

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

JUL 29 AM 10:55

WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR42

TITLE OF RULE BEING AMENDED: REPEAL OF - Greenhouse Gas Emissions Inventory Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: REPEAL OF 45CSR42 - Greenhouse Gas Emissions
Inventory Program

1. Authorizing statute(s) citation W. Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 10, 2011

b. What other notice, including advertising, did you give of the hearing?
Public Notice placed on Department of Environmental Protection's web site,
distributed via the agency's mailing list, and in a Class I legal ad published in the
Charleston Newspapers.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Hearing/Comment Period Ended - July 11, 2011 (close of hearing)

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

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

July 29, 2011

- 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
Phone: (304) 926-0499 ext. 1966

Fax: (304) 926-0488

John.A.Benedict@wv.gov

- 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)

See "f" above

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 Department of Environmental Protection is proposing to repeal rule 45CSR42 *Greenhouse Gas Emissions Inventory Program*". The purpose of this rule was to establish a program which requires the reporting of greenhouse gas emissions by stationary sources which emit greenhouse gases.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The Department of Environmental Protection is proposing to repeal rule 45CSR42 because on October 30, 2009, U.S. EPA promulgated standardized greenhouse reporting requirements, *Mandatory Reporting of Greenhouse Gases*. Because 45CSR42 was promulgated before U.S. EPA finalized its greenhouse gas reporting requirements, and the rule's approach to greenhouse gas reporting was significantly different from U.S. EPA's final approach, the Division of Air Quality has determined that sources subject to U.S. EPA's *Mandatory Reporting of Greenhouse Gases* shall not be also be subject to the differing requirements of 45CSR42. To further eliminate this conflict, the Department will take steps to amend W.Va. Code §22-5-19, which authorizes the Secretary to propose legislative rules establishing a Greenhouse Gas Inventory Program. Such amendment to the Code will provide for the Cabinet Secretary to allow reporting under U.S. EPA's *Mandatory Reporting of Greenhouse Gases* to satisfy greenhouse gas reporting requirements in West Virginia.

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

Because the repeal of 45CSR42 will eliminate conflict with U.S. EPA's *Mandatory Reporting of Greenhouse Gases*, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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 June 2, 2011, meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

MEETING MINUTES

June 2, 2011

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman, called to order the regular meeting of the DEP Advisory Council at 1:35 p.m. on June 2, 2011 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Lisa Dooley, Jackie Hallinan, Ted Hapney, Larry Harris, Bill Raney, and Rick Roberts. Karen Price was absent.

The meeting was also attended by the following DEP personnel and invited guests: Lisa A. McClung, Deputy Cabinet Secretary; Kathy Cosco, Chief Communication Officer; James L. Mason, Division of Air Quality; Donald W. Martin, Division of Land Restoration; Charles W. Armstead, Division of Water & Waste Management; and David L. Johnston, Division of Water & Waste Management. Sherrie A. Armstrong and John Ailes of Bailey & Glasser attended the meeting at Ms. Boggs' invitation to fulfill Dr. Harris' request at the March 17 meeting that the DEP provide some information on the implications of the *West Virginia Highlands Conservancy v. Huffman* decision.

Also in attendance were the following members of the public: Don Garvin of the Ohio Valley Environmental Coalition; Don Gasper of Trout Unlimited; and Rosa Rose.

III. OLD BUSINESS

Minutes of the March 17, 2011 Meeting. The minutes were emailed and provided to Council in hard copy. Mr. Raney moved for approval of the minutes, Ms. Dooley seconded the motion, and it was carried by acclamation of Council.

IV. SPECIAL PRESENTATION

Ms. Armstrong, who – along with Benjamin L. Bailey - represented the DEP in the Fourth Circuit Court of Appeals in *West Virginia Highlands Conservancy v. Huffman* (the “special rec” or “bond forfeiture” cases), gave a brief overview of the possible consequences of the decision rendered in that case. John Ailes of Bailey & Glasser also participated in the presentation. In sum, an unintended consequence of this ruling could be that watershed groups, which volunteer their time and resources to clean up pre-law mine sites, could be required to get NPDES permits.

Dr. Harris suggested that a way out for Good Samaritan watershed groups would be to partner with the State and let the State obtain the NPDES permits. Mr. Ailes then opined

that the chilling effect on beneficial partnerships between citizen groups and the regulatory agencies it is one of the unintended consequences of the ruling and that this is an opportunity for the DEP to look into rulemaking to address some of these issues.

Ms. Dooley asked if the agency could waive the permit application fees for Good Samaritan groups like some municipalities waive business license fees, and DEP did not foreclose that possibility. That is one of the issues that could be addressed in future rulemaking.

