

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-19

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 42

TITLE OF RULE BEING PROPOSED: Greenhouse Gas Emissions Inventory Program

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

**WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION**

Form #1

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2007 JUN -6 PM 4:27

OFFICE W. VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: WV Code §22-5-19

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 42

TITLE OF RULE BEING PROPOSED: Greenhouse Gas Emissions Inventory Program

DATE OF PUBLIC HEARING: July 9, 2007 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection
Dolly Sods Conference Room
601 57th Street, SE
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

DATE WRITTEN COMMENT PERIOD ENDS: July 9, 2007 TIME: 6:00 p.m.

WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Public Information Office
Department of Environmental Protection
601 57th Street, SE

Legislative Rule Marking WV 25304

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

JUN 5 2007



Authorized Signature

Review Committee

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2007

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499

Fax: 304 926-0488

e-mail: jbenedict@wvdep.org

Phone: 304 926-0499

Fax: 304 926-0488

e-mail: tmowrer@wvdep.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

James Mason, Technical Analyst II
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200

Fax: 304 926-0479

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

_____ N/A _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
BRIEFING DOCUMENT**

Rule Title: 45CSR42 - "Greenhouse Gas Emissions Inventory Program"

A. AUTHORITY: W.Va. Code §22-5-19.

B. SUMMARY OF RULE:

The purpose of this rule is to establish a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount of greenhouse gases. The program will inventory greenhouse gas emissions from stationary, area, mobile and biogenic sources, and account for reductions, capture and sequestration activities. The rule provides for a periodic compilation of a net greenhouse gas emissions inventory, and a determination whether West Virginia is a net sink or emitter of greenhouse gases. The rule also provides for development of a registry for voluntary reductions of greenhouse gas emissions, and a determination whether the reduction, capture and sequestration of greenhouse gas emissions can be developed as an asset for economic development.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

45CSR42 - "Greenhouse Gas Emissions Inventory Program" satisfies W.Va. Code §22-5-19 which authorizes the Secretary to propose legislative rules establishing a Greenhouse Gas Inventory Program in West Virginia in accordance with W.Va. Code §29A-3-1 et seq.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation, thus no determination of stringency is not required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

Briefing Document

45CSR42

Page 2

In accordance with §22-1A-1 and 3(c,) the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 21, 2007, and May 30, 2007 meetings, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Monday – May 21, 2007

~~1:00 p.m. – 3:00 p.m.~~

601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Lisa Dooley
Larry Harris
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Lewis Halstead, DMR
Ken Politan, DMR
Charlie Sturey, DMR
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, Office of Oil & Gas
Carroll Cather, DWWM
Pam Nixon, Advocate
David L. Vande Linde, Blasting
Jim Mason, DAQ
Mike Zeto, DWWM – EE
Matt Sweeney, DWWM

VISITORS:

Ann Bradley, Spilman Thomas & Battle
Charlie Burd, IOGA
Don Garvin, WVEC
Dave Yaussy, Robinson & McElwee

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m.

Karen Price stated that the Council did not have enough time to review the rules, therefore was requesting to have another meeting to discuss further and the remaining of the Council agreed. The Council will meet May 30, 2007 at 10:00 a.m. – WVDEP – 601 57th Street, SE – Charleston, WV 25304 – West Virginia Room (3001).

Deputy Cabinet Secretary Huffman apologized for the short time period regarding the rules getting out to Council. Randy Huffman then introduced Karen Watson, Assistant General Counsel to discuss with the Council the DEP bills that had passed in the 2007 Regular Legislative Session:

- SB 337 – Establishing New Greenhouse Gas Inventory Program
Approved by Governor – April 4, 2007
- SB 425 – Relating to Water Pollution Control Revolving Fund
Approved by Governor – April 4, 2007
- SB 465 – Establishing Dam Safety Rehabilitation Revolving Fund
Approved by Governor – March 27, 2007
- SB 490 – Relating to Underground Storage Tank Insurance Fund
Approved by Governor – April 3, 2007
- SB 524 – Requiring Proof of Lawful Disposal of Solid Waste
Approved by Governor – March 28, 2007
- SB 588 – Removing Tax Expiration Date on Manufacturing or Production of Synthetic Fuel From Coal
Approved by Governor – April 4, 2007

Karen Watson then gave a brief summary of each proposed rule for the 2008 legislative session:

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes ‘statutory air pollution,’ addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Mr. Harris: Why does it allow low-level radioactive waste?

DEP Response: To allow crematories to dispose of bodies with chemo drugs. Does not allow high-level radioactive compounds related to research.

~~Council wanted to know if the agency would accept comments in writing after the meeting (e-mail in comments)~~

DEP Response: Yes

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO₂ & PM NAAQS include correction of SO₂ annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour PM_{2.5} standards, and addition of measurement methods for PM_{2.5}. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO₂ and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Mr. Harris: Are we sure we are protecting the public's health? We should not be lowering standards so that our energy being transmitted to other states doesn't pollute our air. Are we aware of EPA's Science Advisory Panel?

DEP Response: CAIR aims to lower emissions at power plants. Utility controls are helping us meet targets earlier. EPA's regional approach has generally been successful and we are seeing tremendous benefits. The agency is aware of the EPA's panel, and EPA is considering more stringent regulations but has not done so yet.

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

Revisions to rule incorporate annual incorporation by reference updates and exclusions.

COMMENT

No questions.

45CSR18 – Control of Air Pollution from Combustion of Solid Waste

SUMMARY

CISWI Rule 18 combines and incorporates by reference all current federal Section 111/129 combustion regulation into one rule. Old Rule 24 will be repealed and replaced. New exemption section is consistent with revised Rules 6, 25 and 34. Revisions also include revised scope, extensive federal counterpart language updates, improved citing and consistency.

COMMENT

No questions.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities

SUMMARY

Revisions to the proposed rule include general annual incorporation by reference and revisions required to maintain consistency with the DWWM's rule 33CSR20 and federal counterpart regulation. Addition of direct incorporation by reference of new provisions published in the Federal Register. Language for pathological waste incinerators is revised for clarity.

COMMENT

No questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

Rule 34 now combines all NESHAP regulations previously adopted under both Rules 15 & 34. Old Rule 15 will be repealed and replaced. Revisions to Rule 34 incorporate annual NESHAP updates under Parts 61 & 63. Some Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas; Polyvinyl Chloride and Copolymers; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals.

COMMENT

No questions.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

SUMMARY

Annual CAIR NO_x Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

COMMENT

No questions.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

Annual CAIR SO₂ Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Mr. Raney: Is the exclusion still there for coal preparation activities?

DEP Response: Yes, section 3.2. (45CSR42)

Mr. Raney: How do we quantify sequestration?

DEP Response: Don't think we will get down to stationary source level. Agency will look at area

sources and biogenic activities. Once we get information, we will compile in an inventory.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Lisa Dooley: Public notice of permits – who bears the cost – there has to be a more efficient way of getting notices out than Class I legal ads. This is a suggestion for the future.

DEP Response: Applicant bears cost – DEP is trying other methods of getting the information out – but not everyone has access to e-mail.

400 people on DEP's mailing list to receive permits by e-mail and we have between 30-40 who receive permits by US mail.

33CSR20 – Hazardous Waste Management System

SUMMARY

This amendment will adopt by reference approximately two years of changes to federal regulations by adopting the federal regulations in effect as of June 1, 2007 consisting of changes that correct errors in previously enacted Dye and Pigment rule and Manifest rule, allow more hazardous waste, allow greater flexibility in SW-846 testing and monitoring, allow more mercury containing devices to be managed as universal waste, streamline permitting process through a standardized permit, allow additional headworks and de minimus waste exemptions, reference Clean Air Act standards for hazardous waste combustors, allow a series of paperwork burden reductions for hazardous waste management facilities, corrects errors in 40 CFR (federal regulations) and excludes cathode ray tubes from the definition of solid waste under certain conditions. Language corrections, updated references and a change as the result of an EPA comment regarding annual groundwater monitoring at corrective action sites are also included in the amended rule. The rule amendment is not projected to require additional operating expenses above current levels as the amendments are generally de-regulatory in nature.

COMMENT

No questions.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced tanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

No questions.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Mr. Raney: Would like to have the trout water list stay within the agency and be able to discuss the science on a case-by-base basis before the EQB, not the Legislature.

DEP Response: The DEP believes the scientific basis for the proposed trout streams is clear and does not need to be litigated before the EQB.

Mr. Harris: Commented on the changes in Appendix E and asked whether the formula change for copper and cadmium resulted in a more or less stringent standard.

DEP Response: The changes in Appendix E are recommended by EPA, updating MCL's, etc. The revised hardness formulas represent EPA's latest science.

47CSR10 – National Pollutant Discharge Elimination System (NPDES)

SUMMARY

The proposed revisions to the National Pollutant Discharge Elimination System Rule reflect updates/additions made to the various federal regulations that govern the NPDES program. The proposed changes also include specific language in section 14 of the rule relating to the Pretreatment Program to ensure that the rule is consistent with the most recent federal pretreatment regulations in 40 CFR Part 403.

COMMENT

No questions.

47CSR34 – Dam Safety

SUMMARY

The proposed revisions establish requirements governing the disbursement and use of moneys in the Dam Safety Rehabilitation Revolving Fund, authorized by SB 465 in the 2007 legislative session.

COMMENT

Ms. Hallinan: Any progress being made in reducing the number of deficient dams?

DEP Response: Not very much. The fund initiative is badly needed.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Mr. Harris: Suggested we file with 309 streams instead of 156 streams because Legislature will further reduce.

Jackie Hallinan: The program is a good idea.

Meeting was adjourned by Deputy Cabinet Secretary Randy Huffman.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday – May 30, 2007

10:00 a.m. – 12:00 p.m.

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Larry Harris - Teleconference
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
Pam Nixon, Advocate
Jim Mason, DAQ
Mike Zeto, DWWM – EE
John Morgan, DWWM
Scott Mandirola, DWWM
Greg Adolfson, PIO

VISITORS:

Dave Yaussy
Brittany Carns
Joe Gollehon
Gregory Hoyer
Jeff Mauzy
Amy Christy

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 10:00 a.m. Advisory Council Member Larry Harris joined the meeting via teleconference. Deputy Cabinet Secretary Huffman then turned the meeting over to Karen Watson, Assistant General Counsel for the West Virginia Department of Environmental Protection. Karen informed the Council that the agency had received comments from several Council members and those comments would be appended to the minutes. (see attached) She explained the agency

had representatives from each of the programs to answer questions for the rules identified in those comments. She also explained the agency had made several changes in the rules as a result of those comments.

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes ‘statutory air pollution,’ addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Larry Harris: Had raised the issue of “low-level radioactive waste” in the last meeting.

DEP Response: DEP has removed the chemotherapeutic waste and low-level radioactive waste provisions from the proposed rule. The proposed rule does not in any way affect current medical waste incineration rules now on the books.

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO₂ & PM NAAQS include correction of SO₂ annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour PM_{2.5} standards, and addition of measurement methods for PM_{2.5}. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO₂ and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Karen Price: Section 4.2.c – PM_{2.5} Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m³. This should be 65 ug/m³, pursuant to 40 CFR 50.7.

DEP Response: On October 17, 2006, the federal NAAQS regulation changed from 65 to 35.

Larry Harris: Restated his concern that the standards may not be stringent enough to protect public health. He also restated his question about the antidegradation language struck from the rule.

DEP Response: DEP cannot lower the NAAQS standards below that of federal levels unless the provisions for the stringency test in §22-1-3a are fully met. 45CSR14, in its entirety, has wholly replaced the intent of the relic anti-degradation language struck in proposed Rule 8.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

Annual CAIR SO₂ Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

Karen Price: Asked why the opt-in language was deleted from each of these rules.

DEP Response: has removed the opt-in provisions in the three CAIR rules so that West Virginia can say that CAIR equals NOx RACT for EGUs under the PM2.5 implementation rule.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Karen Price and Larry Harris: Both asked about the definitions of “anthropogenic” and “biogenic” in the rule and asked for examples of each.

DEP Response: An example of an anthropogenic source is the coal extraction process and an example of a biogenic source is the erosion of soil exposing a coal seam. The agency does not plan

to ask sources to report biogenic activities. In order to receive credit a source must report all of its emissions.

Karen Price: Can the reporting requirement in section 4.1 be made consistent with the emissions inventory requirements.

DEP Response: The date in the rule is March 31st and is the same as the emissions inventory date.

Karen Price: Does not believe fees should be required for greenhouse gas reporting.

DEP Response: The agency will consider the issue.

Karen Price: The last sentence in section 5.3 allowing the Secretary to request information is not authorized by statute.

