

§47 CSR 9B – CARBON DIOXIDE SEQUESTRATION FEE SCHEDULE

Response to Public Comments from May 30-July 15, 2025

The WV Department of Environmental Protection (WVDEP), Division of Water and Waste Management (DWWM) commenced the public comment period for proposed legislative rule 47 CSR 9B on May 30, 2025. The public comment period concluded on July 15, 2025, after satisfying the minimum 30-day period. A virtual public hearing was held on July 08, 2025, at 6.00 PM, to accept oral and written comments regarding the proposed legislative rule 47 CSR 9B.

WVDEP did not receive any comments on 47 CSR 9B and no changes were made to the proposed rule based on the comments received.

Attached is the transcript of the virtual public hearing that was conducted on July 08, 2025 that also included the public hearing for two other rules, 33 CSR 20 and 47 CSR 02.

In the Matter Of:

WEST VIRGINIA DEPT. OF ENVIRON. PROTECTION

PUBLIC HEARING

July 08, 2025



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WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Transcription of Video:

Public Hearing

Date: July 8, 2025

Runtime: 14:28

1 (Beginning of Recording)

2 MS. ERNEST: Chris, if you don't mind.

3 Great, you already started recording. Good. Good

4 evening, my name is Nicole Ernest with the West

5 Virginia Department of Environmental Protection.

6 Welcome to the DEP's virtual public hearing for the

7 Division of Water and Waste Management's 2026 proposed

8 legislative rules 33CSR20, relating to the hazardous

9 waste management system, 47CSR2, requirements

10 governing water quality standards, and 47CSR9B,

11 establishing carbon dioxide sequestration fee

12 schedule.

13 With me tonight is staff from the Division
14 of Water and Waste Management, including Yogesh Patel

15 and Johnsely Cyrus with Permitting, and Mindy Neil,

16 Don Newell, and Chris Smith with Water Quality

17 Assessment and Standards.

18 The purpose for this public hearing is to

19 give you the opportunity to share your comments or
20 information about these proposed rules with the DEP.

21 To ensure we have an accurate record of everyone

22 attending this evening, we ask that you please provide
23 your name and contact information in the meeting chat.

24 You can do that by clicking the small text bubble icon

25 in the bottom right corner of your screen.

1 This hearing is being recorded, so that the
2 comments you share, can be taken into consideration,
3 and entered into public record for these rules. All
4 comments submitted before the end of the comment
5 period, including those provided here tonight, will be
6 made part of the public record.

7 The comment period for the proposed rules
8 has been extended and ends at 5 p.m. on July 21st,
9 2025. Please, please note that comments can be
10 submitted via regular mail and email. Written
11 comments on 33CSR20, may be emailed or mailed to John
12 -- Johnseely Cyrus. Written comments on 42CSR2, may be
13 emailed or mailed to Don Newell. Written comments on
14 47CSR9B, may be emailed or mailed to Yogesh Patel.

15 I've added this information to the meeting
16 chat, which you can access by clicking the small text
17 bubble icon in the bottom right corner of your screen.
18 It is also on the screen for you to view. To ensure
19 that we successfully achieve the purpose of this
20 hearing, we ask that everyone be respectful and
21 considerate of each other, by refraining from using
22 foul language, name calling, and interrupting others
23 while they are speaking.

24 We also ask that you keep your comments on
25 the topic of these proposed rules, so that our time

1 together is used efficiently. Each commenter will be
2 given five minutes to speak. If time allows, we'll
3 circle back to previous commenters to allow for
4 additional testimony. If you have written comments in
5 addition to your oral comments, please email them to
6 the appropriate WVDEP contact I mentioned earlier.
7 Thank you for bearing with me through these opening
8 remart [sic] -- remarks and instructions.

9 We will now open the floor for commenters.
10 If you'd like to provide comments, please use the
11 raised hand feature and we will call on you. When
12 called upon, please state your name, any organizations
13 you represent, and which proposed rule or rules you
14 are commenting on. Jason Bostik, the floor's open.

15 MR. BOSTIK: Well it would help if I turn my
16 microphone on, wouldn't it. Sorry about that. Good
17 evening and thank you for the opportunity to offer
18 comments regarding the proposed revisions to the
19 state's water quality standards rule 47CSR2. My name
20 is Jason Bostik, and I am the Executive Vice President
21 of the West Virginia Coal Association.

22 At the outset, the association would like to
23 compliment the Division of Water and Race [sic] --
24 Waste Management for the continuing level of
25 professionalism, technical competency, and public

1 outreach the agency has brought to the water quality
2 standard program of the state, since assuming those
3 rulemaking responsibilities from the Environmental
4 Quality Board.