Mr. Roberts asked if this ruling would apply to AML, and Ms. Armstrong answered that we do not think so, since AML is governed by a separate set of rules.

Mr. Raney asked if this ruling could apply to other industrial discharges, and Ms. Armstrong answered no.

V. PROPOSED 2012 LEGISLATIVE RULES

Division of Air Quality

- ❖ 45 CSR 8 – *Ambient Air Quality Standards* – Annual incorporation by reference amendments to the NAAQS, including Primary National Ambient Air Quality standard for sulfur dioxide.
- ❖ 45 CSR 14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration* – Revisions to the rule incorporate changes to the federal counterpart, “Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers – Increments, Significant Impact Levels and Significant Monitoring Concentration.”
 - ◆ Dr. Harris asked the following questions regarding this rule: What is a PAL? Are there any in West Virginia? Would it apply to the TransGas facility in Mingo County? On behalf of the Division of Air Quality, James L. Mason answered that a PAL is a plant-wide applicability unit, and it may apply to the TransGas facility, but TransGas would have to apply for it. Mr. Mason was unsure if there were any PALs in West Virginia, but he advised the Council he would get back to them with a response.¹
- ❖ 45 CSR 16 – *Standards of Performance for New Stationary Sources* – Annual incorporation by reference amendments to the NSPS.

¹ Mr. Mason has determined since the June 2 meeting that, because the TransGas facility is a synthetic minor source, 45CSR14 did not apply to the permitting process. If TransGas were to become a major source, 45CSR14 may then apply. Mr. Mason also determined that there are no permitted PALs in West Virginia at this time.

- ❖ 45 CSR 18 – *Combustion of Solid Waste* – The revised rule incorporates by reference the amended Standards of Performance for New Commercial and Industrial Solid Waste Incineration Units and sets forth emission guidelines for existing commercial and industrial solid waste incineration units. The new CISWI language was pulled from the proposed rule based on EPA’s recent delay of the rule’s effective date.
- ❖ 45 CSR 19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment* – Revisions to the rule include new significant impact levels promulgated by EPA.
 - ◆ Mr. Raney inquired whether Marcellus pads fall under this rule. The short answer, as provided by Mr. Garvin and Deputy Secretary McClung, is no.
- ❖ 45 CSR 25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities* – Revisions to the rule include annual incorporation-by-reference updates.
- ❖ 45 CSR 30 – *Requirements for Operating Permits* – Revisions to the rule implement the provisions of EPA’s final Greenhouse Gas Tailoring Rule. Language is added that is intended to rescind elements of the Tailoring Rule if a court, Congress, EPA or the President finds that GHGs are not subject to regulation. In order to effect the provisions of the Tailoring Rule as soon as practicable, and in accordance with EPA-mandated timelines, West Virginia has adopted this rule as an emergency rule.
 - ◆ Dr. Harris asked what an alternative operating scenario is, and Mr. Mason explained that, once an operating system is approved, the permittee can propose something different and, if it is allowed by the rule, the Secretary can approve it as an alternative operating scenario. Dr. Harris then asked what “approved replicatable methodology” is, and Mr. Mason clarified that approved replicatable methodology (“ARM”) goes along with alternative operating scenarios: we want reproducible science, and the ARM is used to prove how the permittee plans to meet its permit limits.
 - ◆ Mr. Mason also clarified for Council that the rescission language amended into the rule in the emergency rulemaking process is only applicable to greenhouse gases and not any other pollutant.
- ❖ 45 CSR 34 – *Emission Standards for Hazardous Air Pollutants* – Annual incorporation-by-reference revisions to the Hazardous Air Pollutant rule.
- ❖ 45 CSR 35 – *Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)* – This revised rule incorporates by reference the following provisions of 40 CFR 93: Revisions to the General Conformity Regulations.
- ❖ 45 CSR 42 – *Greenhouse Gas Emissions Inventory Program* – DAQ is proposing to repeal this rule because on October 30, 2009, EPA promulgated standardized greenhouse

reporting requirements, “Mandatory Reporting of Greenhouse Gases.” Because 45 CSR 42 was promulgated before the EPA finalized its mandatory greenhouse gas reporting requirements, and the rule’s approach to greenhouse gas reporting was significantly different from EPA’s final approach, the DAQ has determined that sources subject to EPA’s Mandatory Reporting of Greenhouse Gases shall not be also subject to the differing requirements of this State rule. To further eliminate this conflict, the DEP will take steps to amend W. Va. Code § 22-5-19, which authorizes the Secretary to propose legislative rules establishing a Greenhouse Gas Inventory Program. Such amendment to the Code will provide for the Cabinet Secretary to allow reporting under EPA’s Mandatory Reporting of Greenhouse Gases to satisfy greenhouse gas reporting requirements in West Virginia.