DEP Response: It is authorized by the statute.

Karen Price: There should be a reasonable protocol for reporting emissions.

DEP Response: D AQ purposely wrote the rule in a manner flexible to the Secretary, as greenhouse gas reduction quantification protocols are still being developed at this time.

Karen Price: Is WV going to sign on to the climate registry or are we going to have our own?

DEP Response: In order to trade, we have to be consistent with other programs, but we do not want to be more specific in the rule.

Bill Raney: The exemption in section 3.2 includes language referring to sources covered by chapter 22-3 as well as sources required to report emissions. We are concerned this may take the exemption in the statute away.

DEP Response: While the agency did not want to require mining extraction to report emissions, thermal dryers associated with coal prep plants often have huge emissions of greenhouse gases. That is the reason the statute and rule only exempt sources permitted under chapter 22-3.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-

15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Larry Harris: DEP made changes to this rule during the Interims process last year, and the rule now requires a permit for both short-term and long-term applications. This is a good change. However, we feel that most of the information required in Section 7.3. Permit Application Requirements for long-term permits should also be required for short-term permits.

DEP Response: The requirements of section 7.3 were intended to be directed toward facilities that proposed to land apply filtrate as the beneficial use. It was intended to be applicable to both, if land application was the proposed method of reuse. Section 7.3 will be revised to more clearly reflect the applicability of the requirement for both long-term and short-term, if land application is the proposed beneficial reuse.

Rick Roberts and Larry Harris: Regarding the environmental effects of disposal of sludge are the values in Table 1 of the rule sufficient?

DEP Response: The Table 1 values are the same as the sewage sludge levels in DEP's other rules, and the agency believes they are supported by sound science.

Rick Roberts and Larry Harris: Mr. Harris expressed concern with the distinction between "beneficial reuse" and "disposal." Mr. Roberts believes that his concern is satisfied by the language in section 3.1.b.1.

Rick Roberts: The rule should include general permits as proposed.

Larry Harris: Only individual permits should be allowed under the rule.

DEP Response: There will be public notice in the general permit process.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced tanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

Karen Price: Section 6.1. states "...including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

DEP Response: This language will give the agency a better handle on transporters and middle-men involved in the process.

Karen Price: Section 7.3.a.1. states "...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods.....".

1. The portion that states "...the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

DEP Response: Regarding dates, times and location of the training the agency will not require the information prior to the training. As far as the credentials of the instructor the agency needs this information as part of its curriculum review, in this case before the training.

Karen Price: Section 7.3.a.2 - This section states that a nonrefundable application fee of \$280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process.

DEP Response: The agency agrees and believes the rule only requires a one-time fee.

Rick Roberts: Regarding the \$5.00 per ton fee, how does a source measure the tonnage? Perhaps the agency should consider using a cubic-yard approach.

DEP Response: The agency will consider.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Larry Harris: Does the use removal in section 7.2.d follow the federal Clean Water Act requirements?

DEP Response: Yes, the agency followed all the requirements, federal and state, and required extensive information from the company. The agency also conducted two public meetings.

Bill Raney: Mr. Raney repeated his concern with the listing of trout waters in the rule and the fact that the list has to be approved by the Legislature. Karen Price agreed with this comment. Jackie Hallinan and Larry Harris did not agree with this comment.

Karen Price: Questioned the need for Appendix D, because the Category C use applies to all state waters.

DEP Response: Agency will consider.

Karen Price: Will the agency consider not making use removals go through the legislative process.

DEP Response: The agency decided not to include any language pertaining to this issue at this point in time, but will be subjecting this issue to the public participation process in the coming months.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Larry Harris: Scientific criteria should be used to add or delete streams from the Tier 2.5 list.

Rick Roberts: Can the SRF program give priority to facilities impacted by the Tier 2.5 list?

DEP Response: Agency will take this under advisement.

Larry Harris: Is the nomination process adequate?

DEP Response: The agency believes the process is generally adequate and workable. If, however a large number of streams are nominated at one time, the individual notification requirements may be difficult and costly.

At this point in the meeting, Bill Raney submitted written comments regarding several mining rules. (see attached)

60CSR8 - Environmental Excellence Program

Greg Adolfson summarized the rule revisions. He said the changes would provide more flexibility for the agency to approve or disapprove of incentives in the program, as well as other flexibilities.

SUMMARY

Changes are being proposed to the Environmental Excellence Program Rule (60CSR8) to better align with and follow the momentum of the United States Environmental Protection Agency's National Environmental Performance Track Program. Additionally, the primary purpose for the changes is to give more flexibility to the Department of Environmental Protection Cabinet Secretary in areas such as: Eligibility Criteria for Participation (section 4); Environmental Performance Record (section 5); Environmental Management System (section 6); Public Participation (section 8); Incentives (section 9); Procedures for Application (section 10); and Annual Performance Report (section 14). Language, such as "may include, but will not be limited to, the following," has been added to allow for this flexibility.

COMMENT

Rick Roberts: Why is section 6.2 completely deleted?

DEP Response: The section is not completely deleted, just the 1996 standards. This will allow the agency to use the most current standards.

Bill Raney: How many companies are participating in the program?

DEP Response: There are two in the National Program, Toyota and Dow.

Mr. Raney: Suggested we start with 39.

Mr. Harris: Asked about section 2.11 in the definitions regarding “trading” and if it includes cross-pollutant trading.

DEP Response: The definitions were unchanged from the ones the EQB first adopted in 2001. The agency does not think it allows cross-pollutant trading.

Division of Mining and Reclamation

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

§38-2-3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38-2-5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. The changes in §38-2-5.6 clarify what operations may be exempt from conducting a “Surface Water Runoff Analysis”, monitoring requirements and removes phase-in compliance schedule that expired on June 19, 2006. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. New §38-2-11.8 titled “Bond Credit for Reclamation of Bond Forfeiture Site under a No Cost Reclamation Contract” encourages qualified operators to undertake reclamation of bond forfeiture sites for the purpose of eliminating hazards to human health and safety, abating pollution of surface and ground waters and the contribution of sediment to adjacent areas, and restoring land to beneficial uses. Changes in §38-2-14.15.c.2 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in 14.15.e remove a phase-in compliance schedule that expired in 2004. The changes in §38-2-23 are being made to make the mining rule consistent with the proposed changes in the State’s NPDES Mining Rules.

COMMENT

No questions.

47CSR5A – Individual State Certification of Activities Requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Mr. Harris: How do we determine the “ordinary high water mark” under section 4.2.f.4 and how is it determined on a small stream?

DEP Response: The US Army Corps of Engineers is responsible for determining “waters of the U.S.” under the rule.

Mr. Harris: What are the differences between coal and non-coal impacts and how are they determined?

DEP Response: Rule has to be consistent with statute.

47CSR30 – WV/NPDES Rules for Coal Mining Facilities

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the “Director” are changed to “Secretary” to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit. This rule clarifies provisions related to coal remining operations and provides a remining water quality standard variance for any parameter of concern.

COMMENT

No questions.

199CSR1 - Surface Mining Blasting Rule

SUMMARY

The proposed amendments change the following sections: 2.27. Adds the definition of “other structure” (structures built by the permittee); 2.38 Clarifies definition of “surface mine operation”; 3.2.C. Plan for blasting should include seismic monitoring when within 1000 ft of a structure, and performance specifications for blasting seismographs; 3.4. Areas of blasting that will be regulated for shaft and slope development; 3.6.c.3. Requiring field practice guidelines for blasting seismographs; 3.7a Request for alternate limits must have written consent of the owner; 3.9. Minimum qualifications and continuing education requirements for surveyor; 4.1.b. Allows the agency to consider blasting experience of applicants that was gained prior to the last three years; 4.5.d. Requires applicants who have been suspended or revoked in other states to show cause as to why should be issued a certification; 4.9.a.2 process for issuing a temporary suspension to a blaster and appeal rights; 4.13 Clarifies blasters responsibility of training the blasting crew; 5.2.a.3&4 Clarifies

the investigations process on a claim of blasting damage; 6.1 Requiring that any arbitrators that are removed from the list must be done with cause; and 7.3 Detonators and initiation systems are not considered for calculation of fees.

COMMENT

No questions.

Office of Oil and Gas

35CSR3 – Coalbed Methane Wells Rule

SUMMARY

The WVDEP, Office of Oil and Gas is proposing to revise existing rule 35CSR3. Series 3 is a legislative rule in place to enforce the provisions in WV Code §22-21-1 et seq., Coalbed Methane Wells and Units, commonly referred to as the Coalbed Methane Act. The revisions will: Address the establishment of special field rules to promote the orderly development of coalbed methane fields; Protect the correlative rights of all owners located within the geographic area for which special field rules are established; Provide a process by which the Review Board may hold a hearing on an application for special field rules and issue such rules; Insert language (Section 17) which was inadvertently deleted from the rule during the 2006 legislative session. This language existed in the rule prior to the revisions in 2006.

COMMENT

Is this the same rule that went through last year?

DEP Response: Yes, except for two sections that had changes:

16.2.e – advertisement “15 days”

16.1.6.1 – “FOIA” issue that came out of the LRMRC.

Mr. Raney: Is this the product of the stakeholders group?

DEP Response: Yes.

Ms. Hallinan: What is a field rule?

DEP Response: Special spacing procedure for coalbed methane wells. It deals with pooling and royalty issues.

Division of Land Restoration

33CSR10 – Recycling Assistance Grant Program

SUMMARY

This rule sets out guidelines and procedures for providing assistance grants to local governments and other interested parties for the purpose of planning, initiating, expanding, or upgrading recycling programs, provide related public education programs, and assist in recycling market procurement efforts.

COMMENT

No questions.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

This legislative rule establishes the eligibility, procedures, standards and legal documents required for voluntary and brownfield cleanups and updates risk protocol standards, including updates to the deminimis table. It also includes changes to the land use covenant section to incorporate the components of the Uniform Covenant Act.

COMMENT

Ms. Dooley: Are there grant dollars for brownfields?

DEP Response: Yes

The next scheduled Advisory Council Meeting will be on May 30, 2007 at 10:00 a.m. Mr. Huffman asked the Council members to notify the DEP of which rules they want to discuss so the right agency person can be at the meeting. He also asked them to submit comments prior to the meeting if possible.

DO, temperature, and fecal coliform. We feel that they can assess these parameters and should not treat them separately.

45CSR42 Greenhouse Gases

The fact that the DEP is beginning to deal with the process of greenhouse gases that lead to global warming is commendable. Some questions on the rule were raised by Dr. Kotcon:

The greenhouse gases emissions inventory rule (45-42-1) needs to be >strengthened considerably. The sections on emissions inventory >(section 5, pages 3-4) is so vague as to be meaningless, especially >as it deals with sequestration for area sources and sinks. I do not >see how any meaningful data can be generated with this language. How would the carbon sequestration be estimated? Has there been studies estimating the biogenic incorporation of CO₂ per acre of woodland, for example? The rule appears to be a vague in how it would be implemented.

Air Quality and Emission Rules (see below)

45CSR8 Ambient Air Quality Standards

Don Garvin pointed out that the the antidegradation language was removed from this rule, and it was explained that the agency feels these provisions are now covered in 45-CSR-14("Prevention of Significant Deterioration.") However, the language that was stricken does not appear in 45-CSR-14, and the stricken language is the ONLY statement in the rules of West Virginia's antidegradation policy for air quality. The environmental community still believes the stricken language should be restored.

Here is what should be reinstated:

§45-8-2. Anti-Degradation Policy.

2.1. Pursuant to the best interests of the State of West Virginia, it is the objective of the Secretary to obtain and maintain the cleanest air possible, consistent with the best available technology.

2.2. Where the present ambient air is of better quality than the established standards, the Secretary will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Secretary that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.

45CSR41 Control of Annual SO₂ emissions

45CSR6 Control of Air Pollution from Refuse Combustion

45CSR39 Nitrogen Oxides

I raised the general concern whether the standards for air quality were consistent with the EPA guidelines or not. Further, were any recognized health authorities consulted when these levels were determined? I also raised the issue that West Virginia is increasing supplying electricity to the population east of our mountains. New transmission lines are proposed that are to be connected with coal burning power plants. Billy Jack Gregg, Consumer Advocate for the WV PSC has pointed out that the states receiving our generated power will not permit generation plants in their region. They are concerned about air pollution and its various effects. But they need power, so they turn to West Virginia. This helps the coal industry and generation plants, but puts the health of West Virginians in jeopardy. I feel that our air quality and emission limits should be even more stringent than the EPA calls for in order to protect our citizens. This should be particularly true for power plants that export electricity.

