

In Re:

PUBLIC HEARING ON PROPOSED RULES
47CSR30, 33CSR12, 33CSR27 AND 47CSR26

AUGUST 7TH, 2012
6:00 P.M.

WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
601 57TH STREET, S.E.
CHARLESTON, WEST VIRGINIA

Dena A. Belisle
Certified Court Reporter

CAPITOL CITY REPORTING
"PROFESSIONAL STENOMASK FOR THE RECORD"

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APPEARANCES

ON BEHALF OF THE WEST
VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

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P R O C E E D I N G S

MR. ALUISE: Good evening. My name is Tom Aluise and I am with the Public Information Office here at the DEP. I would like to welcome everybody to the DEP this evening for the public hearing on four of the agency's proposed rules.

This evening we will be taking comments on changes to 47CSR30, the West Virginia NPDES Rule for Coal Mining Facilities; 33CSR12, Covered Electronics Device Recycling Rule; 33CSR27, which a Hazardous Waste Administrative Proceedings and Civil Penalty Assessment Rule; and 47CSR26, which is the Water Pollution Control Permit Fee Schedules Rule.

To make the most efficient use of our time this evening, we will open the hearing the comments on the first rule, and once everybody who wishes to speak about that rule has a chance to do so, we will the close that portion of the hearing and immediately open the hearing on the next rule.

Tonight's hearing is being recorded by a court reporter so that comments shared can be taken into consideration and entered into the public record for the proposed rules. If you have written comments, please provide them to me when you speak or

1 at the close of this hearing. If you come up to
2 speak, please state your name, where you live and if
3 you are with any groups or organizations.

4 The first proposed rule we are going to
5 accept comments on this evening are 33CSR12, which is
6 the Covered Electronics Device Recycling Rule. This
7 is a new rule, necessitated by the passage of Senate
8 Bill 298 on March 12th, 2010, which amended and
9 reenacted West Virginia Code to ban certain
10 electronic devices from landfill disposal. This rule
11 establishes requirements for commercial solid waste
12 facilities' and commercial recycling facilities'
13 handling and recycling covered electronic devices.

14 And no one has signed up to speak on
15 the sign-in sheet. Is there anybody who would like
16 to say anything about this proposed rule? Okay. In
17 that case, this concludes the public hearing on
18 33CSR12, the Covered Electronics Device Recycling
19 Rule. The agency will review all comments and
20 prepare a written response, which will be filed when
21 the final rule is filed with the Secretary of State's
22 office. The public comment period on this proposed
23 rule ends tonight.

24 The second proposed rule we will accept

1 comments on this evening is 33CSR27, Hazardous Waste
2 Administrative Proceedings and Civil Penalty
3 Assessment Rule. This is a new rule, necessitated by
4 the passage of House Bill 4320 on March 6th, 2012,
5 which amended West Virginia Code to grant the
6 Secretary the authority to enter into consent
7 agreements settling violations of the Hazardous Waste
8 Management Act. This rule provides a mechanism for
9 the consent agreements to include appropriate penalty
10 calculations and corrective action orders, which will
11 allow for the timely and effective administrative
12 settlement of hazardous waste violations in this
13 state while lessening the burden on the circuit
14 courts.

15 And no one signed up to comment on this
16 proposed rule. Is there anyone who would like to
17 speak? In that case, this concludes the public
18 hearing on 33CSR27, Hazardous Waste Administrative
19 Proceedings and Civil Penalty Assessment Rule. The
20 agency will review all comments and prepare a written
21 response, which will be filed when the final rule is
22 filed with the Secretary of State. The public
23 comment period on this proposed rule ends tonight.

24 The third proposed rule we will accept

1 comments on this evening is 47CSR26, Water Pollution
2 Control Permit Fee Schedules Rule. This revised rule
3 establishes a reduced National Pollutant Discharge
4 Elimination System permit fee for public geothermal
5 facilities. Currently, the only public geothermal
6 facility in West Virginia is the Morgan County
7 Courthouse, which has installed a geothermal HVAC
8 system. Morgan County authorities have advised DEP
9 that the fee imposed by the current rule is
10 economically burdensome for the County and the DEP
11 has agreed to revise the rule in this manner.

12 And we did not have any speakers sign
13 up. Is there anyone who would like to comment on
14 this proposed rule? In that case, this concludes the
15 public hearing on 47CSR26, Water Pollution Control
16 Permit Fee Schedules Rule. The agency will review
17 all comments and prepare a written response, which
18 will be filed when the final rule is filed with the
19 Secretary of State. The public comment period on
20 this proposed rule ends tonight.