DIVISION OF LAND RESTORATION

- ❖ 60 CSR 3 – *Voluntary Remediation and Redevelopment Rule* – This rule is being revised to update the *de minimus* clean-up standards. This change is necessary, because the toxicological profiles for many chemicals in the federal IRIS database have been revised, which necessitates changes to the *de minimus* table.

Division of Water & Waste Management

- ❖ 33 CSR 1 – *Solid Waste Management Rule* – Revisions to this rule are to add the definition of “covered electronic devices” to the list of defined terms and to add covered electronic devices as an unacceptable waste banned from disposal in the State’s landfills. This revision is necessary due to the passage of Senate Bill 298 on March 12, 2010, which amended and reenacted W. Va. Code § 22-15A-25 to ban certain electronic devices from landfill disposal.
- ❖ 33 CSR 20 – *Hazardous Waste Management Rule* – Revisions to the rule include annual incorporation-by-reference updates from the federal counterpart. Further, DWWM proposes to amend the rule to reflect that the authority it previously transferred to the Division of Highways to regulate hazardous waste on the highways has been transferred by statute to the Public Service Commission when the Weights & Measures Section was transferred from the DOH to the PSC.

Dr. Harris moved that the proposed 2012 Legislative rules be approved for submission to the Legislature; Mr. Hapney seconded the motion; Mr. Raney objected only on the basis that the DAQ rules are complex and difficult to understand, and he wants to make sure DEP is not simply adopting federal recommendations without adequate consideration to the needs of the economy of West Virginia. The motion to approve the rule was then carried by acclamation of Council.

VI. OTHER BUSINESS

- ❖ Ms. Hallinan advised the DEP to keep pushing Marcellus regulations.
- ❖ Dr. Harris expressed serious concerns about the Marcellus permits issued in Monongalia County close to a public drinking water intake. Specifically, he opined that allowing natural gas drilling so close to a water intake is the most irresponsible siting he has ever seen and that once there has been accident, it is too late to do anything. He advised DEP that Morgantown is considering a moratorium on Marcellus drilling. He finally advised DEP that there should be a public comment period on Marcellus well work permits.
- ❖ The next Advisory Council meeting will be **Thursday, September 22, 2011 at 1:30 p.m.**

VII. ADJOURNMENT

Mr. Hapney moved that the meeting be adjourned, Ms. Hallinan seconded the motion, Dr. Harris objected, based on Ms. Boggs' failure to allow public comment at the meeting, and the motion carried by acclamation of Council. The meeting was adjourned at 2:30 p.m.

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 SECharleston, WV 25304Phone Number: 304) 926-0475Email: tammy.l.mowrer@wv.gov**Fiscal Note Summary**

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

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR42 due to standardized greenhouse gas reporting requirements promulgated by U.S. EPA. Repeal of 45CSR42 will have a positive impact of \$16,250 on the cost of state government in fiscal years 2012 and beyond.

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	2012 Increase/Decrease (use "-")	2013 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	- \$16,250	0	0
Personal Services	- \$16,250	0	0
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"

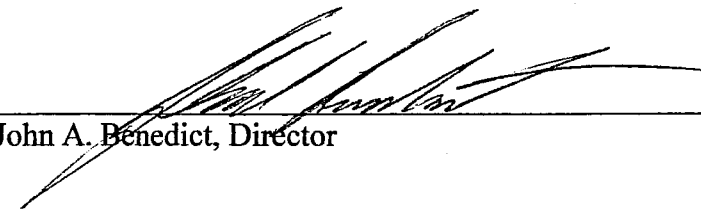
3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Full implementation costs of 0.25 FTE or \$16,250 to maintain the program are saved with the repeal of 45CSR42.

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, 2011



John A. Benedict, Director

JUL 29 11:10:55

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

WEST VIRGINIA
SECRETARY 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. -- April 23, 2008.~~

~~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.~~

~~—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.~~

ORIGINAL

1

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

In re: The proposed repeal of Rule 45CSR42 - Greenhouse Gas
Emissions Inventory Program

Transcript of proceedings had at a public
hearing in the above-styled matter taken at the West
Virginia Department of Environmental Protection, Division
of Air Quality, Conference Room, 601 57th Street, S.E.
Charleston, West Virginia, commencing at 7:15 p.m., on the
11th day of July, 2011, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 6296
CHARLESTON, WEST VIRGINIA 25362
304-205-4929 or 304-539-6192

1 P R O C E E D I N G S

2 MR. MASON: This public hearing will now
3 come to order on this 11th day of July, 2011, at the West
4 Virginia Department of Environmental Protection
5 Headquarters. Comments and testimony will be accepted until
6 the close of this hearing and will be made part of the
7 rulemaking record. Any question regarding revisions to the
8 rules will be included with your comments, and any such
9 question will be answered as part of the response to
10 comments in the rulemaking record.