Dr. Kotcon has raised the following issues:

45-CSR-8 Ambient Air Quality Standards

The standards for PM_{2.5} and Ozone are not adequately protective. I recommend that the standards be lowered from 15 $\mu\text{g}/\text{m}^3$ to 13 $\mu\text{g}/\text{m}^3$ in section 4.2.b., and from 0.08 ppm to 0.07 ppm in section 4.4.b.

The air standards (45-8-1) retains the standards for PM_{2.5} and ozone
>that the EPA Clean Air Scientific Advisory Council has already
>determined to be inadequate. Keeping these old standards will kill
>dozens or hundreds of West Virginians each year.

>The rule on refuse combustion (45-6-1) attempts to revise the
>definition of low-level radioactive waste and revives the
>Below-Regulatory_Concern (BRC) issue from some years ago. It also
>creates a large number of exemptions for "temporary" pollution
>sources. I am not yet sure if this re-opens old battles over
>medical waste incineration, but this was a really hot issue a few
>years back.

Questions/Comments on DEP's 2007 Proposed Rules

Comment submitted
by Karen Price at
Council
meeting
5/30/07

- **45 CSR 8 Ambient Air Quality Standards**

Section 4.2.c – PM_{2.5} Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m³. This should be 65 ug/m³, pursuant to 40 CFR 50.7.

- **45 CSR 39, 45 CSR 40, 45 CSR 41**

The opt-in unit language is deleted from each of these rules. What is the purpose for the deletion of these provisions?

- **33 CSR 30, Underground Storage Tank Rules**

Section 6.1. states "...including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

Section 7.3 a.1. states "...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods...."

1. The portion that states "...the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might

occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

Section 7.3.a.2 - This section states that a nonrefundable application fee of \$280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process. The State should clarify or make provision for a company to submit one application for the training program that will be administered to all company UST facilities. This will make the \$280 application fee reasonable and the application process less burdensome.

FISCAL NOTE FOR PROPOSED RULESRule Title: 45CSR42 - "Greenhouse Gas Emissions Inventory Program"Type of Rule: Legislative Interpretive ProceduralAgency: Division of Air QualityAddress: 601 57th Street SE
Charleston, WV 25304Phone Number: 926-0475Email: tmowrer@wvdep.org**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The bill will require personal resources for development and implementation of a program to inventory emissions, reductions and sequestration of greenhouse gases. These resource costs will be covered by existing federal grant funds and agency resources. Therefore, no additional state or federal funding will be required.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 14,300	\$ 69,875	\$ 16,250
Personal Services	\$ 14,300	\$ 69,875	\$ 16,250
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR42 - "Greenhouse Gas Emissions Inventory Program"

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

FY 08 - Estimated technical/legal/clerkal costs to support legislative rulemaking, and preliminary program development are approximately 0.25 FTE or \$14,300.


Full implementation is expected to occur in FY 09. Estimated technical/legal/clerkal costs to develop the program are approximately 1.1 FTE or \$69,875. Thereafter, costs decrease to 0.25 FTE or \$16,250 to maintain the program.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 1, 2007

Signature of Agency Head or Authorized Representative



John A. Benedict, Director

FILED

2007 JUL 26 PM 2:09

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

OFFICE WEST VIRGINIA
 DEPARTMENT OF STATE

SERIES 42
GREENHOUSE GAS EMISSIONS INVENTORY PROGRAM

§45-42-1. General.

1.1. Scope. -- This rule establishes a greenhouse gas emissions inventory program in West Virginia which:

1.1.a. Requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount of greenhouse gases on an annual basis;

1.1.b. Inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions and sequestration of greenhouse gas emissions;

1.1.c. Provides for a periodic compilation of a greenhouse gas emissions inventory and a determination whether West Virginia is a net sink or emitter of greenhouse gases;

1.1.d. Provides for development of a registry to record voluntary reductions of greenhouse gas emissions; and

1.1.e. Provides for a determination whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for economic development.

1.2. Authority. -- W.Va. Code §22-5-19.

1.3. Filing Date. --

1.4. Effective Date. -- June 1, 2008.

§45-42-2. Definitions.

2.1. "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air pollution" or "statutory air pollution" means and is limited to the discharge into the air by the act of man substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.3. "Anthropogenic" means a direct result of human activities or the result of natural processes that have been influenced by human activities.

2.4. "Area source" means, for purposes of this rule, a collection of similar sources of air pollutants within a geographic area. Area sources collectively represent individual sources that are small and numerous, and that typically have not been inventoried as a stationary or mobile source.

2.5. "Biogenic" means a naturally occurring biological source or process that is not significantly affected by human actions or activity.

2.6. "Capture" means the collection of greenhouse gas emissions from a stationary source.

2.7. “*De minimis*” means emissions from a stationary source that are equal to or less than ten thousand tons per year for carbon dioxide, four hundred seventy-six tons per year for methane, thirty-two and six tenths tons per year for nitrous oxide, eight hundred fifty-five thousandths tons per year for hydrofluorocarbons, one and nine hundredths tons per year for perfluorocarbons and forty-two hundredths tons per year for sulfur hexafluoride.

2.8. “Emission” means the release, escape or discharge of regulated air pollutants or greenhouse gases into the air.

2.9. “Greenhouse gas” means the gaseous compounds: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (SF₆).

2.10. “Mobile source” means a variety of onroad and nonroad vehicles, engines, locomotives, marine vessels, airplanes and other equipment that generate air pollutants and greenhouse gas emissions, and that move or can be moved from place to place.

2.11. “Regulated air pollutant” means, for purposes of this rule, any air pollutant regulated under rules promulgated by the Secretary pursuant to W.Va. Code §22-5-4.

2.12. “Reservoir” means a geological site where a greenhouse gas is securely stored.

2.13. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.14. “Sequestration” means the physical process by which emissions of a greenhouse gas are directly captured for storage in a reservoir, or the biologic process by which a greenhouse gas is indirectly removed from the atmosphere for storage in a sink.

2.15. “Sink” means any process, activity or mechanism which removes a greenhouse gas from the atmosphere. Forests are considered sinks because they remove carbon dioxide through photosynthesis.

2.16. “Source” means, for purposes of this rule, any process or activity which releases a greenhouse gas into the air.

2.17. “Stationary source” means any building, structure, facility, installation, stationary process or process equipment which emits or may emit any regulated air pollutant or greenhouse gas.

2.18. “Ton” means a short ton, or 2000 pounds.

2.19. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §22-5-1 et seq.

§45-42-3. Applicability.

3.1. Any stationary source that emits one or more greenhouse gases on an annual basis greater than the *de minimis* amounts listed in the table below, and reports emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14), shall be an affected source required to report emissions of all greenhouse gases emitted above *de minimis* amounts to the Secretary under section 4:

Greenhouse Gas Compound	tons/year
carbon dioxide	10,000
methane	476
nitrous oxide	32.6
hydrofluorocarbons	0.855
perfluorocarbons	1.09

sulfur hexafluoride	0.42
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3.2. Stationary sources which are regulated by the Secretary under W.Va. Code §22-3-1 et seq. and do not report emissions of regulated air pollutants pursuant to the emissions inventory requirements under W.Va. Code §22-5-4(a)(14) are not required to, but may voluntarily report their greenhouse gas emissions under section 4.

§45-42-4. Reporting Requirements.

4.1. In accordance with a reporting cycle provided by the Secretary, affected sources shall report to the Secretary the quantity of all greenhouse gases emitted above *de minimis* amounts in the years specified by the Secretary.

4.2. Affected sources shall only be required to report annual quantities of anthropogenic non-mobile source greenhouse gases emitted at the stationary source, and shall not be required to report biogenic emissions of greenhouse gases.

4.3. The Secretary shall determine the form and format of the information reported by affected sources under subsection 4.1 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

4.4. Notwithstanding the provisions of subsection 4.3, to satisfy the greenhouse gas emission reporting requirements under this section, affected sources may submit greenhouse gas emissions inventory information from documented greenhouse gas inventories such as those provided to the Environmental Protection Agency's Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization and the SF₆ Emissions Reduction Partnership for Electric Power Systems. Greenhouse gas emissions inventory information from other widely recognized and verified greenhouse gas emissions inventory programs may be submitted by affected sources under this subsection, but shall be subject

to approval by the Secretary on a case-by-case basis.

4.5. Reports of greenhouse gas emissions submitted to the Secretary under this section shall be signed by a responsible official and shall include the following certification statement: "I, the undersigned, hereby certify that the data transmitted to the West Virginia Department of Environmental Protection is true, accurate, and complete, based upon information and belief formed after reasonable inquiry."

4.6. Greenhouse gases reported under this section are not subject to fees under 45CSR30, unless the greenhouse gases are otherwise regulated by the Secretary.

§45-42-5. Greenhouse Gas Emissions Inventory.

5.1. The Secretary shall periodically compile an inventory of greenhouse gas emissions to:

5.1.a. Characterize the relative contributions of greenhouse gas emissions from stationary, area, mobile and biogenic sources in West Virginia; and

5.1.b. Determine the extent to which greenhouse gas emissions are offset by the rate of sequestration, and whether West Virginia is a net sink or emitter of greenhouse gases.

5.2. The greenhouse gas emissions inventory shall include the emissions from stationary sources reported under section 4, and other relevant information regarding significant emissions, reductions, and sequestration of greenhouse gases from stationary, area, mobile and biogenic sources requested by the Secretary under subsections 5.3 and 5.4.

5.3. To inventory greenhouse gas emissions reductions, the Secretary shall consult with the citizenry and other entities such as industry trade groups that have information relating to

greenhouse gas emissions reductions, and sequestration. Upon request of the Secretary, such entities may provide relevant information relating to greenhouse gas emissions reductions, capture and sequestration.

5.4. The Department of Agriculture, the Division of Forestry, Marshall University, West Virginia University, West Virginia Geological and Economic Survey, and the Department of Transportation shall enter into interagency agreements with the Secretary and at the Secretary's request provide:

5.4.a. Relevant information relating to greenhouse gas emissions from area, mobile and biogenic sources;

5.4.b. Relevant information relating to greenhouse gas emissions reductions and sequestration; and

5.4.c. Any assistance the Secretary may request during the development of the greenhouse gas emissions inventory.

5.5. The Secretary shall determine the form and format of the information submitted by the entities under subsections 5.3 and 5.4 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

§45-42-6. Greenhouse Gas Emissions Registry Program.

6.1. The Secretary shall develop a registry for the recordation of voluntary reductions of greenhouse gas emissions.

6.2. The greenhouse gas emissions registry program shall be as consistent as possible with developing regional, national, or international programs designed to monitor, quantify and register reductions in greenhouse gas emissions with respect to:

6.2.a. Development of criteria, based on a set of standardized emissions accounting, reporting and verification protocols, to determine baseline emissions and quantification of voluntary reductions in emissions of greenhouse gases;

6.2.b. Public recognition of such voluntary emissions reductions;

6.2.c. Consideration of voluntary greenhouse gas emission reductions when determining baselines and reduction requirements under future federal greenhouse gas emission reduction programs; and

6.2.d. The ability of sources to participate in future greenhouse gas emission trading programs.

§45-42-7. Economic Development Potential.

7.1. Using information obtained, gathered or developed under this rule, the Secretary will determine whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for economic development in West Virginia.

§45-42-8. Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

**NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD**

On Monday, July 9, 2007 beginning at 6 p.m., the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ) will hold a public hearing on proposed revisions to existing legislative rules. Oral and written comments shall be limited only to the proposed revisions to the following existing legislative rules:

- 45CSR6 To Prevent and Control Air Pollution From Combustion of Refuse;
- 45CSR8 Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter;
- 45CSR16 Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60;
- 45CSR18 To Prevent and Control Emissions From Commercial and Industrial Solid Waste Incineration Units;
- 45CSR25 To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities;
- 45CSR34 Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63;
- 45CSR39 Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides;
- 45CSR40 Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides; and
- 45CSR41 Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide.

On Monday, July 9, 2007, after public hearings on the above proposed legislative rules, the West Virginia Department of Environmental Protection, DAQ will hold a public hearing on the following proposed legislative rule:

- 45CSR42 Greenhouse Gas Emissions Inventory Program.

Upon authorization and promulgation of revisions to 45CSR6, 45CSR8, 45CSR39, 45CSR40 and 45CSR41, the DAQ will submit the final rules to the U.S. Environmental Protection Agency (U.S. EPA) as revisions to the State Implementation Plan, pursuant to the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR18, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's Section 111(d)/129 Plan and program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR25, the DAQ will submit the final rule to the U.S. EPA for approval as part of the West Virginia Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR34, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the National Emission Standards for Hazardous Air Pollutants.