5 We believe the current proposal under 47CSR2
6 is further evidence of that competency in the agency's
7 commitment to rational and technically sound changes
8 to state water quality standards. The revisions to
9 the state selenium standard proposed in the current
10 package, are fully supported by the association in our
11 membership, and are completely justified by the body
12 of science regarding selenium and fish populations in
13 West Virginia streams and rivers.

14 As we did when a similar revision was
15 offered as a sight specific standard last year, the
16 association will be filing very detailed technical
17 comments supporting the change as part of the written
18 comment period. Thank you for the chance to speak in
19 favor of the proposed selenium criteria changes, and
20 we look forward to working with the agency as the
21 revisions are finalized and reviewed by the
22 legislature in 2026.

23 MS. ERNEST: Thank you, Jason. Is there
24 anybody else wishing to make comment? Please use the
25 raised hand feature. Thank you, Than, the floor is

1 open.

2 MR. HITT: Thank you all. My name is
3 Nathaniel Hitt. My nickname is Than, T-H-A-N, and I
4 serve as the Senior Scientist with the West Virginia
5 Rivers Coalition. Today I'd like to bring a series of
6 questions to you. We will be providing our written
7 comments on, on 47CSR2 by the July 15 deadline.

8 But today I bring to you a series of, of
9 questions more than conclusions. I really do
10 appreciate this space and I, I appreciate you all for,
11 for hosting this space, because as a, as a researcher
12 in this field, I want to know how our research
13 actually reflects your regulatory reality. I bring to
14 you a couple questions.

15 First, I noticed that with, with respect to
16 process, I, I noticed that in your, in the letter
17 provided by DEP, the effective date for this change
18 was listed as July 1st, 2025. I'm curious how that
19 could be promulgated before the, the public process,
20 and before the review. So, maybe that's a typo, but
21 in the letter that you provided, 47CSR02 had an
22 effective date of July 1st, 2025. That may be a typo.
23 Let's follow-up on that.

24 But to the, but to the merits, the proposed
25 change would focus on sturgeon, and I want to know

1 why. Sturgeon is a fantastic species. It's, it's an
2 American icon, but in West Virginia, it doesn't seem
3 to be all that relevant. Now DNR is attempting to, to
4 recover sturgeon and hats off to their efforts, but
5 I'm not sure that sturgeon is the appropriate species
6 to develop water quality standards based on, and so we
7 will be following up with that. Is it arbitrary?
8 Maybe, maybe not. Let's, let's talk about that.

9 Also, I'm curious about the sampling
10 protocols. If you are to increase the criterion from
11 8 to 9.5 micrograms per gram in non-sturgeon waters,
12 I'm curious about how that would affect the sampling
13 protocols, because we have demonstrated, I'm gonna put
14 this in the chat, we've written a paper 2015, CTAC
15 (phonetic), that demonstrated that as you increase the
16 standard, you need more individuals -- you need to
17 sample more fish to actually detect the standard, and,
18 and that's because as DEP data conclusively identifies
19 them, we've shown in this paper, anything above a, as
20 the, as the average concentration of selenium and fish
21 con -- tissue concentrations in the communities goes
22 up, the variance goes up.

23 So you need to sample more individuals to
24 account, to account for that. And so I'm curious
25 about how this proposed change will affect the

1 requirements for sampling, or, alternatively, DEP
2 could accept less statistical power to detect an
3 effect. If that's the case, acknowledge it, and, and
4 then, and, and that would be transparent.

5 So, to review, I have a process question
6 regarding the effective date of this rulemaking. It's
7 listed as July 1, doesn't seem coherent given that
8 we're meeting after that. And, and I have a question
9 on, on the merits regarding the, the, the focus on
10 sturgeon. I'm not sure that makes a lot of sense
11 here. I'd like to see some more evidence for that.
12 And third, on process with respect to sampling. I
13 mean, excuse me. Third, with respect to sampling
14 protocols, I'd like to see how this, how this may
15 affect the requirements for sample size in these fish
16 communities, cause we can show conclusively, that as
17 the average concentration goes up, the variance goes
18 up.

19 In other words, individuals are different,
20 and we don't know exactly why this is. It's
21 interesting from a science perspective. Maybe some
22 individuals are eating at different trophic levels.
23 Maybe some individuals are accessing different
24 exposures in, in, in habitats. We don't know, but we
25 do know from DEP data, that the average concentration

1 of selenium and fish con -- tissue concentrations for
2 communities, as that goes up, the amount of variation
3 among individuals goes up as well.