11 The purpose of this public hearing is to
12 satisfy state rulemaking requirements by accepting comments
13 on proposed repeal of rule 45CSR42 - Greenhouse Gas
14 Emissions Inventory Program.

15 45CSR42 is proposed to be repealed because
16 the EPA has recently promulgated standardized greenhouse
17 gas reporting requirements. Because 45CSR42 was
18 promulgated before EPA finalized its mandatory greenhouse
19 gas reporting requirements, and the rule's approach to
20 greenhouse gas reporting was significantly different from
21 EPA's final approach, the Division of Air Quality has
22 determined that sources subject to EPA's Mandatory
23 Reporting of Greenhouse Gases shall not also be subject to

1 the differing reporting requirements of 45CSR42.

2 The floor is now open for comments.

3 MR. KOTSON: With regard to 45CSR42, I have
4 will offer the following comments. My name is James
5 Kotson, I'm managing chair of the West Virginia Sierra
6 Club.

7 First, we're opposed to the deletion of the
8 rule, again, because of my earlier comments, we thing we
9 should be pursuing additional greenhouse gas controls and
10 not doing away with any of those rules. To the extent that
11 many of these reporting requirements have been transferred
12 to Reg 30, 45CSR30, there does appear to be an opportunity
13 to reduce needless duplications.

14 My concern is that the reporting threshold,
15 the EPA's rule, would potentially exempt some West Virginia
16 entities that are currently emitting greenhouse gases.
17 Specifically, although, West Virginia's DAQ, Division of
18 Air Quality currently does not issue air pollution permits,
19 regulate, monitor or otherwise have those controls on
20 Marcellus gas wells, the air emissions from many of those
21 gas wells are significant sources of - - organic compound
22 and other hydrocarbons, and in particular of methane, a
23 very significant greenhouse gas. Those are companies not

1 regulated under the reporting thresholds that EPA has
2 promulgated. But the cumulative effect of literally
3 hundreds of these wells, each emitting hundreds of tons of
4 methane, is greater than the greenhouse impact of many coal
5 fired power plants.

6 West Virginia is missing an opportunity to
7 at least monitor and get a handle on some of those
8 greenhouse gas emissions. I would request that the
9 Division of Air Quality address what sources would be
10 required to report under this proposed rule that would not
11 also be regulated under the reporting requirements in
12 45CSR30.

13 Secondly, which Marcellus gas wells would
14 meet the threshold for 45CSR42 that would not meet the
15 threshold of reporting under Title 5 in Reg 30.

16 Finally, to what extent is West Virginia
17 going backwards by deleting this rule and relying solely on
18 the federal counterpart regulation?

19 We recognize that when the Federal
20 Government promulgates rules, there is no need for West
21 Virginian's to reinvent the wheel, but to the extent that
22 the currently missing important sources of greenhouse
23 gases, the cumulative effect which is significant, we think

1 it's important to retain this rule.

2 I would offer a final comment on the
3 hearing process itself. To the extent that the Division of
4 Air Quality offers a public hearing, I would request that
5 it be located in a venue where the front doors are not
6 locked prior to the start of the hearing. Thank you.

7 MR. GASPER: I do have a comment, Don
8 Gasper. I represent E Counsel, like I said I'm a member of
9 the Ohio Conservancy Board as well. Some of this discussion
10 has occurred at our meetings. We had some fellow who said
11 that we can capture methane and we can design the wells so
12 that - - he was an engineer, and he said that this can be
13 done.

14 So, when you get plans in for approval you
15 could have the engineering fix and very quickly Chesapeake
16 could pick up on that and submit applications then that
17 would not need to be looked at so closely. If you capture
18 methane, any useful gas, and - - I don't know, I'm not an
19 engineer - - run it some place, into a tank, hold it and
20 then pick it up. He thought this was doable. I think it
21 may be an important source of methane as they develop the
22 gas field.

23 I would encourage you to look for a

1 technical fix that would then capture the, at least
2 methane, and the other gases that might be useful that
3 could be put into the mix and transported and used. That's
4 all that I have.