Upon authorization and promulgation of 45CSR42, the DAQ will begin implementation of a Greenhouse Gas Inventory Program.

The public hearing will be held at the Department of Environmental Protection, Dolly Sods Conference Room, 601 57th Street SE, Charleston and is open to the public. Written and oral comments will be accepted until the close of the hearing and will be made a part of the rulemaking record. Comments will also be accepted by fax (304-926-0479), U.S. Mail, or e-mail if postmarked or delivered by the close of business on July 9, 2007.

Copies of the proposed legislative rules may be viewed between 8:30 a.m. and 4:30 p.m. at the Division of Air Quality, 601 57th SE, Charleston, WV 25304 beginning June 8, 2007 or electronically upon e-mail request to: tmowrer@wvdep.org. For a copy of the proposed rules, access the following web address: www.wvdep.org/daq. Choose Public Notice and Comment.

Send written comments to John A. Benedict, Director, Division of Air Quality at the above address. Please identify the draft document to which the comments apply, the commenter's name, address, and telephone number. Comments will also be accepted by e-mail if transmitted by 5:00 p.m. on July 9, 2007 to: tmowrer@wvdep.org. Comments submitted by U.S. Mail must be postmarked by July 9, 2007.



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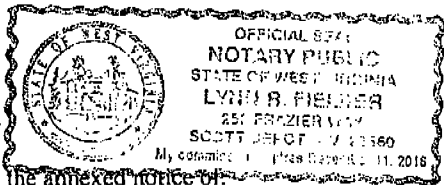
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			421127001 Jessica Gr			22.50			
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State of West Virginia. **AFFIDAVIT OF PUBLICATION**

I, Amelia Legg of
THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of
Public Notice - Legislat



was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County
West Virginia, on the 9TH day of JUNE 2007 Published during the following dates: 06/08/07-06/08/07
Subscribed and sworn to before me this 12 day of June
Printers fee \$ 396.90

Amelia R. Legg
Notary Public

Division of Mining and Reclamation
38CSR2 - Surface Mining Reclamation Rule - The public hearing will be held at 5 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

47CSR5A - Individual State Certification of Activities Requiring a Federal Permit - The public hearing will be held at 4 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

47CSR30 - WVINPDES Rules for Coal Mining Facilities - The public hearing will be held at 4 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

39CSR1 - Surface Mining Blasting Rule - The public hearing will be held at 5 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DWM rules, call 926-0400.

Office of Oil and Gas
25CSR3 - Coalbed Methane Wells Rules - The public hearing will be held at 4 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0450.

Division of Land Reclamation
33CSR10 - Recycling Assistance Grant Program - The public hearing will be held at 2 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

40CSR3 - Voluntary Remediation and Redevelopment Rule - The public hearing will be held at 4:30 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DLR rules, call 926-0455.

Public Information Office

40CSR9 - Environmental Excellence Rule - The public hearing will be held at 7 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0440.

(287864)

Division of Water and Waste Management
33CSR1 - Standards for Beneficial Use of Effluents from Water Treatment Plants - The public hearing will be held at 4 p.m. on July 7, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

33CSR2 - Hazardous Waste Management System - The public hearing will be held at 4 p.m. on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

29CSR40 - Underground Storage Tanks - The public hearing will be held at 6:30 p.m. on July 11, 2007, in the Coopers Rock Training Room at DEP's Charleston headquarters. The comment period will end at the conclusion of the hearing.

47CSR2 - Rules Governing Water Quality Standards - The public hearing will be held at 4 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5 p.m. on July 17, 2007. The rule includes a proposed use redesignation for Park Branch in the Guyandotte River Basin (see additional information in the information sheet attached to the briefing document).

47CSR10 - National Pollutant Discharge Elimination System (NPDES) - The public hearing will be held at 4:30 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

47CSR34 - Dam Safety - The public hearing will be held at 7 p.m. on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

40CSR3 - Amalgamation, Imple-mentation Procedures - The public hearing will be held at 7 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5:00 p.m. on July 17, 2007.

For more information on any of the DWM rules, call 926-0400.

PUBLIC NOTICE

The West Virginia Department of Environmental Protection has scheduled public hearings for its 2008 proposed legislative rules. All hearings will be held at DEP's Charleston headquarters, 601 57th Street S.E., Charleston, WV 25305. Oral and written comments shall be limited to the proposed revisions to the following rules. All comments will be made a part of the rulemaking record. Copies of the rules and other rule documents are available from the Secretary of State's Office or from the agency at www.wvdep.org/2008rules. You may also obtain hardcopies of the information by calling the phone numbers listed below.

Written comments may be submitted to the Public Information Office at the above address. Comments may also be e-mailed to comments@wvdep.org. The hearing dates, locations and comment deadlines are as follows:

- Division of Air Quality**
 - 45CSR6 - Control of Air Pollution from Combustion of Refuse**
 - 45CSR8 - Ambient Air Quality Standards**
 - 45CSR16 - Standards of Performance for New Stationary Sources**
 - 45CSR18 - Control of Air Pollution from Combustion of Solid Waste**
 - 45CSR25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities**
 - 45CSR34 - Emission Standards for Hazardous Air Pollutants**
 - 45CSR37 - Control of Annual Nitrogen Oxide Emissions**
 - 45CSR40 - Control of Ozone Season Nitrogen Oxide Emissions**
 - 45CSR41 - Control of Annual Sulfur Dioxide Emissions**
 - 45CSR42 - Greenhouse Gas Emissions Inventory Program**

The public hearing for all air quality rules will be held at 2 p.m. on July 9, 2007, in the Dolly Sods conference room. The comment period will end at the conclusion of the hearing. A public information and promotion of revisions to 45CSR6, 45CSR8, 45CSR16, 45CSR18, 45CSR34, and 45CSR41, the DAQ will submit the rules to the U.S. Environmental Protection Agency (EPA) as revisions to the State Implementation Plan pursuant to the federal Clean Air Act (CAA). Rules 45CSR16, 45CSR18, 45CSR25, and 45CSR34 will also be submitted to EPA to fulfill other federal obligations under the CAA, including delegations, plans and program approvals. For more information on any of the air rules, call 926-0475.

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of: PROPOSED REVISIONS TO 45CSR42- Greenhouse
Gas Emissions Inventory Program

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter, at the West Virginia Department of Environmental Protection, Division of Air Quality, Dolly Sods Conference Room, 601 57th Street, S.E. Charleston, West Virginia, commencing at 6:41 p.m., on the 9th day of July 2007, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 13221
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

1 establishing a Greenhouse Gas Inventory Program in West
2 Virginia in accordance with West Virginia Code §29A-3-1 et
3 seq.

4 The floor is now open for comments.

5 MS. TENANT: Comments have been submitted
6 for the Independent Oil and Gas Association.

7 MS. CHANDLER: Okay. That is Linda Tenant
8 making that comment.

9 Any thing further?

10 There being nothing further, this public
11 hearing for the proposed revisions to 45CSR42 is concluded.

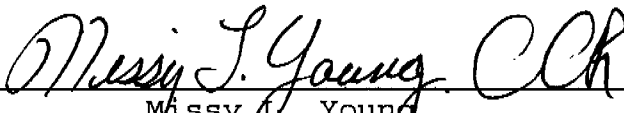
12 (WHEREUPON, the hearing was
13 concluded at 6:44 p.m.)

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23

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for the
State of West Virginia, duly commissioned and qualified, do
hereby certify that the foregoing, is to the best of my
skill and ability, a true and accurate transcript of all the
proceedings had in the aforementioned matter.

Given under my hand and official seal this
20th day of July 2007.



Missy L. Young
Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

West Virginia Coal Association

P.O. Box 3923
Charleston, WV 25339
304-342-4153

representing *"America's "Fuel of Choice"*

304-342-7651 (fax) jbstic@wvcoal.com (e-mail)

July 9, 2007

**Ms. Jessica Greathouse
West Virginia Department of Environmental Protection
Public Information Office
601 57th Street SE
Charleston, WV 25304**

**Re: Comments on Proposed Greenhouse Gas Emissions Inventory
Program Rule, 45 CSR 42**

Dear Ms. Greathouse:

Pursuant to the notice filed with the West Virginia Secretary of State, the West Virginia Coal Association (WVCA) offers the following comments and observations regarding the agency's proposed new greenhouse gas emissions inventory rule, 45 CSR 42.

WVCA is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation and consumption. WVCA's membership accounts for over 80 percent of the Mountain State's underground and surface coal production. WVCA's primary goal is to enhance the viability of the West Virginia coal industry by supporting efficient and environmentally responsible coal extraction and processing through reasonable, equitable and achievable state and federal policy and regulation.

WVCA appreciates the opportunity to provide comments to the West Virginia Department of Environmental Protection (WV DEP) regarding the proposed greenhouse gas emissions inventory rule.

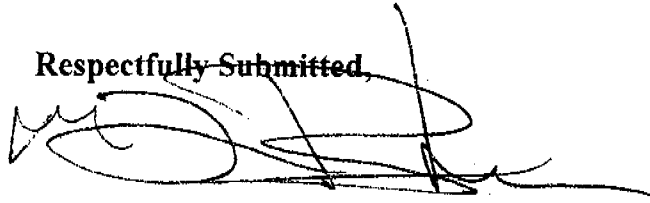
45 CSR 42 is a new set of state environmental rules intended to implement Senate Bill 337 which was passed by the West Virginia Legislature during the 2007 Regular Session. During committee discussions on Senate Bill 337, a Committee amendment was offered that intended to exempt coal industry sources from the requirement to inventory greenhouse gas emissions. With the proposed rule, it appears that the agency has broadened the reporting requirement to now include certain sources that are regulated by WV DEP under the state's Surface Coal Mining and Reclamation Act (22-3-1). For example, 45 CSR 42.3.2 provides:

Stationary sources which are regulated by the Secretary under W.Va. Code §22-3-1 et seq. and do not report emissions of regulated air pollutants pursuant to the emissions inventory requirements under W.Va. Code §22-5-4(a)(14) are not required to, but may voluntarily report their greenhouse gas emissions...

The above cited language appears only to exempt "stationary sources" that are regulated under the state's surface mining act. The clear intent of the Legislature was to exempt all coal mining sources, whether they are stationary or other sources. WVCA believes that the language of proposed 45 CSR 42.3.2 needs clarification to clearly exempt all mining-related sources from the reporting

requirements of this new rule as was clearly the intent of the Legislature as expressed in amendments to Senate Bill 337.

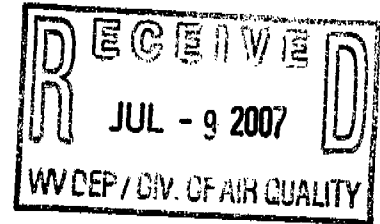
~~Respectfully Submitted,~~

A handwritten signature in black ink, appearing to read "Jason D. Bostic", written over the crossed-out text.

**Jason D. Bostic
Vice-President
Environmental & Regulatory Affairs**



July 9, 2007



VIA HAND DELIVERY & ELECTRONIC MAIL

Public Information Office
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Re: Proposed Greenhouse Gas Emissions Inventory Program Rule –45
CSR 42; Proposed Revisions to Emission Standards for Hazardous
Air Pollutants – 45 CSR 34

Dear Sir or Madam:

On behalf of the Independent Oil and Gas Association of West Virginia, Inc. ("IOGA"), I am submitting comments regarding the proposed Greenhouse Gas Emissions Inventory Program rule (the "Proposed GHG Rule") implementing SB 337 which was passed during the 2007 Regular Session of the West Virginia legislature. IOGA also offers a brief comments below regarding the proposed revisions to Emission Standards for Hazardous Air Pollutants – 45 CSR 34. IOGA is a statewide non-profit trade association representing companies engaged in the exploration, production and development of natural gas and oil resources in West Virginia, and the companies and individuals who support these activities

Proposed GHG Rule

IOGA believes that with limited exceptions, the Proposed GHG Rule succinctly and effectively reflects the legislature's intent in SB 337 and we compliment the Division of Air Quality for its efforts in this proposal. Comments on specific sections of the proposed rule are provided below.

Section 2.4 – The term "area source" is defined in the rule, but we do not find where the term is actually used. We ask that the agency clarify whether it intends some portion of the rule to apply to areas sources and, if so, in what manner.

Section 3.1 – This section sets forth the threshold levels that trigger the obligation for a stationary source to report its emissions of greenhouse gases. IOGA believes that it was the intent of the legislature that the threshold level was established to assure that the burden of reporting was not imposed on de minimis sources of emissions and that a source should be required to report emissions only for those greenhouse gases for

which the threshold is exceeded. We respectfully request that the agency clarify whether this is consistent with its interpretation of this section.