4 Those are important considerations, and like
5 I said, we will be providing our, our technical
6 comments on this issue by the July 15 deadline. And I
7 do appreciate your all's time and attention to this.
8 This is really important stuff. So, those are my
9 remarks. Thanks. Thanks for your time.

10 MS. ERNEST: Thank you so much, and my
11 apologies for mispronouncing your name. Thank you.
12 Is there anybody else who would like to make comments?
13 If so, please use the raised hand feature. Mindy, the
14 floor is open. Mindy did you have a question or
15 comment?

16 MS. NEIL: Oh, Nicole, I'm so sorry.

17 MS. ERNEST: That's okay.

18 MS. NEIL: Jason (inaudible) me, cause I was
19 muted the entire time. No, I wanted to speak up.
20 Than had mentioned the comment period ending on July
21 15th. That had been the original plan. There was a,
22 a hold up with our publication and so Terry Fletcher
23 had asked that we announce at this meeting that the
24 comment period for 472 extends until July 21st. So
25 472 extends a bit longer, if that makes sense.

1 We are required to have a 45 day period,
2 and, and again, I apologize Nicole if you've already
3 mentioned that. I just kind of want to clarify that
4 since, since Than had mentioned it. So July 21st is
5 when that comment period closes for 472.

6 MS. ERNEST: Thank you. Is there anyone else
7 who would like to make a comment? If so, please use
8 the raised hand feature. Going once. Going twice.
9 And last chance. If there are no more commenters, we
10 will close the virtual public hearing for the Division
11 of Water and Waste Management's 2026 proposed
12 legislative rules 33CSR2, relating to the hazardous
13 waste management system, 47CSR2, requirements
14 governing water quality standards, and 47CSR9B,
15 establishing carbon dioxide sequestration fee
16 schedule.

17 Again, please make sure your name and
18 contact information are in the meeting chat. Written
19 comments can be submitted using the mailing and email
20 address on the screen. The comment period closes at 5
21 p.m. on July 21st, 2025. Thank you very much for your
22 interest, and for taking time to attend this hearing.
23 Have a good meeting -- or have a good evening, sorry.

24 (End of Recording)
25

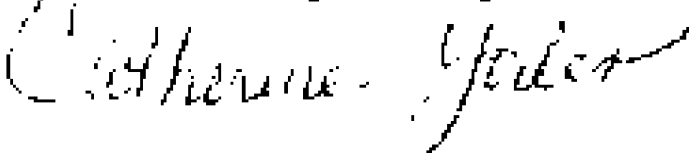
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I, CATHERINE YODER, hereby certify that I was authorized to and did transcribe the provided recording and that the foregoing transcript is a true transcript of said electronic recording to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 22nd day of July, 2025.



Catherine Yoder

<hr/>	472	achieve	association	5:1
1	9:24,25	3:19	4:21,22	bubble
<hr/>	10:5	acknowledge	5:10,16	2:24 3:17
1	47CSR02	8:3	assuming	<hr/>
8:7	6:21	added	5:2	C
15	47CSR2	3:15	attempting	<hr/>
6:7 9:6	2:9 4:19	addition	7:3	call
15th	5:5 6:7	4:5	attend	4:11
9:21	10:13	additional	10:22	called
1st	47CSR9B	4:4	attending	4:12
6:18,22	2:10 3:14	address	2:22	calling
<hr/>	10:14	10:20	attention	3:22
2	<hr/>	affect	9:7	carbon
<hr/>	5	7:12,25	average	2:11
2015	<hr/>	8:15	7:20	10:15
7:14	5	agency	8:17,25	case
2025	3:8 10:20	5:1,20	<hr/>	8:3
3:9 6:18, 22 10:21	<hr/>	agency's	B	chance
2026	8	5:6	<hr/>	5:18 10:9
2:7 5:22	7:11	all's	back	change
10:11	<hr/>	9:7	4:3	5:17
21st	9	alternative	based	6:17,25
3:8 9:24	<hr/>	ly	7:6	7:25
10:4,21	9.5	8:1	bearing	chat
<hr/>	7:11	American	4:7	2:23 3:16
3	<hr/>	7:2	bit	7:14
<hr/>	A	amount	9:25	10:18
33CSR2	<hr/>	9:2	Board	Chris
10:12	accept	announce	5:4	2:2,16
33CSR20	8:2	9:23	body	circle
2:8 3:11	access	apologies	5:11	4:3
<hr/>	3:16	9:11	Bostik	clarify
4	accessing	apologize	4:14,15, 20	10:3
<hr/>	8:23	10:2	bottom	clicking
42CSR2	account	arbitrary	2:25 3:17	2:24 3:16
3:12	7:24	7:7	bring	close
45	accurate	Assessment	6:5,8,13	10:10
10:1	2:21	2:17	brought	closes
				10:5,20