5 ME. MASON: Thank you, Mr. Gasper.

6 MS. MAUL: Thank you. My name is Mary Ann
7 Maul, I'm an environmental lawyer in Charleston, West
8 Virginia. Mr. Kotson's comments concerning Marcellus
9 natural gas wells, I understand from my work in a QV case
10 No. 10-03, I represented Bill Hughes - - natural gas
11 compressor stations should likewise apply to natural gas
12 compressor stations. Also to the pipelines connecting both
13 gas wells and compressor stations. These facilities are
14 not only emission units themselves, but the pipelines, in
15 particular, will leak. They have pigs running through them
16 and valves that are sources of emissions.

17 Again, as Dr. Kotson referred to, there is
18 a cumulative impact from the combined totals of the
19 emissions, it all goes into the air. These should not be
20 considered as separate emissions units; either for purposes
21 for permitting or laundering, as discussed here.

22 I support the thrust of the comments by Dr.
23 Kotson, but I recommend that they apply, as well as

1 compressor stations, and as well to the pipelines
2 connecting the both the compressor stations and the well
3 heads.

4 MS. HERNANDEZ: I am Renee Hernandez, I'm
5 with West Virginia for Moms. We ask West Virginia for a
6 moratorium on Marcellus and I would concur with Mr.
7 Kotson's comments on Marcellus wells, as well as the
8 compressor stations that you all mentioned, these are all
9 areas of deep concern to West Virginia for Moms.

10 MR. MANYPENNY: One quick comment from me,
11 and I don't know if it's has already been said, but I didn't
12 hear it. In regards to the - - Mike Manypenny of the 42nd
13 District. One thing that I didn't hear, and it may have
14 been; I apologize if it was. I'd like to see the
15 monitoring and regulations to reduce the amount of off-
16 gasing that is occurring in the flow-back tanks from the
17 Marcellus - - because the flow-back tanks emit a large
18 amount of volatile organic compounds, as well as dissolve
19 methane which leaches out into the water over time.

20 MR. MASON: Thank you. Any further comments
21 on proposed Rule 45CSR42?

22 MS. MAUL: I would just also add that the
23 technical notes that what Delegate Manypenny just raised;

1 and that is that there are pipelines that carry flow-back
2 that runs between flow-back tanks and other facilities.
3 So, again, all of the this equipment, the compressor
4 station, the well caps, the pipelines carrying the natural
5 gas, the flow-back tanks and the pipelines connecting the
6 flow-back tanks to other facilities are emission units and
7 they are sources of greenhouse gas emissions. They need to
8 be permitted and they need to be monitored. All of this is
9 Marcellus gas drilling matter that is more intensive
10 because of the deep drilling because of the numerous wells
11 afforded by horizontal drilling and fracing, and because of
12 the much bigger amounts of gases are being recovered from
13 the Marcellus.

14 It's a special issue, it needs special
15 attention, and it requires regulators to take a new look at
16 all of these air rules that apply, or should apply, to
17 Marcellus gas drilling.

18 MR. MASON: Any further comments on proposed
19 rule 45CSR42?

20 MS. HERNANDEZ: Again, I would just concur
21 with the additional comments of this gentleman, Delegate
22 Manypenny added.

23 MR. MASON: Thank you.

1 MR. KESLING: Randy Kesling, Trout
2 Unlimited, just to add to what's being said here, this
3 whole industry is burgeoning so vaguely at this point,
4 there are many threats and, you know, the threat of air, to
5 the extent that it effects our entire eco system, down to
6 our forest; down to our aquatic species. I think it's very
7 important that we have appropriate regulation that
8 mitigates those impacts that we know are coming, those
9 increased impacts that are going to result from all of this
10 drilling of the Marcellus.

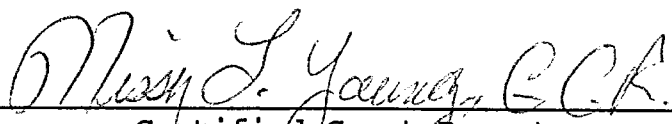
11 MR. MASON: Thank you for your comment. Any
12 further comments? There being nothing further, this public
13 hearing for proposed repeal of rule 45CSR42 is concluded.
14 Thank you everyone for coming and I wish to apologize for
15 the locked door.

16 (WHEREUPON, the hearing was
17 concluded at 7:29 p.m.)
18
19
20
21
22
23

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

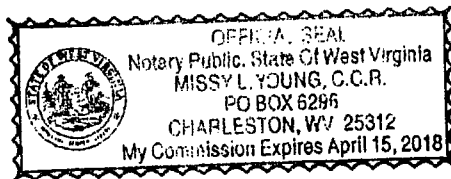
I, the undersigned, Missy L. Young, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing, was taken to the best of my skill and ability, a true and accurate transcript of all the proceedings had in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

Given under my hand and official seal this 13th day of July 2011.