Section 5.3 – This section suggests that the Secretary may mandate industry trade groups, such as IOGA, to provide information regarding greenhouse gas emissions. Assuming such trade groups are not independent sources of greenhouse gas emissions, but rather have members that are sources, we submit that the DEP does not have jurisdiction to require that information be submitted by such groups. However, please be advised that IOGA would be pleased to consult with the DEP in any efforts it undertakes to estimate greenhouse gas emissions for oil and gas facilities.

Emission Standards for Hazardous Air Pollutants

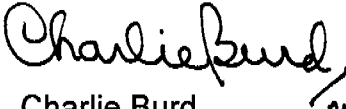
In its proposed revisions to 45 CSR 34, the emissions standards for hazardous air pollutants, the agency has proposed to incorporate by reference federal regulations setting standards for emissions of hazardous air pollutants in effect as of June 1, 2007. See Sec. 4.1. However, the agency also proposes to except from this provision several specific federal regulations including regulations governing emissions from natural gas operations. Specifically, Subsection 4.1.c reads as follows:

Provisions under Subpart HH of 40 CFR Part 63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.760(b)(2) shall be excluded [from incorporation by reference].

Because there are members of IOGA who may be covered by the regulations referenced in Subsection 4.1.c, we are requesting that the agency provide some explanation regarding its reasons for excluding these rules from incorporation by reference. In addition, what guidance will the agency be providing to those sources who may be covered by the excluded regulations? Absent some justification for this proposed exclusion and adequate guidance to the regulated sources regarding how they can achieve compliance with these standards, IOGA must object to Subsection 4.1.c and requests its deletion from the final version of this rule.

IOGA appreciates the opportunity to present these comments to the agency and requests that they be given careful consideration.

Very truly yours,

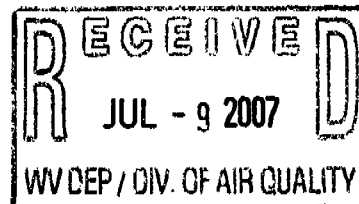

Charlie Burd *msb*



American Electric Power
1 Riverside Plaza
Columbus, OH 43215
AEP.com

July 9, 2007

Mr. John A. Benedict, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304



RE: AEP Comments on Proposed Division of Air Quality Rules

Dear Director Benedict:

Appalachian Power Company and Ohio Power Company, dba American Electric Power (AEP), are pleased to offer comments on the following rules proposed by the Division of Air Quality (DAQ):

- **45 C.S.R. 39 - Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides**
- **45 C.S.R. 40 - Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides**
- **45 C.S.R. 41 - Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide**
- **45 C.S.R. 42 - Greenhouse Gas Emissions Inventory Program**

In addition to our comments, AEP also wishes to endorse comments prepared and submitted by the West Virginia Manufacturers Association.

AEP continues to support DAQ's decision to adopt the CAIR rules (45 CSR 39, 45 CSR 40, and 45 CSR 41) consistent with the federal model rule and encourages the DAQ to move forward with the timely development of revisions as finalized by USEPA. We appreciate the efforts of the DAQ to keep these rules updated and consistent with federal rulemaking developments.

In general, AEP supports the development and promulgation of the Greenhouse Gas Emissions Inventory Program (45 C.S.R. 42). Nevertheless, AEP recommends that the rule be revised somewhat.

AEP has a particular concern with **Section 3.1 (Applicability)** of the proposed rule. This section would require that a source emitting an amount of any greenhouse gas greater than the "de minimis" quantities listed in the rule would have to report all emissions of the listed greenhouse gases to the Secretary. AEP suggests that several questions can be raised regarding this requirement.

The current law (§22-5-19) does not specifically require that emission of any greenhouse gas in a quantity greater than a de minimis amount imparts a responsibility to report all such listed gases. The law states specifically (§22-5-19(b)) that the Secretary is to establish a program for the reporting "... from all sources that emit greater than a de minimis amount of greenhouse gases on an annual basis." AEP submits that the statute thus grants the Secretary the authority to either require such "affected sources" to report all such gases if any non-de minimis amount of a gas is emitted (as the proposal would require) or would allow the Secretary to require only the reporting of quantities emitted that exceed the de minimis quantity on an annual basis.

AEP suggests to the DEP that the requirement to report less than de minimis quantities could place affected sources in a situation requiring significant commitment of resources and yield questionable data of extremely low importance. The concern is especially pronounced with the reporting of the three gases; hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. Taken together these three gases were estimated for 2005 to be approximately 2.2% of the total greenhouse gas emissions of the United States in terms of teragrams of CO₂ equivalent. Of that impact, 82% of the CO₂ equivalent was attributed to emissions of hydrofluorocarbons, the majority of which was associated with leakages from mobile source air conditioners. A small amount was associated with leakage from stationary air conditioners and leaks of refrigerants. (Source: *Emissions of Greenhouse Gases in the United States 2005*, USDOE Energy Information Administration). Unless a source is involved with the manufacture of one or more of these gases, the amounts emitted on a yearly basis would be expected to be extremely small, especially since only stationary source emission points are covered by reporting requirements. However, under the proposed rule unless a source could in some way rule out the emission of any of these substances a positive reporting requirement would be imposed. Establishing tracking systems and developing an emission estimation program could be a significant requirement.

In 2006, WVDAQ considered a greenhouse gas reporting requirement as part of the Title V Annual Emissions Inventory program. As part of that program the Agency referenced several documents for the calculation of greenhouse gas emissions quantities. In the document *Methods For Estimating Greenhouse Gas Emissions From Industrial Processes* Prepared by ICF Consulting for STAPPA – ALAPCO and EPA, various methods are given for the calculation of emissions data for these "other gases" related to manufacturing process involved in their production. However for the emissions for the consumption of these materials (i.e. the emissions resulting from their use, which should be the dominant source in West Virginia) the document lists only a single method. That method involves taking the nationwide quantity (issued yearly by EPA), determining the national per capita emissions quantity and multiplying this number by the population of the state. This method, while useful from a statewide basis, has no application to individual affected sources.

Based on the above, AEP concludes that the proposed reporting requirement which would require the submission of data involving any emission of greenhouse gas would yield data of an extremely questionable nature, could require significant resource commitment from affected sources, establishes data of very little importance in the overall concern regarding climate change and is, by the wording of the statute, at the discretion of the Secretary. During the review of this regulation by the DEP Advisory Council, Ms. Price of the Council submitted a proposed amendment to Section 3.1 which would clarify that only quantities of the 6 categories equal to or exceeding the de minimis quantities need be reported. AEP endorses this concept and asks that DEP accept the suggested amendment.

AEP also encourages the DAQ to remove the specific date found in Section 4.1 of the proposed rule that specifies the annual deadline for sources to submit a greenhouse inventory. Instead, AEP suggests that DAQ simply make the greenhouse inventories due on a date to be provided by

Mr. John A. Benedict, Director
July 9, 2007
Page 3 of 3

the DAQ, without specifying a particular date. Because the proposed rule states in Section 4.4 that greenhouse gas emissions inventory information from documented greenhouse gas inventories such as those provided under USEPA's Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization and the SF6 Emissions Reduction Partnership for Electric Power Systems will satisfy the 45 CSR 42 emission reporting requirements, it is imperative that the deadline for the annual 45 CSR 42 reporting is no earlier than the deadlines for the other noted programs.

Section 5.3 of the proposed regulation could be interpreted to require industry trade groups as well as others having information relating to greenhouse gas emissions, reduction and sequestration to provide such information at the request of the Secretary. We note that the authorizing legislation (§22-5-19(d)) requires the Secretary to "consult and coordinate" with a variety of organizations but places no obligation on any organization except for "governmental entities" to positively respond to such a request. We again refer to the amendments proposed by Ms. Price (cited above) and ask that WVDEP incorporate the changes to this section that were suggested in that submittal.

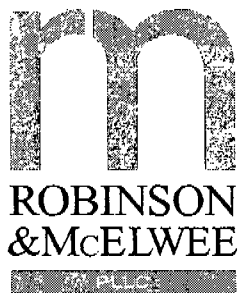
If you have any questions on these comments, please contact G. J. Wooten of my staff at 614-716-1262.

Sincerely,



P. A. Dal Porto
Manager – Air Quality Services

cc: T. P. Mallan - Charleston
G. J. Wooten - AQS



ANNE C. BLANKENSHIP
ATTORNEY AT LAW

P.O. BOX 1791
CHARLESTON, WV 25326

DIRECT DIAL: (304) 347-8344
E-MAIL: acb@ramlaw.com

July 9, 2007

07-10-07P02:06 RCVD

BY HAND DELIVERY

John A. Benedict
Director, Division of Air Quality
West Virginia Department of Environmental Protection
601 57th SE
Charleston, WV 25304

Re: **Comments on DAQ's Proposed Rules**

Dear Director Benedict:

Please find enclosed herewith the **COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION AND THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION ON THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF AIR QUALITY 2007 PROPOSED RULES.**

Please contact me with any questions you may have regarding the enclosed.

Very truly yours,

Anne C. Blankenship
Counsel to the West Virginia Manufacturers Association and
the West Virginia Oil and Natural Gas Association

acb

Enclosures

cc: Ms. Karen Price (w/encl.)
Mr. Nicholas DeMarco (w/encl.)

**COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
AND THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION
ON THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION, DIVISION OF AIR QUALITY 2007 PROPOSED RULES**

The West Virginia Manufacturers Association (“WVMA”) represents numerous manufacturers throughout the state which are subject to the regulations of the West Virginia Department of Environmental Protection, Division of Air Quality (“DAQ”). Likewise, the West Virginia Oil and Natural Gas Association (“WVONGA”) also has member companies which are subject to the DAQ’s regulations. Therefore, the WVMA and WVONGA (collectively the “Associations”) submit the following comments on the DAQ’s proposed revisions to its regulations and the new proposed 45 CSR 42, Greenhouse Gas Emissions Inventory Program.

I. 45 CSR 42 – Greenhouse Gas Emissions Inventory Program

The Associations have an interest in the development of a reasonable and effective greenhouse gas emissions inventory program and the implementing rule. During the 2007 West Virginia Legislative Session, the Associations supported the DAQ’s bill to develop a greenhouse gas inventory program (SB 337) and provided suggestions on the bill during the legislative process, including suggestions on which sources should be required to report emissions and the appropriate *de minimis* levels which trigger reporting requirements. We appreciate the DAQ’s reception to the comments and suggestions made to SB 337 and believe that with the suggested changes to the rule addressed below, 45 CSR 42 will lay the foundation for an effective greenhouse gas inventory program which will be reflective of the state’s greenhouse gas emissions and reductions. Many of

the comments below were provided to the DAQ during the DEP Advisory Council Meeting on May 30, 2007, including a proposed mark-up of the rule, attached hereto. We believe the comments and suggestions clarify the provisions set forth in the proposed rule in order to preclude any confusion to what, we believe, was the DAQ's intent in drafting the proposed rule.

Section 2.3 Definitions.

The definition of "anthropogenic" should be revised to state that it is the "result of natural processes that have been influenced significantly by human activities". Adding the term "significantly" makes the definition consistent with the definition of "biogenic" which means a "naturally occurring biological source or process that is not significantly affected by human actions or activity." (emphasis added.)

Section 3.1 Applicability.

Our greatest concern with this proposed regulation is the proposed applicability provision as it relates to what types of emissions an affected source is required to report. As drafted, an affected source which emits any of the listed greenhouse gases above the *de minimis* amounts would be required to report any emissions of the listed greenhouse gases, no matter how insignificant. This means that any greenhouse gas emissions above zero would have to be reported. We do not believe that this was the intent of DAQ in drafting this rule. The reporting of insignificant emissions below the *de minimis* amounts would be meaningless for purposes of an inventory and would be extremely burdensome for the affected sources as it would be nearly impossible for sources to quantify such emissions. Affected sources should only be required to report emissions which are above the *de minimis* amounts listed in Section 3.1. Therefore, this section should be

revised to clarify that only individual greenhouse gases emitted above the *de minimis* amounts are required to be reported. Otherwise, affected sources that trigger any of the *de minimis* amounts could be required to report emissions of all of the greenhouse gases even if they are below the *de minimis* amounts.

Also, this section should be revised to clarify that the *de minimis* amounts do not include biogenic emissions. We do not believe that it is the intent of DAQ for facilities to include biogenic emissions in determining whether they emit more than the *de minimis* amounts of greenhouse gases. As provided for in Section 4.2 of the proposed rule, the affected sources will not be required to report biogenic emissions. Therefore, facilities should not be required to include biogenic emissions to determine whether they emit more than the *de minimis* amount and, as a result, be considered an affected source.

