

Form #3

SECRET

2007 JUL 27 AM 8:33

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Department of Environmental Protection, Secretary's Office TITLE NUMBER: 60

CITE AUTHORITY: §22-25-4

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Environmental Excellence Program Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED:_____

Stephen R. Timmerman
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 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, West Virginia 25304
(304) 926-0499 Extension 1332

LEGISLATIVE RULE TITLE: 60CSR8, Environmental Excellence Program Rule

1. Authorizing statute(s) citation §22-25-4
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 8, 2007
 - b. What other notice, including advertising, did you give of the hearing?
Class I Legal Advertisement in Charleston Daily Mail and Charleston Gazette, Agency Web Site, Agency Mailing List, and Agency Newsletter.
 - c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 17, 2007
 - 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 27, 2007

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

G. E. "Greg" Adolfson, Public Outreach Specialist
601 57th Street, SE
Charleston, WV 25304

Office: (304) 926-0499 Extension 1332
Facsimile: (304) 926-0484
E-Mail: gadolfson@wvdep.org

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

Same as Item 'f'.

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.

Not Applicable.

b. Date of hearing or comment period:

Not Applicable.

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

Not Applicable.

d. Attach findings and determinations and reasons:

Attached Not Applicable.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

Rule Title: 60CSR8, Environmental Excellence Program Rule

A. AUTHORITY:

W.Va. Code §22-25-4

B. SUMMARY OF RULE:

West Virginia Code §60-8-1 et seq. authorizes the West Virginia Department of Environmental Protection to establish the eligibility, procedures, standards, and legal documents required for developing and implementing a voluntary Environmental Excellence Program as specified under West Virginia Code §22-25-4, Powers and Duties of the Department.

The purpose of the Environmental Excellence Program Rule is to establish an environmental excellence program that encourages, promotes, recognizes, and rewards superior environmental performance and enhanced public involvement.

The Environmental Excellence Program Rule institutionalizes the framework for the establishment and implementation of the necessary program elements for Environmental Excellence Program participation. Environmental Excellence Program elements include: eligibility criteria for participation; environmental performance record; environmental management system; environmental performance goals; public participation; incentives; procedures for application; notice; action on application; environmental performance agreement; annual performance report; annual facility visitations; procedures for retention, renewal, or termination of Environmental Excellence Program designation; impact on incentives from termination of Environmental Excellence Program designation; and, application fees and annual renewal fees.

Eligible facilities may participate at one of three levels: Bronze Leaf, Silver Leaf, or Gold Leaf. Level of participation and incentives granted are based on facility's environmental management system, environmental performance goals, and public involvement.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Changes are being proposed to the Environmental Excellence Program Rule (60CSR8) to better align with and follow the momentum of the United States Environmental Protection Agency's National Environmental Performance Track Program. Additionally, the primary purpose for the changes is to give more flexibility to the Department of Environmental Protection Cabinet Secretary in

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

areas such as: Eligibility Criteria for Participation (section 4); Environmental Performance Record (section 5); Environmental Management System (section 6); Public Participation (section 8); Incentives (section 9); Procedures for Application (section 10); and Annual Performance Report (section 14). Language, such as "may include, but will not be limited to, the following," has been added to allow for this flexibility.

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

There is no federal counterpart regulation, thus 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 meetings on May 30, 2007, the Environmental Protection Advisory Council discussed this rule. (See attached minutes for Council's discussion.)

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday – May 30, 2007

10:00 a.m. – 12:00 p.m.

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

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

DEP:

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

VISITORS:

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

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

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

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

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

COMMENT

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

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

45CSR8 – Ambient Air Quality Standards

SUMMARY

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

COMMENT

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

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

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

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

45CSR39 – Control of Annual Nitrogen Oxides Emissions

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

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

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

45CSR41 – Control of Annual Sulfur Dioxide Emissions

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

COMMENT

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

DEP Response: has removed the opt-in provisions in the three CAIR rules so that West Virginia can say that CAIR equals NO_x RACT for EGUs under the PM_{2.5} implementation rule.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

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

COMMENT

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

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

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

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

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

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

DEP Response: The agency will consider the issue.

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

DEP Response: It is authorized by the statute.

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

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

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

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

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

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

Division of Water and Waste Management

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

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or

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

COMMENT

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

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

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

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

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

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

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

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

33CSR30 – Underground Storage Tanks

SUMMARY

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

COMMENT

Karen Price: Section 6.1. states "....including any person who accepts a delivery order, accepts

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

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

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

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

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

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

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

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

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

DEP Response: The agency will consider.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

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

COMMENT

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

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

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

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

DEP Response: Agency will consider.

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

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

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

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

on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

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

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

DEP Response: Agency will take this under advisement.

Larry Harris: Is the nomination process adequate?

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

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

60CSR8 - Environmental Excellence Program

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

SUMMARY

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

COMMENT

Rick Roberts: Why is section 6.2 completely deleted?

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

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

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

Jackie Hallinan: The program is a good idea.