Certified Court Reporter
Notary Public for the State of West Virginia

My commission expires April 15, 2018.





west virginia department of environmental protection

SIGN-IN SHEET

Public Hearing on the Division of Air Quality Rules 45CSR8, 45CSR14, 45CSR16, 45CSR18, 45CSR19, 45CSR25, 45CSR30, 45CSR34, 45CSR35 and 45CSR42

July 11, 2011, 6:00 p.m.

The Department of Environmental Protection asks for the information below so that agency staff may provide responses and information about decisions to you. The information you voluntarily provide on this sheet becomes part of the public record related to this topic and may be released if requested under the Freedom of Information Act.

Name (please print)	Address	Organization	Phone	E-mail	Comment Y/N
Randy Kepling	RT 2 Box 427 Bridgeport WV 26330	Trout Unlimited	304 622 5992	Rkepling@MHA.R.COM	N
Pam Nixon		WV-DEP			
Mary Anne Maul	148 Charleston, WV 25301	PLLC	304-383-266	Maryannemaule@yahoo.com	Y
Jim Katcom	414 Ydome Avey Corp Morgantown, WV 26508	SIERRA CLUB	304-594-3323	JKatcom@wvuh.edu	Y
Mike Manypenny	RT 3 Box 202 Craxton, WV 26354	House of Delegates	677-0379	Mike.manypenny@wv.gov	Maybe
John Christensen	512 STONEY LICK RD. MARTINSBURG WV 25403	C-COUNCIL	304-754-8505	JBC4RE@YAHOO.COM	N
RENEE HERNANDEZ	224 Overdale St Morgantown WV 26501	WV 4 MOM	304-241-5675	CRY-liberty@yahoo.com	.
Dan Collier	4 Ruffin Rd AT GLENVIEW	E-Society	472 3704		Y

SIERRA CLUB

WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

July 11, 2011

West Virginia Division of Air Quality
Department of Environmental Protection,
601 57th Street S.E.,
Charleston, WV 25304.

Re: Comments on Air Rules.

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club.

1. 45-CSR-14. PSD Construction Permits. The terms "2.9 "Baseline Area" and 2.42 "Baseline Date" do not appear to have any application outside of the Plantwide Applicability Limitations (PALs)? I don't seem to see them used anywhere else. How many facilities in West Virginia currently have PALs in their permits? How would this apply to something like the TransGas Coal-to-Liquids plant in Mingo County? We believe that it would make a lot more sense to get rid of these PALs. Applying pollution emission limits at each emission point would make it much simpler to monitor these emissions and identify the best control technologies. **We recommend that this rule be revised to strike all reference to PALs.**

3) 45-CSR-18. Solid Waste Incinerators. This rule is extensively re-written and appears to open the door to out-of-state garbage incinerators. We are concerned that the changes weaken the rule and do not preserve the earlier legislative intent to prohibit such technologies? **We oppose the proposed changes as they are inconsistent with the WV Solid Waste Management hierarchy of promoting waste reduction, reuse and recycling.** Air pollution rules should not authorize practices that are prohibited elsewhere instate code.

4) 45-CSR-30. Operating permits.
Section 2.6 and 2.8. What is an "Alternative Operating Scenario" or an "Approved Replicable Methodology"? Why are these needed, and how would the agency enforce them (e.g., section 5.1)? Would there be opportunities for public comment on either of these should an applicant choose to adopt them? **We recommend that the rules be revised to delete these changes, or at a minimum, to allow public notice and comment on these before the agency approves their application at any facility.**

Not Blind Opposition To Progress, But Opposition To Blind Progress

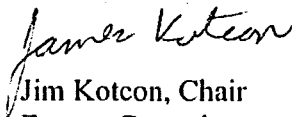
Section 2.43 defines "Subject to Regulation" but then exempts greenhouse gases under a wide range of scenarios (Act of Congress, Court Order, etc.). Why is this language included for greenhouse gases, and not for other pollutants subject to regulation? How do the reporting requirements under Title V compare to those in the rule being proposed for deletion (45-42)? **We recommend that this language be deleted from the final rule.**

Table 45-30C. Why is this Table being deleted? Where did it come from and to what does it refer? It does not seem to be referenced anywhere else in the rule?

5) 45-CSR-42. To what extent is West Virginia going backwards by deleting this rule and relying solely on the federal counterpart? The goal needs to be to develop greenhouse gas monitoring, control, and emissions reductions, and almost every other state in the Northeast is ahead of West Virginia in this regards. **We oppose deletion of the rule and recommend that, instead, DEP be pursuing additional greenhouse gas controls in the next legislative session.**

Thank you for the opportunity to comment. Please feel free to contact me if I can provide further information to clarify these comments.