Coal 4:21	concentrati on 7:20 8:17,25	Cyrus 2:15 3:12	Don 2:16 3:13	Ernest 2:2,4 5:23 9:10,17 10:6
Coalition 6:5		D	E	
coherent 8:7	concentrati ons 7:21 9:1	data 7:18 8:25	earlier 4:6	establishin g 2:11 10:15
comment 3:4,7 5:18,24 9:15,20, 24 10:5, 7,20	conclusions 6:9	date 6:17,22 8:6	eating 8:22	evening 2:4,22 4:17 10:23
commenter 4:1	conclusivel y 7:18 8:16	day 10:1	effect 8:3	
commenters 4:3,9 10:9	considerate 3:21	deadline 6:7 9:6	effective 6:17,22 8:6	evidence 5:6 8:11
commenting 4:14	considerati on 3:2	demonstrate d 7:13,15	efficiently 4:1	excuse 8:13
comments 2:19 3:2, 4,9,11, 12,13,24 4:4,5,10, 18 5:17 6:7 9:6, 12 10:19	considerati ons 9:4	DEP 2:20 6:17 7:18 8:1, 25	efforts 7:4	Executive 4:20
commitment 5:7	contact 2:23 4:6 10:18	DEP's 2:6	email 3:10 4:5 10:19	exposures 8:24
communities 7:21 8:16 9:2	continuing 4:24	Department 2:5	emailed 3:11,13, 14	extended 3:8
competency 4:25 5:6	corner 2:25 3:17	detailed 5:16	end 3:4	extends 9:24,25
completely 5:11	couple 6:14	detect 7:17 8:2	ending 9:20	F
compliment 4:23	criteria 5:19	develop 7:6	ends 3:8	fantastic 7:1
con 7:21 9:1	criterion 7:10	dioxide 2:11 10:15	ensure 2:21 3:18	favor 5:19
	CTAC 7:14	Division 2:7,13 4:23 10:10	entered 3:3	feature 4:11 5:25 9:13 10:8
	curious 6:18 7:9, 12,24		entire 9:19	fee 2:11 10:15
	current 5:5,9	DNR 7:3	Environment al 2:5 5:3	field 6:12

filing 5:16		8:19,22, 23 9:3		2:9,14 4:24 10:13
	H		L	
finalized 5:21	habitats 8:24	information 2:20,23 3:15 10:18	language 3:22	Management 's 2:7 10:11
fish 5:12 7:17,20 8:15 9:1	hand 4:11 5:25 9:13 10:8	instruction s 4:8	legislative 2:8 10:12	meeting 2:23 3:15 8:8 9:23 10:18,23
Fletcher 9:22	hats 7:4	interest 10:22	legislature 5:22	membership 5:11
floor 4:9 5:25 9:14	hazardous 2:8 10:12	interesting 8:21	letter 6:16,21	mentioned 4:6 9:20 10:3,4
floor's 4:14	hearing 2:6,18 3:1,20 10:10,22	interruptin g 3:22	level 4:24	merits 6:24 8:9
focus 6:25 8:9	Hitt 6:2,3	issue 9:6	levels 8:22	micrograms 7:11
follow-up 6:23	hold 9:22		listed 6:18 8:7	microphone 4:16
forward 5:20	hosting 6:11	J	longer 9:25	mind 2:2
foul 3:22		Jason 4:14,20 5:23 9:18	lot 8:10	Mindy 2:15 9:13,14
fully 5:10	I	John 3:11	M	minutes 4:2
	icon 2:24 3:17 7:2	Johnsely 2:15 3:12	made 3:6	mispronounc ing 9:11
G	identifies 7:18	July 3:8 6:7, 18,22 8:7 9:6,20,24 10:4,21	mailed 3:11,13, 14	muted 9:19
give 2:19	important 9:4,8	justified 5:11	mailing 10:19	
good 2:3 4:16 10:23	inaudible 9:18		make 5:24 9:12 10:7,17	N
governing 2:10 10:14	including 2:14 3:5	K	makes 8:10 9:25	Nathaniel 6:3
gram 7:11	increase 7:10,15	kind 10:3	management	Neil 2:15
Great 2:3	individuals 7:16,23			