21 The final rule that we will accept
22 comments on this evening is 47CSR30, West Virginia
23 NPDES Rule for Coal Mining Facilities. This revised
24 rule is necessitated by the passage of Senate Bill

1 615 on March 10th, 2012, which amended West Virginia
2 Code to make the state's Water Pollution Control Act
3 consistent with the federal Water Pollution Control
4 Act by clarifying in compliance with the effluent
5 limits contained in the NPDES permit is deemed
6 compliant with West Virginia's Water Pollution
7 Control Act. This proposed amendment reflects the
8 changes made to the statute.

9 We do have some speakers. I need my
10 sheet here. Our first speaker is Vernon Halton.

11 MR. HALTON: My name is Vernon Halton
12 with Coal River Mountain Watch and I oppose this rule
13 change. DEP has done a poor job of regulating under
14 the existing rules. A very good example of that,
15 there was a couple of years ago when the federal EPA
16 stepped in and collected 20 million dollars for
17 federal coffers which could have been two billion
18 dollars and state coffers have the DEP exercise its
19 duties and collected by Massey Energy of the
20 appropriate rate.

21 The previous governor has told the coal
22 industry that he did not want their money. I think
23 the exact words are "I don't your money. I won't do
24 anything with it." I disagree. I believe that the

1 state could do a great deal with two billion dollars
2 or 20 million dollars or even enough to hire a few
3 inspectors. As it is, the current fines are
4 ineffective at deterring continuing pollution.

5 The current governor has not rescinded
6 that guidance, from what I know. The DEP continues
7 to, at best, slap wrists or whack fingers.

8 This rule change is really just an
9 excuse for the DEP not to regulate it and it would
10 provide fewer things for them to actually look for
11 and to enforce and that's not the direction we need
12 to be going. We know that so many of our streams are
13 impaired and the water quality is very poor. We know
14 where it is coming from and we know who is supposed
15 to be regulating that and this rule change just gives
16 those folks a reason to look the other way. So
17 because of those reasons, I oppose this rule change
18 and I appreciate you giving us time me to speak.
19 Thank you.

20 MR. ALUISE: Our next speaker is Rob
21 -- is it Goodwin?

22 MR. GOODWIN: Yes.

23 MR. ALUISE: Okay.

24 MR. GOODWIN: I'm Rob Goodwin. I work

1 for Coal River Mountain Watch in Naomi, West
2 Virginia. I oppose this rule change. I think that
3 this is far from productive use of agency time. I
4 think that the many people that work in this agency,
5 the West Virginia DEP, that wish to make
6 improvements, that wish to have less mine pollution
7 in the State of West Virginia. I think that, you
8 know, environmental written regulation in protective
9 is a constantly evolving process and it should to
10 continue to address the pollution in the future.
11 This agency should refrain and respect the citizens
12 and respect those expert well-respected scientists
13 within the agency; that under the current standards,
14 West Virginia DEP is able to hold industry
15 accountable, if it chooses to. I don't understand
16 why an agency would give itself less power to control
17 pollution in the State of West Virginia. I
18 understand that the legislature has already passed
19 such legislation and the West Virginia DEP has to
20 operate implementation of this legislation under very
21 narrow, narrow grounds. However, I feel that instead
22 of just taking word-for-word what the legislature has
23 suggested, I believe that West Virginia DEP can be
24 constructive and find some other area, maybe through

1 the NPDES permitting system where they can include
2 more pollutants, include more things that should be
3 monitored for in these operations and dictate that
4 through a rulemaking process where industry and
5 citizens can be involved.

6 I opposed this rule change because it
7 has been seemingly implemented with the notion that
8 less regulation is what is best for West Virginia.
9 Now, what must be considered is that our legacy, you
10 know, mines out here, some mines that have become
11 bankrupt, there are, you know, mines where pollution
12 is existing and streams are impaired with no
13 documented cause.

14 This rule change appears to make it
15 harder for West Virginia DEP to hold those companies
16 accountable or possibly to get funds to clean up
17 those mine sites, which could provide, you know, jobs
18 as part of the transition for coal miners.

19 I think there are a plethora of ways at
20 which, you know, environment regulations controlling
21 pollution can be good for West Virginia, can be good
22 for those that work in the industry and good for a
23 transition, and so I have, well, one simply ask and
24 maybe is the only thing that this agency can do, is

1 that it can do an actual jobs analysis, those that
2 create jobs, like it consistently asks the EPA to do
3 with its federal regulations. So given the West
4 Virginia DEP demands and the industry demands toward
5 the federal government, I think the agency should be
6 held accountable to consider whether this is good for
7 jobs or bad for jobs because that appears to be the
8 intent by which this rule change process was started.
9 Thank you.