Section 4.1 Reporting Requirements.

This section requires that sources must report their greenhouse gas emissions by March 31, 2007. This section should be revised to require reporting of greenhouse gases at the same time the air emissions inventory reporting is required. During the DEP Advisory Council meeting, the DAQ stated that March 31 will be the reporting date for the air emissions inventory program. Due to the many other reporting deadlines in the month of March, requiring greenhouse gas emissions reporting and air emissions inventory reporting in March would be extremely burdensome to affected sources. Currently, the air emissions inventory reporting is due July 1. There is no statutory or regulatory requirement for when sources must report air emissions inventory and it is our understanding that this date may be moved in the future. Therefore, we believe that the greenhouse gas rule should also remain silent as to a particular reporting date to allow

flexibility to correspond to the air emissions inventory reporting. Otherwise, sources may be subject to two different reporting dates. Sources should not be required to report their emissions at two different times. This section should also be clarified so that only greenhouse gases emitted above the *de minimis* amounts are required to be reported, as discussed above.

Section 4.2

This section should be revised so that “mobile” emissions of greenhouse gases are not required to be reported. This section should also be revised to clarify that only direct emissions and not indirect greenhouse gas emissions (e.g., emissions occurring offsite from electricity consumption) are required to be reported. The references in section 4.3 to programs like Climate Leaders could lead sources to include indirect and direct emissions in their reporting. This would lead to double counting of electric generation greenhouse gas emissions and to higher source emissions compared to the *de minimis* amounts.

Section 4.4

WVONGA requests that Section 4.4 of the rule be modified so that the Interstate Natural Gas Association of America’s (“INGAA”) greenhouse gas protocol is recognized as an approved greenhouse gas inventory protocol for the natural gas transmission sector. In the proposed rule, use of these protocols would require approval by the Secretary on a case-by-case basis. The INGAA protocol, Greenhouse Gas Emission Estimate Guidelines for Natural Gas Transmission and Storage, Volume 1 – Emission Estimating Methodologies and Procedures, Revision 2, September 28, 2005 can be found and reviewed at <http://www.ingaa.org/environment/Climate.htm>. We believe that this is the

best source currently available for measuring greenhouse gas emissions from the natural gas transmission sector.

Section 4.6

This section should be revised to clarify that sources will not be subject to fees for reporting greenhouse gas emissions. The DAQ has no statutory authority under W.Va. Code §22-5-19 to require sources to pay fees based on emissions of greenhouse gases. In addition, unlike the air emissions inventory program, the greenhouse emissions reporting serves only to develop a greenhouse gas inventory and is not intended to generate fees. Therefore, we suggest that a provision be added to the rule to provide that affected sources will not be subject to fees under the greenhouse gas emissions inventory program.

Section 5.3 Greenhouse Gas Emissions Inventory.

This section should be revised to delete the requirement that certain entities, including trade associations, must provide relevant information on greenhouse gas emissions, reductions, capture and sequestration to the Secretary upon request. This requirement is not found in the statute and could be interpreted to require such entities to report reductions, which is also not required under the statute. We believe the proposed language in the rule is broader than that in the statute and we request that the language in the rule be made consistent with the statutory language.

Section 7.1 Economic Development Potential.

This section should be revised to require the DEP to also determine whether reduction and sequestration will result in a deterrent to net economic development – not just whether it will be an asset. It is equally important to determine whether the

reduction and sequestration will result in a deterrent to economic development as it is to determine whether it could be as asset.

The Associations also request that a reasonable protocol for reporting greenhouse gas emissions from stationary sources should be developed. Affected sources should be allowed reasonable flexibility to determine the best reporting method. Affected sources should not be required to report emissions from individual units within a stationary source if such emissions are insignificant, as this would be extremely burdensome. Affected stationary sources should have the option to report all of its greenhouse gas emissions in the aggregate. The Associations request that the greenhouse gas emissions reporting program allow the same flexibility as that under the air emissions inventory program.

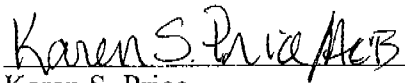
Finally, the Associations suggest that the DAQ coordinate with nationally recognized greenhouse gas inventory programs, such as "The Climate Registry", which currently includes 31 states, to ensure that West Virginia's program is consistent with other states' programs across the nation.

II. 45 CSR 34 Emissions Standards for Hazardous Air Pollutants

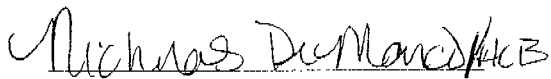
Under Section 4, the Secretary sets forth the federal regulations which the DAQ adopts and incorporates by reference. The DAQ has proposed not to adopt certain federal regulations that apply to area sources, including the provisions in Subpart HH of 40 CFR §63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.760(b)(2). In addition, it is the Associations' understanding that the DAQ does not plan to adopt any federal MACT regulations that will apply to area

sources. The Associations do not favor the DAQ's refusal to accept delegation of these federal programs, as it raises many questions and uncertainties as to how such programs will be implemented and enforced. Therefore, in order to provide certainty and consistency with the current delegation of federal programs, the Associations request that the DAQ reconsider its decision not to adopt the federal regulations for area sources. The Associations appreciate the opportunity to provide comments on the proposed rules and hope that the DAQ seriously considers the suggestions and comments made herein.

Sincerely,



Karen S. Price
President, West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, WV 25311



Nicholas DeMarco
Executive Director, West Virginia Oil & Natural Gas Association
P.O. Box 3231 (25332)
1700 MacCorkle Avenue, S.E.
Charleston, WV 25305

Signed this 9th day of July, 2007.

WVMA and WVONGA REVISIONS

45CSR42

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

**SERIES 42
GREENHOUSE GAS EMISSIONS INVENTORY PROGRAM**

§45-42-1.General.

1.1. Scope. -- This rule establishes a greenhouse gas emissions inventory program in West Virginia which:

1.1.a. Requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount of greenhouse gases on an annual basis;

1.1.b. Inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions and sequestration of greenhouse gas emissions;

1.1.c. Provides for a periodic compilation of a greenhouse gas emissions inventory and a determination whether West Virginia is a net sink or emitter of greenhouse gases;

1.1.d. Provides for development of a registry to record voluntary reductions of greenhouse gas emissions; and

1.1.e. Provides for a determination whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for economic development.

1.2. Authority. -- W.Va. Code §22-5-19.

1.3. Filing Date. --

1.4. Effective Date. -- June 1, 2008.

§45-42-2. Definitions.

2.1. "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air pollution" or "statutory air pollution" means and is limited to the discharge into the air by the act of man substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.3. "Anthropogenic" means a direct result of human activities or the result of natural processes that have been influenced significantly by human activities.

2.4. "Area source" means, for purposes of this rule, a collection of similar sources of air pollutants within a geographic area. Area sources collectively represent individual sources that are small and numerous, and that typically have not been inventoried as a stationary or mobile source.

2.5. "Biogenic" means a naturally occurring biological source or process that is not significantly affected by human actions or activity.

2.6. "Capture" means the collection of greenhouse gas emissions from a stationary source.

2.7. "*De minimis*" means emissions from a stationary source that are equal to or less than ten thousand tons per year for carbon dioxide, four hundred seventy-six tons per year for methane, thirty-two and six tenths tons per year for nitrous oxide, eight hundred fifty-five thousandths tons per year for hydrofluorocarbons, one and nine hundredths tons per year for perfluorocarbons and forty-two hundredths tons per year for sulfur hexafluoride.

2.8. "Emission" means the release, escape or discharge of regulated air pollutants or greenhouse gases into the air.

2.9. "Greenhouse gas" means the gaseous compounds: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (SF₆).

2.10. "Mobile source" means a variety of onroad and nonroad vehicles, engines, locomotives, marine vessels, airplanes and other equipment that generate air pollutants and greenhouse gas emissions, and that move or can be moved from place to place.

2.11. "Regulated air pollutant" means, for purposes of this rule, any air pollutant regulated under rules promulgated by the Secretary pursuant to W.Va. Code §22-5-4.

2.12. "Reservoir" means a geological site where a greenhouse gas is securely stored.

2.13. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.14. "Sequestration" means the physical process by which emissions of a greenhouse gas are directly captured for storage

in a reservoir, or the biologic process by which a greenhouse gas is indirectly removed from the atmosphere for storage in a sink.

2.15. "Sink" means any process, activity or mechanism which removes a greenhouse gas from the atmosphere. Forests are considered sinks because they remove carbon dioxide through photosynthesis.

2.16. "Source" means, for purposes of this rule, any process or activity which releases a greenhouse gas into the air.

2.17. "Stationary source" means any building, structure, facility, installation, stationary process or process equipment which emits or may emit any regulated air pollutant or greenhouse gas.

2.18. "Ton" means a short ton, or 2000 pounds.

2.19. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §22-5-1 *et seq.*

§45-42-3.Applicability.

3.1. Any stationary source that emits one or more greenhouse gases on an annual basis greater than the *de minimis* amounts listed in the table below, excluding biogenic emissions, and reports emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14), shall be an affected source required to report emissions of all greenhouse gases emitted above *de minimis* amounts to the Secretary under section 4:

Greenhouse Gas Compound	tons/year
carbon dioxide	10,000
methane	476

nitrous oxide	32.6
perfluorocarbons	1.09
sulfur hexafluoride	0.42

3.2. Stationary sources which are regulated by the Secretary under W.Va. Code §22-3-1 et seq. and do not report emissions of regulated air pollutants pursuant to the emissions inventory requirements under W.Va. Code §22-5-4(a)(14) are not required to, but may voluntarily report their greenhouse gas emissions under section 4.

§45-42-4. Reporting Requirements.

4.1. ~~By March 31, 2009, and March 31 of each year thereafter, affected~~ Affected sources shall report to the Secretary the quantity of all greenhouse gases emitted above de minimis amounts in the previous calendar year at the same time such sources are to report emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14).

4.2. Affected sources shall only be required to report annual quantities of anthropogenic non-mobile source greenhouse gas emissions directly at the source, and shall not be required to report biogenic or mobile emissions of greenhouse gases, or indirect emissions of greenhouse gases, such as emissions occurring offsite from energy consumption.

4.3. The Secretary shall determine the form and format of the information reported by affected sources under subsection 4.1 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

4.4. Notwithstanding the provisions of subsection 4.3, to satisfy the greenhouse gas

hydrofluorocarbons	0.855
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emission reporting requirements under this section, affected sources may submit greenhouse gas emissions inventory information from documented greenhouse gas inventories such as those provided to the Environmental Protection Agency's Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization, the Interstate Natural Gas Association of America's Greenhouse Gas Emission Estimate Guidelines for Natural Gas Transmission and Storage and the SF₆ Emissions Reduction Partnership for Electric Power Systems. Greenhouse gas emissions inventory information from other widely recognized and verified greenhouse gas emissions inventory programs may be submitted by affected sources under this subsection, but shall be subject to approval by the Secretary on a case-by-case basis.

4.5. Reports of greenhouse gas emissions submitted to the Secretary under this section shall be signed by a responsible official and shall include the following certification statement: "I, the undersigned, hereby certify that the data transmitted to the West Virginia Department of Environmental Protection is true, accurate, and complete, based upon information and belief formed after reasonable inquiry."

4.6. Greenhouse gases reported under this section are not subject to fees under 45 CSR 30, unless the greenhouse gases are otherwise regulated by the Secretary.

§45-42-5. Greenhouse Gas Emissions Inventory.

5.1. The Secretary shall periodically compile an inventory of greenhouse gas emissions to:

5.1.a. Characterize the relative contributions of greenhouse gas emissions from stationary, area, mobile and biogenic sources in West Virginia; and

5.1.b. Determine the extent to which greenhouse gas emissions are offset by the rate of sequestration, and whether West Virginia is a net sink or emitter of greenhouse gases.

5.2. The greenhouse gas emissions inventory shall include the emissions from stationary sources reported under section 4, and other relevant information regarding significant emissions, reductions, and sequestration of greenhouse gases from stationary, area, mobile and biogenic sources requested by the Secretary under subsections 5.3 and 5.4.