Sincerely,



Jim Kotcon, Chair
Energy Committee
West Virginia Chapter
304-594-3322 (home)
304-293-8822 (office)
jkotcon@gmail.com

45CSR42

GREENHOUSE GAS EMISSIONS INVENTORY PROGRAM

RESPONSE TO COMMENTS

On June 10, 2011, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 11, 2011 to accept oral comments on the proposed repeal of legislative rule 45CSR42. Written comments were also accepted through 6:00 PM on Monday, July 11, 2011. One commenter submitted written comments regarding proposed rule 45CSR42, and four people provided substantive verbal comments. DAQ addresses the written comments below.

I. COMMENTER: Sierra Club

COMMENT A. The commenter states, “45-CSR-42. To what extent is West Virginia going backwards by deleting this rule and relying solely on the federal counterpart? The goal needs to be to develop greenhouse gas monitoring, control, and emissions reductions, and almost every other state in the Northeast is ahead of West Virginia in this regards. We oppose deletion of the rule and recommend that, instead, DEP be pursuing additional greenhouse gas controls in the next legislative session.”

RESPONSE A. The Department of Environmental Protection is proposing to repeal rule 45CSR42 because on October 30, 2009, U.S. EPA promulgated standardized greenhouse reporting requirements, *Mandatory Reporting of Greenhouse Gases*. Because 45CSR42 was promulgated before U.S. EPA finalized its greenhouse gas reporting requirements, and the rule’s approach to greenhouse gas reporting was significantly different from U.S. EPA’s final approach, the Division of Air Quality has determined that sources subject to U.S. EPA’s *Mandatory Reporting of Greenhouse Gases* shall not be also be subject to the differing requirements of 45CSR42. DAQ notes that 45CSR42 did not require controls or limitations on greenhouse gases. The repeal of 45CSR42 will not directly affect or increase emissions of greenhouse gases in West Virginia. DAQ considers the repeal of 45CSR42 a step towards a consistent greenhouse gas inventory that will provide better information on greenhouse gas emissions in West Virginia and throughout the country.

II. COMMENTER: Jim Kotcon

COMMENT A. The commenter states, “First, we’re opposed to the deletion of the rule, again, because of my earlier comments, we think we should be pursuing additional greenhouse gas controls and not doing away with any of those rules. To the extent that many of these reporting requirements have been transferred to Reg 30, 45CSR30, there does appear to be an opportunity to reduce needless duplications.”

RESPONSE A. DAQ notes that the purpose of 45CSR42 was to allow the DEP to create an inventory of greenhouse gases in West Virginia. It did not authorize any controls or limitations on greenhouse gases. No greenhouse gas reporting requirements have been transferred to 45CSR30. 45CSR42 is proposed to be repealed because the EPA has recently promulgated standardized greenhouse reporting requirements. Indeed, because 45CSR42 was promulgated before EPA finalized its mandatory greenhouse gas reporting requirements, and the rule's approach to greenhouse gas reporting was significantly different from EPA's final approach, the Division of Air Quality saw an opportunity to reduce needless duplications, and determined that sources subject to EPA's *Mandatory Reporting of Greenhouse Gases* shall not be also be subject to the differing reporting requirements of 45CSR42.

COMMENT B. The commenter states, "*My concern is that the reporting threshold, the EPA's rule, would potentially exempt some West Virginia entities that are currently emitting greenhouse gases. Specifically, although, West Virginia's DAQ, Division of Air Quality currently does not issue air pollution permits, regulate, monitor or otherwise have those controls on Marcellus gas wells, the air emissions from many of those gas wells are significant sources of organic compound and other hydrocarbons, and in particular of methane, a very significant greenhouse gas. Those are companies not regulated under the reporting thresholds that EPA has promulgated. But the cumulative effect of literally hundreds of these wells, each emitting hundreds of tons of methane, is greater than the greenhouse impact of many coal fired power plants. West Virginia is missing an opportunity to at least monitor and get a handle on some of those greenhouse gas emissions. I would request that the Division of Air Quality address what sources would be required to report under this proposed rule that would not also be regulated under the reporting requirements in 45CSR30.*"

RESPONSE B. DAQ notes that if a facility triggers the permitting thresholds under 45CSR13, 45CSR14, 45CSR19 or 45CSR30, the facility will be required to operate under an appropriate Air Quality permit. The DAQ will use the information reported to EPA under its *Mandatory Reporting of Greenhouse Gases* rule to inventory greenhouse gases in West Virginia. DAQ again notes that there are no reporting requirements under 45CSR30. In the past, DAQ has required only non-deferred sources that are subject to 45CSR30 (Title V) to report greenhouse gas emissions pursuant to 45CSR42. Thus, only about 180 sources have been subject to state greenhouse gas reporting requirements. Most of these are subject also to EPA's greenhouse gas mandatory reporting rule thereby creating duplicative reporting requirements. The larger sources will remain subject to EPA's greenhouse gas mandatory reporting rule and will continue to report greenhouse gases in a format consistent with the national program.