10 MR. ALUISE: Our next speaker is
11 Deborah Jarrell.

12 MS. JARRELL: Hello. My name is
13 Debbie Jarrell. I am from Rock Creek, West Virginia
14 and I'm with Coal River Mountain Watch. At a time
15 when water became so important to our areas does this
16 rule change come about at a time when evidence about
17 stream damage is un-refuted, at a time when their
18 environmental quality board finds that a grown body
19 of science has demonstrated that discharge from
20 surface coal mines in Appalachia decides that these
21 discharges cause harm to the quality of life and
22 significant impact to the aquatic ecosystem's
23 industry at a time when mining companies have
24 converted five percent of the region to mountaintop

1 mines. The resulting water pollution has caused some
2 many sensitive species to vanish that 22 percent of
3 streams may qualify as impaired under the West
4 Virginia state criteria, which would leave us holding
5 the bag responsible for those streams.

6 At this time, our West Virginia DEP
7 wants to exempt coal facilities from some of water
8 quality standards. At this time when Randy Huffman
9 states, "Yes, I work for people who are adamant and
10 are the supporters of coal mining." I just leave you
11 with one question: what about the people of West
12 Virginia, when will the time for us come? I oppose
13 this rule change.

14 MR. ALUISE: The next speaker is
15 Junior Walk.

16 MR. WALK: My name is Junior Walk and
17 I'm from Whitesville, West Virginia and I'm with Coal
18 River Mountain Watch as well. I do not -- yeah, I
19 oppose the rule change, because just like everybody
20 else that's been up here so far has said, you know,
21 the mining industry in this state has run-a-muck for
22 the past 150 years pretty much untended and, you
23 know, we only have a couple of regulations in this
24 state to keep them in check with and, you know, the

1 DEP doing away with some of those water regulations
2 does not sound like a very good idea to me. You
3 know, I know that -- I might not look like I know
4 much about the coal industry or about West Virginia.
5 You know, I might look like I'm a little bit young to
6 be up here talking and giving my opinion on all this,
7 but I worked for coal industry, you know, when I got
8 out of high school. I've worked in prep plants.
9 I've been a security guard. You know, I know what
10 life is like in this state and I know what life is
11 like living beneath the surface mine as well and I've
12 got to tell you, it's not a very healthy life. I had
13 to have red water coming out of my tap for seven
14 years every single day, smelling like sulphur because
15 of what they injected on the hillside up in those
16 underground mines is that coal sludge.

17 You know, if we had better regulations
18 in this state, if we had better regulatory body in
19 this state, then I wouldn't have had to live through
20 that, you know, and a lot of people in this state
21 wouldn't have had to live through that, because that
22 is not an uncommon story. But yeah, I oppose the
23 rule change.

24 MR. ALUISE: Do we have other people

1 who wanted to speak that came in late?

2 MS. GUNNOE: My name is Maria Gunnoe.
3 I'm from Bob White in Boone County, West Virginia and
4 I am here to oppose this rule change. We need more
5 protections for our streams and our communities.
6 Basically, this rule change and what the coal
7 companies and the DEP are doing in the State of West
8 Virginia is depopulating our communities to get to
9 the coal.

10 Now, the DEP is complacent in this.
11 The DEP is causing and allowing a divided in our
12 communities. Pro coal that's what it boils down to.
13 You cannot continue to depopulate the southern part
14 of this state and expect like myself to stand up in
15 opposition. We are here not only to oppose this rule
16 change, but we're here also to oppose the
17 mistreatment by the DEP.

18 Our communities are as important as
19 anyone's. The DEP was complacent in allowing the
20 Town of Lindytown to disappear. The DEP is partially
21 responsible for what took place there. Let's talk
22 about the truth of why the DEP wants this rule
23 change. The DEP wants this rule change so that they
24 continue to depopulate our communities.

1 when I began doing this work, I was
2 nothing more than a country girl. Now, for some
3 reason, I'm considered an environmentalist. I'm
4 country girl. I choose to grow my food, I choose to
5 fish from my streams and I choose to be what my
6 parents and grandparents were before me. The DEP is
7 taking that opportunity away from me. The DEP is
8 taking that opportunity away from my children and
9 your own. You think about this, because when it's
10 gone, you cannot get it back. I needed to sign in.

11 MR. ALUISE: Here you go, ma'am. Do
12 we have another speaker? Okay.

13 MS. PARK: I did sign in.

14 MR. ALUISE: I thought you did.

15 MS. PARK: what you see here is
16 probably the world's worst public speaker. I did
17 sign in, yes.

18 MR. ALUISE: Yeah, but you need to say
19 your name, though.

20 MS. PARK: well, okay.

21 MR. ALUISE: Just so I can make note.

22 MS. PARK: Okay. And let's hear amen
23 for Maria Gunnoe, everybody. Amen. We all have
24 children. Amen for Maria Gunnoe. My name is Becky

1 Park. I'm not really with any group. I live here in
2 Charleston. I would be willing to bet the five
3 dollar bill that's in my purse that if you went out
4 on the street and talked to people, you would find
5 that a large majority would agree with what I am
6 about to say.