9:16,18	4:22	professiona		regulatory
Newell		lism	Q	6:13
2:16 3:13	P	4:25		relating
nickname		program	quality	2:8 10:12
6:3	p.m.	5:2	2:10,16	relevant
Nicole	3:8 10:21	promulgated	4:19 5:1,	7:3
2:4 9:16	package	6:19	4,8 7:6	remarks
10:2	5:10	proposal	10:14	4:8 9:9
non-	paper	5:5	question	remart
sturgeon	7:14,19	proposed	8:5,8	4:8
7:11	part	2:7,20	9:14	represent
note	3:6 5:17	3:7,25	questions	4:13
3:9	Patel	4:13,18	6:6,9,14	required
noticed	2:14 3:14	5:9,19		10:1
6:15,16	period	6:24 7:25	R	requirement
	3:5,7	10:11		s
O	5:18	Protection	Race	2:9 8:1,
	9:20,24	2:5	4:23	15 10:13
offer	10:1,5,20	protocols	raised	research
4:17	Permitting	7:10,13	4:11 5:25	6:12
offered	2:15	8:14	9:13 10:8	researcher
5:15	perspective	provide	rational	6:11
open	8:21	2:22 4:10	5:7	respect
4:9,14	phonetic	provided	reality	6:15
6:1 9:14	7:15	3:5 6:17,	6:13	8:12,13
opening	plan	21	record	respectful
4:7	9:21	providing	2:21 3:3,	3:20
opportunity	populations	6:6 9:5	6	responsibil
2:19 4:17	5:12	public	recorded	ities
oral	power	2:6,18	3:1	5:3
4:5	8:2	3:3,6	recording	review
organizatio	President	4:25 6:19	2:3	6:20 8:5
ns	4:20	10:10	recover	reviewed
4:12	previous	publication	7:4	5:21
original	4:3	9:22	reflects	revision
9:21	process	purpose	6:13	5:14
outreach	6:16,19	2:18 3:19	refraining	revisions
5:1	8:5,12	put	3:21	4:18 5:8,
outset		7:13	regular	21
			3:10	

rivers 5:13 6:5	2:11 10:15	standard 5:2,9,15 7:16,17	taking 10:22	7:22 8:17
rule 4:13,19	series 6:5,8	standards 2:10,17 4:19 5:8 7:6 10:14	talk 7:8	variation 9:2
rulemaking 5:3 8:6	serve 6:4	started 2:3	technical 4:25 5:16 9:5	Vice 4:20
rules 2:8,20 3:3,7,25 4:13 10:12	share 2:19 3:2	state 4:12 5:2, 8,9	technically 5:7	view 3:18
<hr/> S <hr/>	show 8:16	state's 4:19	Terry 9:22	Virginia 2:5 4:21 5:13 6:4 7:2
sample 7:17,23 8:15	shown 7:19	statistical 8:2	testimony 4:4	virtual 2:6 10:10
sampling 7:9,12 8:1,12,13	sic 4:8,23	streams 5:13	text 2:24 3:16	<hr/> W <hr/>
schedule 2:12 10:16	sight 5:15	stuff 9:8	time 3:25 4:2 9:7,9,19 10:22	wanted 9:19
science 5:12 8:21	similar 5:14	sturgeon 6:25 7:1, 4,5 8:10	tissue 7:21 9:1	waste 2:7,9,14 4:24 10:11,13
Scientist 6:4	size 8:15	submitted 3:4,10 10:19	today 6:5,8	water 2:7,10, 14,16 4:19,23 5:1,8 7:6 10:11,14
screen 2:25 3:17,18 10:20	small 2:24 3:16	successful Y 3:19	tonight 2:13 3:5	waters 7:11
selenium 5:9,12,19 7:20 9:1	Smith 2:16	supported 5:10	topic 3:25	West 2:4 4:21 5:13 6:4 7:2
Senior 6:4	sound 5:7	supporting 5:17	transparent 8:4	wishing 5:24
sense 8:10 9:25	space 6:10,11	system 2:9 10:13	tropic 8:22	words 8:19
sequestrati on	speak 4:2 5:18 9:19	<hr/> T <hr/>	turn 4:15	working 5:20
	speaking 3:23	T-H-A-N 6:3	typo 6:20,22	
	species 7:1,5		<hr/> V <hr/>	
	specific 5:15		variance	
	staff 2:13			

written

3:10,12,
13 4:4
5:17 6:6
7:14
10:18

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2:14 3:14