5.3. To inventory greenhouse gas emissions reductions, the Secretary shall consult with the citizenry and other entities such as industry trade groups that have information relating to greenhouse gas emissions reductions, and sequestration. ~~Upon request of the Secretary, such entities shall provide relevant information relating to greenhouse gas emissions reductions, capture and sequestration.~~

5.4. The Department of Agriculture, the Division of Forestry, Marshall University, West Virginia University, West Virginia Geological and Economic Survey, and the Department of Transportation shall enter into interagency agreements with the Secretary and at the Secretary's request provide:

5.4.a. Relevant information relating to greenhouse gas emissions from area, mobile and biogenic sources;

5.4.b. Relevant information relating to greenhouse gas emissions reductions and sequestration; and

5.4.c. Any assistance the Secretary may request during the development of the greenhouse gas emissions inventory.

5.5. The Secretary shall determine the form and format of the information submitted by the entities under subsections 5.3 and 5.4 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

§45-42-6.Greenhouse Gas Emissions Registry Program.

6.1. The Secretary shall develop a registry for the recordation of voluntary reductions of greenhouse gas emissions.

6.2. The greenhouse gas emissions registry program shall be as consistent as possible with developing regional, national, or international programs designed to monitor, quantify and register reductions in greenhouse gas emissions with respect to:

6.2.a. Development of criteria, based on a set of standardized emissions accounting, reporting and verification protocols, to determine baseline emissions and quantification of voluntary reductions in emissions of greenhouse gases;

6.2.b. Public recognition of such voluntary emissions reductions;

6.2.c. Consideration of voluntary greenhouse gas emission reductions when determining baselines and reduction requirements under future federal greenhouse gas emission reduction programs; and

6.2.d. The ability of sources to participate in future greenhouse gas emission trading programs.

§45-42-7.Economic Development Potential.

7.1. Using information obtained, gathered or developed under this rule, the Secretary will determine whether the reduction and sequestration of greenhouse gas emissions can

be developed as an asset for net economic development or will result in a deterrent to net economic development in West Virginia:

§45-42-8.Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

Pamela E. Faggert
Vice President and Chief Environmental Officer

Dominion Resources Services, Inc.
5000 Dominion Boulevard, Glen Allen, Virginia 23060
Phone: 804.273.3467



By Electronic Delivery
tmowrer@wvdep.org

July 9, 2007

John A. Benedict
Director, Division of Air Quality
West Virginia Department of Environmental Protection
601 57th SE
Charleston, West Virginia 25304

Re: Comments on Proposed Rule 45CSR42 - Greenhouse Gas Emissions Inventory Program

Dear Mr. Benedict:

Dominion appreciates the opportunity to comment on the proposed Greenhouse Gas (GHG) Emissions Inventory program for West Virginia. Dominion Transmission Inc. and Dominion Generation facilities will be affected by this new program.

We support the West Virginia Department of Environmental Protection's efforts to develop a greenhouse gas inventory for the state. However, we do have several comments on the specifics of the proposed program.

First, we ask that West Virginia coordinate with other state or regional GHG registry initiatives already in progress. For example, 31 states and tribes have joined "The Climate Registry," which is being developed as a tool to measure, track, verify and publicly report GHG emissions accurately, and consistently across industry sectors and state borders. Through coordination with existing registry efforts, West Virginia can avoid creating reporting protocols that are out of sync and would require a company with facilities in many states, such as Dominion, to report using several different manners in different states. You can find out more information about the climate registry at www.theclimateregistry.org.¹

Second, if the state elects to proceed independently, we ask that Section §45-42-4.4 of the rule be modified such that the Interstate Natural Gas Association of America's (INGAA) greenhouse gas protocol be recognized as an approved greenhouse gas inventory protocol for the natural gas transmission and storage sector. As the rule is written currently, it appears use of this protocol would require approval by the Secretary on a case-by-case basis. The INGAA protocol, Greenhouse Gas Emission Estimate Guidelines for Natural

¹ Dominion submitted extensive comments on the Draft Eastern Climate Registry Voluntary Reporting Requirements Document on June 14, 2006. Many of the concerns raised in those comments remain unaddressed by The Climate Registry at this time.

Gas Transmission and Storage, Volume 1 – Emission Estimation Methodologies and Procedures, Revision 2, September 28, 2005, can be found and reviewed at <http://www.ingaa.org/environment/Climate.htm>. We believe that you will find that it is the best source currently available for measuring GHG emissions from the natural gas transmission and storage sector.

Third, we ask that Section §45-42-3.1 of the rule be revised such that a source is only required to report any greenhouse gas emissions above the *de minimis* amounts for each gas. As currently drafted, the rule requires any stationary source that emits one or more GHGs on an annual basis greater than the *de minimis* levels to report all emissions of all greenhouse gases on an annual basis. This provision would be very burdensome. Consider, for example, our natural gas transmission business. Typically, natural gas transmission sources greenhouse gas emissions are from CO₂ and CH₄ with small amounts of N₂O emissions. To measure and report other GHGs, such as hydrofluorocarbons, could require Dominion to inventory a number of very small potential sources of hydrofluorocarbons such as refrigerators and air conditioning units.

Fourth, we ask that Section §45-42-4.1 of the rule be modified to require that GHG inventories be due at that same time as annual air emission inventories. Coordination of the deadlines for these emission inventories is logical as some of the information collected for traditional air emission inventories will be used for the greenhouse gas inventory.


Fifth, we ask that Section §45-42-4.2 of the rule be modified to clarify that sources are not required to report emissions from mobile sources and that sources are only required to report direct emissions, not indirect emissions such as emissions from offsite electricity consumption. Reporting of indirect greenhouse gas emissions could lead to double counting of emissions.

Sixth, we ask that a provision be added to the rule to clarify that sources of greenhouse gas emissions will not be subject to fees for reporting emissions.

Finally, we ask that Section §45-42-5.3 of the rule be modified to delete the requirement that entities, such as trade associations, provide relevant information on GHG emissions, reductions, capture and sequestration to the Secretary upon request. This requirement is not found in the statute.

If you have any questions regarding these comments, please contact Lisa Moerner at (804) 273-2998. We thank you for the opportunity to comment.

Very truly yours,


for Pamela F. Faggert

From: Paula Finck <paula@finck.com>
To: <comments@wwdep.org>
Date: 6/27/2007 10:08:43 PM
Subject: Re: air quality rules

Now is the time to put into effects the toughest air quality rules for the sake of the present and future health of the citizens of these United States of America. It is your job and your responsibility to the people.

Respectfully yours,
Paula Finck

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45CSR42

GREENHOUSE GAS EMISSIONS INVENTORY PROGRAM

RESPONSE TO COMMENTS

On June 8, 2007, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 9, 2007 to accept oral comments on proposed revisions to legislative rule 5CSR42. Written comments were also accepted through 6:00 PM on Monday, July 9, 2007. Five commenters submitted written comments regarding proposed rule 45CSR42, and no one provided verbal comments. DAQ addresses the written comments below.

I. COMMENTER: West Virginia Coal Association

COMMENT A. The commenter states, "*With the proposed rule, it appears that the agency has broadened the reporting requirement to now include certain sources that are regulated by WV DEP under the state's Surface Coal Mining and Reclamation Act (22-3-1). For example, 45CSR 42.3.2 provides:*

Stationary sources which are regulated by the Secretary under W.Va. Code §22-3-1 et seq. and do not report emissions of regulated air pollutants pursuant to the emissions inventory requirements under W.Va. Code §22-5-4(a)(14) are not required to, but may voluntarily report their greenhouse gas emissions . . .

The above cited language appears only to exempt 'stationary sources' that are regulated under the state's surface mining act. The clear intent of the Legislature was to exempt all coal mining sources, whether they are stationary or other sources. WVCA believes that the language of proposed 45 CSR 42.3.2 needs clarification to clearly exempt all mining-related sources from the reporting requirements of this new rule as was clearly the intent of the Legislature as expressed in amendments to Senate Bill 337."

RESPONSE A. The commenter seems to misunderstand both the nature of the requirement to report greenhouse gas emissions and which sources are exempt from that requirement. The relevant language from Senate Bill No. 337 is as follows:

"Only those stationary sources who are otherwise required to report emissions of regulated air pollutants under rules promulgated by the secretary pursuant to section four of this article, shall be required to report their greenhouse gas emissions under this section. Stationary sources which are not required to report air emissions under this section and are regulated by the secretary under the provisions of article three, chapter twenty-two of this code are not required to, but may voluntarily, report such emissions."

As can be seen from the first sentence quoted above, the only sources required to report emissions

of greenhouse gases are stationary sources that are already reporting their emissions under other programs administered by the DAQ. (While it is true the greenhouse gas inventory will include area and mobile sources, these types of sources are not required to report their emissions to the agency.)

The second sentence is specifically related to coal mining operations (those regulated under Chapter 22-3) and repeats what was said in the first sentence, i.e., only those stationary sources already reporting their emissions to DAQ must report emissions of greenhouse gases. The statute does not, as the commenter suggests, broaden the exemption to all coal mining sources, only those not currently reporting emissions to the agency. This means that the large thermal dryers associated with coal preparation plants that have been reporting their emissions of carbon monoxide, nitrogen oxides and other pollutants to the agency will be required to also report their emissions of carbon dioxide and other greenhouse gases if they are above the *de minimis* amounts in the statute.

Subsections 3.1 and 3.2 of the proposed rule repeat the above-discussed language of the statute almost verbatim. Every attempt was made to stay true to the statutory language with regard to how coal mining sources are subject to this new program.

II. COMMENTER: Independent Oil And Gas Association of West Virginia

COMMENT A. The commenter states, "*Section 2.4 - The term 'area source' is defined in the rule, but we do not find where the term is actually used. We ask that the agency clarify whether it intends some portion of the rule to apply to areas (sic) sources and, if so, in what manner.*"

RESPONSE A. DAQ notes that the term "area source" is used in subsection 5.2, as well as subdivisions 1.1.b, 5.1.a, and 5.4.a of the rule. The primary intent is to include area sources in a comprehensive greenhouse gas emissions inventory in a manner as detailed and specified in the rule.

COMMENT B. The commenter states, "*Section 3.1 - This section sets forth the threshold levels that trigger the obligation for a stationary source to report its emissions of greenhouse gases. IOGA believes that it was the intent of the legislature that the threshold level was established to assure that the burden of reporting was not imposed on de minimis sources of emissions and that a source should be required to report emissions only for those greenhouse gases for which the threshold is exceeded. We respectfully request that the agency clarify whether this is consistent with its interpretation of this section.*"

RESPONSE B. Upon further consideration, DAQ has revised subsection 3.1 to read:

"3.1. Any stationary source that emits one or more greenhouse gases on an annual basis greater than the *de minimis* amounts listed in the table below, and reports emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14), shall be an affected source required to report emissions of all greenhouse gases emitted above *de minimis* amounts to the Secretary under section 4:"

COMMENT C. The commenter states, "*Section 5.3 - This section suggests that the Secretary may mandate industry trade groups, such as IOGA, to provide information regarding greenhouse gas emissions. Assuming such trade groups are not independent sources of greenhouse gas emissions, but rather have members that are sources, we submit that the DEP does not have jurisdiction to require that information be submitted by such groups. However, please be advised that IOGA would be pleased to consult with the DEP in any efforts it undertakes to estimate greenhouse gas emissions for oil and gas facilities.*"

RESPONSE C. DAQ notes that subsection 5.3 does not contain a requirement for industry trade groups to provide information regarding greenhouse gas emissions, but rather provides for such groups to provide relevant greenhouse gas emissions reduction information if requested by DAQ. As concerns this point, however, the rule will be changed to make the submission of this information voluntary. The agency would certainly expect sources to cooperate in this endeavor by providing this information whenever possible.

III. COMMENTER: American Electric Power

COMMENT A. The commenter states, "*AEP has a particular concern with Section 3.1 (Applicability) of the proposed rule. This section would require that a source emitting an amount of any greenhouse gas greater than the 'de minimis' quantities listed in the rule would have to report all emissions of the listed greenhouse gases to the Secretary.During the review of this regulation by the DEP Advisory Council, Ms. Price of the Council submitted a proposed amendment to Section 3.1 which would clarify that only quantities of the 6 categories equal to or exceeding the de minimis quantities need be reported. AEP endorses this concept and asks that DEP accept the suggested amendment.*"

RESPONSE A. DAQ refers the commenter to Response II.B.

COMMENT B. The commenter states, "*AEP also encourages the DAQ to remove the specific date found in Section 4.1 of the proposed rule that specifies the annual deadline for sources to submit a greenhouse inventory. Instead, AEP suggests that DAQ simply make the greenhouse inventories due on a date to be provided by the DAQ, without specifying a particular date. Because the proposed rule states in Section 4.4 that greenhouse gas emissions inventory information from documented greenhouse gas inventories such as those provided under USEPA's Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization and the SF6 Emissions Reduction Partnership for Electric Power Systems will satisfy the 45 CSR 42 emission reporting requirements, it is imperative that the deadline for the annual 45 CSR 42 reporting is no earlier than the deadlines for the other noted programs.*"

RESPONSE B. Upon further consideration, DAQ has revised subsection 4.1 to read as follows:

"4.1. In accordance with a reporting cycle provided by the Secretary, affected sources shall report to the Secretary the quantity of all greenhouse gases emitted above *de minimis* amounts in the years specified by the Secretary."