COMMENT C. The commenter states, "*Secondly, which Marcellus gas wells would meet the threshold for 45CSR42 that would not meet the threshold of reporting under Title 5 in Reg 30. Finally, to what extent is West Virginia going backwards by deleting this rule and relying solely on the federal counterpart regulation? We recognize that when the Federal Government promulgates rules, there is no need for West Virginian's to reinvent the wheel, but to the extent that the currently missing important sources of greenhouse gases, the cumulative effect which is significant, we think it's important to retain this rule.*"

RESPONSE C. DAQ believes that sharing a common inventory of greenhouse gases with EPA provides an “apples and apples” comparison of green house gas emissions and this a good example of how the national program has evolved into a broader one than that originated under 45CSR42. EPA promulgated a regulation to require monitoring and reporting of greenhouse gas emissions from petroleum and natural gas systems, effective December 30, 2010. This action added this source category to the list of source categories already required to report greenhouse gas emissions. The *Mandatory Reporting of Greenhouse Gases* rule requires that source categories subject to 40 CFR Part 98 monitor and report greenhouse gases in accordance with the methods specified in the individual subparts. And, like the original state rule, does not require control of greenhouse gases. For a list of the specific greenhouse gases to be reported and the greenhouse gas calculation procedures, monitoring, missing data procedures, recordkeeping, and reporting required by facilities subject to Subpart W included in EPA’s rule, see Section II.D of the preamble [Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems, 75 *Federal Register* 74458]. DAQ again notes that there are no reporting requirements under 45CSR30.

III. COMMENTER: Mary Ann Maul

COMMENT A. The commenter states, *“I understand from my work natural gas compressor stations should likewise apply to natural gas compressor stations. Also to the pipelines connecting both gas wells and compressor stations. These facilities are not only emission units themselves, but the pipelines, in particular, will leak. They have pigs running through them and valves that are sources of emissions.”*

RESPONSE A. DAQ notes that 45CSR42 contains only reporting requirements and has only been applied to non-deferred sources subject to Title V operating permit requirements. DAQ is convinced that EPA’s GHG MRR requirements for this source category adequately define the entity subject to reporting requirements and clearly define the emission sources to be accounted for. Duplication of reporting requirements would be a burden on regulated facilities with little or no environmental benefit.

COMMENT B. The commenter states, *“..... there are pipelines that carry flow-back that runs between flow-back tanks and other facilities. So, again, all of this equipment, the compressor station, the well caps, the pipelines carrying the natural gas, the flow-back tanks and the pipelines connecting the flow-back tanks to other facilities are emission units and they are sources of greenhouse gas emissions. They need to be permitted and they need to be monitored. All of this is Marcellus gas drilling matter that is more intensive because of the deep drilling because of the numerous wells afforded by horizontal drilling and fracking, and because of the much bigger amounts of gases are being recovered from the Marcellus. It's a special issue, it needs special attention, and it requires regulators to take a new look at all of these air rules that apply, or should apply, to Marcellus gas drilling.”*

RESPONSE B. See Response III.A.

IV. COMMENTER: Delegate Mike Mannypenny

COMMENT A. The commenter states, *"I'd like to see the monitoring and regulations to reduce the amount of offgasing that is occurring in the flow-back tanks from the Marcellus - - because the flow-back tanks emit a large amount of volatile organic compounds, as well as dissolve methane which leaches out into the water over time."*

RESPONSE A. DAQ notes that 45CSR42 contains only reporting requirements and has only been applied to non-deferred sources subject to Title V operating permit requirements. The flow back tanks referred to by the commenter are not currently subject to state annual emissions reporting. DAQ is convinced that EPA's GHG MRR requirements for this source category adequately define the entity subject to reporting requirements and clearly define the emission sources to be accounted for. Duplication of reporting requirements would be a burden on regulated facilities with little or no environmental benefit.

V. COMMENTER: Randy Kesling

COMMENT A. The commenter states, *"I think it's very important that we have appropriate regulation that mitigates those impacts that we know are coming, those increased impacts that are going to result from all of this drilling of the Marcellus."*

RESPONSE A. DAQ again notes that 45CSR42 contains only reporting requirements and has only been applied to non-deferred sources subject to Title V operating permit requirements. DAQ is convinced that EPA's GHG MRR requirements for this source category adequately define the entity subject to reporting requirements and clearly define the emission sources to be accounted for.