7 The DEP employees are very lucky
8 people, not just because they have a job, which they
9 are lucky because of that, but they have the ability
10 to affect the future.

11 I had four children. My only daughter
12 is 22 years old. She finally, after five years, got
13 a degree at WVU in chemistry and she chose to go live
14 in Daniel Boone National Forest in Kentucky and be
15 climbing bum this summer and not do anything
16 strenuous other than, you know, climb rock faces.

17 She's peculiarly become crazy about
18 babies. You know, she's not married yet, so, but
19 every time when we're in a room and there's a baby
20 she gravitates towards the baby and I know she's
21 thinking about having her first child and maybe more.
22 So, she's living without a refrigerator this summer,
23 and I said, "well, what are you eating?" She said,
24 "I go to the grocery store and I buy non-perishable

1 foods,” and she said “I’m eating a lot of tuna.”

2 I see you nodding your head no back
3 there. what would you tell your daughter if she was
4 22 years old and she was eating a lot of tuna? We
5 have the ability to affect the future.

6 I am in love with my mother and my two
7 friends who we call the little ole ladies who love
8 our land, 80, 82 and 92. They’re not going to be
9 here in 50 years. Most of us here are not going to
10 be here in 50 years. Some of us will be. I would
11 just ask the DEP from the lucky position they’re in
12 to do what you can to keep our waters clean. I can’t
13 name the chemicals very quickly that go into the
14 waters from the coal mining activity. But the few
15 jobs, what, the ten percent or 20 percent of jobs
16 that we’re left with because of some of the mining
17 activities that we have adopted in recent decades are
18 running poisons into our waters and some of those
19 poisons are just going to sit there and leach and
20 leach and leach. We really need to move this
21 machinery in the other direction and make the
22 headwaters of the entire watershed as clean as they
23 once were.

24 Now, I know we don’t get tuna out of

1 streams and I didn't mean to imply that. But we need
2 to think of our future. We need to think of our jobs
3 in two years and five years and ten years and we need
4 to think about the trees, the habitants, the things
5 that the fish eat further downstream, the little
6 bugs.

7 My father is gone now, but he was a
8 land surveyor and he spent endless hours in the woods
9 and if that's why I'm a tree hugger, I guess that's
10 why I'm a tree hugger. But he's gone now and I'm
11 here for him. He's part of the past and it would
12 break his heart if he saw what was going on now.

13 I guess I'm about talked out, but I'm
14 about to do something illegal and nobody in this room
15 knows I have this, but this is what we're talking
16 about, water. This is the picture that was taken to
17 congress and was supposed to be shown to our
18 subcommittee on energy and mineral resources in the
19 house and it was not allowed because it was obscene,
20 somebody said. I don't have permission to have this
21 picture. I probably have to eat it as soon as I walk
22 away from the podium. But is that the water that you
23 want children to be bathed in? Do you want a little
24 girl to have to be bathed in this water because there

1 is no other water for her? Do you need anything
2 else?

3 MR. ALUISE: No. Do we have one more
4 speaker?

5 MS. STOCKMAN: I will go ahead. I
6 will stay over here. My name is Vivian Stockman. I
7 worked for the Ohio Valley Environmental Coalition.
8 Like everybody that has spoken so far, I oppose this
9 rule change basically because of the state our
10 streams are already in. Debbie referred to some of
11 the most recent studies that show, you know, the
12 existential effect of the surface mining and the
13 downstream effects.

14 Maria and I took a conductivity
15 reading in front of the Region III Administrator of
16 EPA at a stream near Lindytown. The reading was over
17 1,800. And we get these kinds of readings all over
18 the place. In order for the Department of
19 Environmental Protection to protect the environment,
20 I believe we need to be strengthening laws, not
21 weakening them.

22 MR. ALUISE: Any other speakers? If
23 we don't have any other speakers, that will conclude
24 the public hearing for opposed Rule 47CSR30, NPDES

1 rule for coalmining facilities. The agency will
2 review all comments and prepare a written response,
3 which will be filed when the final rule is filed with
4 the Secretary of State. The public comment period on
5 this proposed rule ends tonight. And that also
6 concludes tonight's hearings. Thank you very much
7 for your participation.

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(Concluded at 6:30 p.m.)

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REPORTER'S CERTIFICATE

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

I, Dena A. Belisle, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing HEARING duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof; the said witness having been duly sworn by me to testify the whole truth and nothing but the truth concerning the matter in controversy.

I do certify that the said deposition was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of the testimony given by said witness.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 13th day of
August, 2012.

Dena A. Belisle, CCR
Notary Public

My commission expires April 8, 2032.