COMMENT C. The commenter states, “Section 5.3 of the proposed regulation could be interpreted to require industry trade groups as well as others having information relating to greenhouse gas emissions, reduction and sequestration to provide such information at the request of the Secretary. We note that the authorizing legislation (§22-5-19(d)) requires the Secretary to ‘consult and coordinate’ with a variety of organizations but places no obligation on any organization except for ‘governmental entities’ to positively respond to such a request. We again refer to the amendments proposed by Ms. Price (cited above) and ask that WVDEP incorporate the changes to this section that were suggested in the submittal.”

RESPONSE C. DAQ refers the commenter to Response II.C.

IV. COMMENTER: West Virginia Manufacturer’s Association and the West Virginia Oil and Natural Gas Association

COMMENT A. The commenter states, “The definition of ‘anthropogenic’ should be revised to state that it is the ‘result of natural processes that have been influenced significantly by human activities’. Adding the term ‘significantly’ makes the definition consistent with the definition of ‘biogenic’ which means a ‘naturally occurring biological source or process that is not significantly affected by human actions or activity.’ (emphasis added.)”

RESPONSE A. DAQ has used a definition of “anthropogenic”, which is similar to and consistent with the U.S. Department of Energy’s final rule “Guidelines for Voluntary Greenhouse Gas Reporting” under 10 CFR Part 300, which does not include the word “significant”. DAQ also notes that the definition of “biogenic”, which includes the word “significant”, is similar to and consistent with these same federal guidelines. Further, the only entity required to quantify biogenic emissions is the DAQ, and that quantification occurs on a relatively large scale (i.e. statewide). The scope and complexity of this emissions quantification requires some limitation on the level of detail to ensure the quantification is practically achievable. Therefore, DAQ will maintain the definition as proposed.

COMMENT B. The commenter states, “Our greatest concern with this proposed regulation is the proposed applicability provision as it relates to what types of emissions an affected source is required to report. As drafted, an affected source which emits any of the listed greenhouse gases above the de minimis amounts would be required to report any emissions of the listed greenhouse gases, no matter how insignificant. This means that any greenhouse gas emissions above zero would have to be reported. We do not believe that this was the intent of DAQ in drafting this rule. The reporting of insignificant emissions below the de minimis amounts would be meaningless for purposes of an inventory and would be extremely burdensome for the affected sources as it would be nearly impossible for sources to quantify such emissions. Affected sources should only be required to report emissions which are above the de minimis amounts listed in Section 3.1. Therefore, this section should be revised to clarify that only individual greenhouse gases emitted above the de minimis amounts are required to be reported. Otherwise, affected sources that trigger any of the de minimis amounts could be required to report emissions of all of the greenhouse gases

even if they are below the de minimis amounts. Also, this section should be revised to clarify that the de minimis amounts do not include biogenic emissions. We do not believe that it is the intent of DAQ for facilities to include biogenic emissions in determining whether they emit more than the de minimis amounts of greenhouse gases. As provided for in Section 4.2 of the proposed rule, the affected sources will not be required to report biogenic emissions. Therefore, facilities should not be required to include biogenic emissions to determine whether they emit more than the de minimis amount and, as a result, be considered an affected source."

RESPONSE B. DAQ refers the commenter to Response II.B.

COMMENT C. The commenter states, "*Section 4.1 Reporting Requirements. This section requires that sources must report their greenhouse gas emissions by March 31, 2009. This section should be revised to require reporting of greenhouse gases at the same time the air emissions inventory reporting is required. During the DEP Advisory Council meeting, the DAQ stated that March 31 will be the reporting date for the air emissions inventory program. Due to the many other reporting deadlines in the month of March, requiring greenhouse gas emissions reporting and air emissions inventory reporting in March would be extremely burdensome to affected sources. Currently, the air emissions inventory reporting is due July 1. There is no statutory or regulatory requirement for when sources must report air emissions inventory and it is our understanding that this date may be moved in the future. Therefore, we believe that the greenhouse gas rule should also remain silent as to a particular reporting date to allow flexibility to correspond to the air emissions inventory reporting. Otherwise, sources may be subject to two different reporting dates. Sources should not be required to report their emissions at two different times. This section should also be clarified so that only greenhouse gases emitted above the de minimis amounts are required to be reported, as discussed above.*"

RESPONSE C. DAQ refers the commenter to Response III.B.

COMMENT D. The commenter states, "*Section 4.2. This section should be revised so that 'mobile' emissions of greenhouse gases are not required to be reported. This section should also be revised to clarify that only direct emissions and not indirect greenhouse gas emissions (e.g., emissions occurring offsite from electricity consumption) are required to be reported. The references in section 4.3 to programs like Climate Leaders could lead sources to include indirect and direct emissions in their reporting. This would lead to double counting of electric generation greenhouse gas emissions and to higher source emissions compared to the de minimis amounts.*"

RESPONSE D. DAQ believes that subsection 4.2 clearly states that greenhouse gas emissions from mobile sources are not required to be reported under section 4. However, to exclude indirect emissions reporting, DAQ has revised the subsection as follows:

4.2. Affected sources shall only be required to report annual quantities of anthropogenic non-mobile source greenhouse gases emitted at the stationary source, and shall not be required to report biogenic emissions of greenhouse gases.

COMMENT E. The commenter states, "*WVONGA requests that Section 4.4 of the rule be modified so that the Interstate Natural Gas Association of America's ('INGAA') greenhouse gas protocol is recognized as an approved greenhouse gas inventory protocol for the natural gas transmission sector. In the proposed rule, use of these protocols would require approval by the Secretary on a case-by-case basis. The INGAA protocol, Greenhouse Gas Emission Estimate Guidelines for Natural Gas Transmission and Storage, Volume 1 - Emission Estimating Methodologies and Procedures, Revision 2, September 28, 2005 can be found and reviewed at <http://www.ingaa.org/environment/Climate.htm>. We believe that this is the best source currently available for measuring greenhouse gas emissions from the natural gas transmission sector.*"

RESPONSE E. DAQ notes that Senate Bill 337 does not specifically provide for submission of greenhouse gas inventory information from the INGAA protocol, but does allow for submission of such information from "other widely recognized and verified greenhouse gas inventory programs.....". Therefore, it is possible that the INGAA protocol may be used, providing the INGAA protocol is submitted to DAQ for approval, and the protocol is approved by the Secretary. DAQ must ensure that greenhouse gas inventory programs not listed by statute provide accurate and consistent emissions information, and at this point, the agency has not had adequate opportunity to review the INGAA protocol in view of the protocols listed by statute.

COMMENT F. The commenter states, "*Section 4.6 This section should be revised to clarify that sources will not be subject to fees for reporting greenhouse gas emissions. The DAQ has no statutory authority under W.Va. Code §22-5-19 to require sources to pay fees based on emissions of greenhouse gases. In addition, unlike the air emissions inventory program, the greenhouse emissions reporting serves only to develop a greenhouse gas inventory and is not intended to generate fees. Therefore, we suggest that a provision be added to the rule to provide that affected sources will not be subject to fees under the greenhouse gas emissions inventory program.*"

RESPONSE F. DAQ notes that there was originally no subsection 4.6 in the proposed rule. The rule does not require fees from sources required to report greenhouse gas emissions. However, upon further consideration, DAQ has added a new provision (subsection 4.6) to the rule to make it clear that affected sources will not be subject to fees under the greenhouse gas emissions inventory program.

COMMENT G. The commenter states, "*Section 5.3 Greenhouse Gas Emissions Inventory. This section should be revised to delete the requirement that certain entities, including trade associations, must provide relevant information on greenhouse gas emissions, reductions, capture and sequestration to the Secretary upon request. This requirement is not found in the statute and could be interpreted to require such entities to report reductions, which is also not required under the statute. We believe the proposed language in the rule is broader than that in the statute and we request that the language in the rule be made consistent with the statutory language.*"

RESPONSE G. DAQ refers the commenter to Response II.C.

COMMENT H. The commenter states, "*Section 7.1 Economic Development Potential. This section should be revised to require the DEP to also determine whether reduction and sequestration will result in a deterrent to net economic development - not just whether it will be an asset. It is equally important to determine whether the reduction and sequestration will result in a deterrent to economic development as it is to determine whether it could be as asset. The Associations also request that a reasonable protocol for reporting greenhouse gas emissions from stationary sources should be developed. Affected sources should be allowed reasonable flexibility to determine the best reporting method. Affected sources should not be required to report emissions from individual units within a stationary source if such emissions are insignificant, as this would be extremely burdensome. Affected stationary sources should have the option to report all of its greenhouse gas emissions in the aggregate. The Associations request that the greenhouse gas emissions reporting program allow the same flexibility as that under the air emissions inventory program. Finally, the Associations suggest that the DAQ coordinate with nationally recognized greenhouse gas inventory programs, such as 'The Climate Registry', which currently includes 31 states, to ensure that West Virginia's program is consistent with other states' programs across the nation.*"

RESPONSE H. DAQ believes that the language in subsection 7.1 comports with Senate Bill 337 by requiring a determination whether reduction and sequestration of greenhouse gas can be developed as an asset, rather than a deterrent, for economic development in West Virginia. DAQ notes that various reporting protocols are in a state of development and maturation. The Division intends to maintain as much flexibility as practicable with respect to greenhouse gas reporting, while ensuring accurate and consistent emissions information is received from affected sources, as provided under subsection 4.3 and the constraints of statute. Under the DAQ emissions inventory program, sources do not report on a source level, but on a unit level. Under 45CSR42, greenhouse gas emissions are to be reported at the source level, but affected sources have the flexibility to report at the unit level, just as long as aggregate source emissions are provided. DAQ also notes that subsection 4.3 requires consistency with other regional, national or international greenhouse gas emission reporting programs.

V. COMMENTER: Dominion

COMMENT A. The commenter states, "*First, we ask that West Virginia coordinate with other state or regional GHG registry initiatives already in progress.Through coordination with existing registry efforts, West Virginia can avoid creating reporting protocols that are out of sync and would require a company with facilities in many states, such as Dominion, to report using several different manners in different states.*"

RESPONSE A. DAQ notes that subsection 4.3 requires consistency with other regional, national or international greenhouse gas emission reporting programs. However, DAQ also recognizes that the listed programs may differ in many aspects including, but not limited to emissions qualification and reporting requirements.

COMMENT B. The commenter states, "*Second, if the state elects to proceed independently, we ask that Section §45-42-4.4 of the rule be modified such that the Interstate National Gas*

Association of America's (INGAA) greenhouse gas protocol be recognized as an approved greenhouse gas inventory protocol for the natural gas transmission and storage sector."

RESPONSE B. DAQ refers the commenter to Response IV.E.

COMMENT C. The commenter states, *"Third, we ask that Section §45-42-3.1 of the rule be revised such that a source is only required to report any greenhouse gas emissions above the de minimis amounts for each gas. As currently drafted, the rule requires any stationary source that emits one or more GHGs on an annual basis greater than the de minimis levels to report all emissions of all greenhouse gases on an annual basis. This provision would be very burdensome."*

RESPONSE C. DAQ refers the commenter to Response II.B.

COMMENT D. The commenter states, *"Fourth, we ask that Section §45-42-4.1 of the rule be modified to require that GHG inventories be due at the same time as annual air emission inventories."*

RESPONSE D. DAQ refers the commenter to Response III.B.

COMMENT E. The commenter states, *"Fifth, we ask that Section §45-42-4.2 of the rule be modified to clarify that sources are not required to report emissions from mobile sources and that sources are only required to report direct emissions, not indirect emissions such as emissions from offsite electricity consumption."*

RESPONSE E. DAQ refers the commenter to Response IV.D.

COMMENT F. The commenter states, *"Sixth, we ask that a provision be added to the rule to clarify that sources of greenhouse gas emissions will not be subject to fees for reporting emissions."*

RESPONSE F. DAQ refers the commenter to Response IV.F.

COMMENT G. The commenter states, *"Finally, we ask that Section §45-42-5.3 of the rule be modified to delete the requirement that entities, such as trade associations, provide relevant information on GHG emissions, reductions, capture and sequestration to the Secretary upon request. This requirement is not found in the statute."*

RESPONSE G. DAQ refers the commenter to Response II.C.