Meeting was adjourned by Deputy Cabinet Secretary Randy Huffman.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Environmental Excellence Program Rule, 60CSR8

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Department of Environmental Protection

Address: 601 57th Street, SE
Charleston, West Virginia 25304

Phone Number: (304) 926-0499 Extension 1332 Email: gadolfson@wvdep.org

Fiscal Note Summary

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

To recover costs to the department in reviewing applications; developing, negotiating, and publicizing an environmental performance agreement; reviewing annual performance reports; coordinating annual facility visitations; etc.; the secretary has established a reasonable application fee and triennial renewal fee. An "Environmental Excellence Program Administrative Fund" was created in the state treasury for deposit of fees dedicated and appropriated to the department for program administration. An application fee of one thousand dollars (\$1,000.00 and \$300.00 for small businesses) must be paid by the applicant to cover the first three years of membership and a triennial renewal fee of five hundred dollars (\$500.00 and \$150.00 for small businesses) must be paid by the member at each three year anniversary date. Provided that the application/triennial renewal fee shall be waived for all public entities seeking membership in the environmental excellence program.

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	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	10,900.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	10,900.00

Rule Title: _____

Rule Title: Environmental Excellence Program Rule, 60CSR8

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

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

Fiscal Years 2006, 2007, and 2008 "Estimated Total Costs" are estimates based on program participation (Revenues) and are appropriated to the department to administer the program (Costs).

Fiscal Years 2006 and 2007 "Estimated Total Revenues" are \$0.00 (zero dollars) since the program will not begin until Fiscal Year 2008 (July 1, 2007 through June 30, 2008).

Fiscal Year 2008 "Estimated Total Revenues" are estimates based on program participation (Revenues) and are based on 10 (ten) application fees of one thousand dollars (\$1,000.00) and 3 (three) application fees of three hundred dollars (\$300.00).

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.

If there is no program participation, there will be no Revenues or Costs.

Date: July 27, 2007

Signature of Agency Head or Authorized Representative

TITLE 60
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SECRETARY'S OFFICE

SERIES 8
ENVIRONMENTAL EXCELLENCE PROGRAM RULE

FILED
2007 JUL 27 AM 8:34
OFFICE OF THE SECRETARY OF STATE

§60-8-1. General.

1.1. Scope. -- This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program.

1.2. Authority. -- W. Va. Code §22-25-4.

1.3. Filing Date. -- April 13, 2006.

1.4. Effective Date. -- July 13, 2006.

§60-8-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §22-25-3 will apply to the terms in this rule in addition to the definitions expressly set forth in this rule.

2.1. "Applicant" means an individual or entity who has fulfilled the department's requirements to be considered for admission (including payment of the application fee, if any) and who has been notified of one of the following actions: admission, non-admission, or application withdrawn (by applicant or department).

2.2. "Capital Improvement Project" means a project that helps maintain and/or improve an asset to be included in the capital budget, designed to reduce discharges and/or emissions from the facility below the environmental performance baseline for the specified discharges and/or emissions, and/or promotes sustainability, that is:

2.2.a. New construction, expansion, renovation, and/or a replacement project for an existing facility or facilities and must have a total cost of at least \$10,000.00, in cash and/or

in-kind contributions that are realized in goods, commodities, and/or services, etc., over the life of the project, and may include the cost of land, engineering, architectural planning, and contract services needed to complete the project; and/or,

2.2.b. Purchase of major equipment (assets) costing \$50,000.00 or more, in cash and/or in-kind contributions that are realized in goods, commodities, and/or services, etc., with a useful life of at least 10 years; and/or,

2.2.c. Major maintenance or rehabilitation project for existing facilities with a cost of \$10,000.00 or more, in cash and/or in-kind contributions that are realized in goods, commodities, and/or services, etc., and an economic life of at least 10 years; and/or,

2.2.d. Sustainability project costing \$10,000.00 or more, in cash and/or in-kind contributions that are realized in goods, commodities, and/or services, etc., with a useful life of at least 10 years, that integrates economic, environmental, social, and community elements, and essentially is about living, working, and ordering society and communities in ways that are environmentally sustainable, encouraging reduction of pollution, re-use of resources, promoting biodiversity, etc., whereas:

2.2.d.1. Sustainability is a concept and strategy by which facilities seek economic development approaches that benefit the local environment, society, communities, and overall quality of life, and:

2.2.d.1.A. Sustainable development provides a framework under which facilities can use resources efficiently, create efficient infrastructures, protect and enhance the quality of life, reserve the ability of an ecosystem to maintain a defined and desired

state of ecological integrity over time, and create new businesses to strengthen their economies and communities; and,

2.2.d.1.B. Sustainable communities are achieved by facilities that establish short-term and long-term methodologies for developing integrated approaches to develop and achieve a healthy community by addressing economic, environmental, social, and community issues, while fostering a strong sense of community and building partnerships and consensus among key stakeholders are also important elements.

2.3. "Community Advisory Panel" means a committee, task force, or board comprised of citizens affected by facilities that provides a public forum for community members to present and discuss their needs and concerns about the decision-making process at facilities affecting them.

2.4. "Environmental Management Program" means an activity for achieving a facility's environmental objectives and environmental targets that includes designation of responsibility for achieving environmental objectives and environmental targets at relevant functions and levels within the facility, and the means and time-frame by which they are to be achieved.

2.5. "Facility" means places, buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, such person that provides a particular service or is used for a particular industry; and also means the piece of land, with or without facilities, that is within the jurisdiction of federal, state, and/or municipal government.

2.6. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other State, the United States of America, any municipal, statutory, public, or private corporation, organized or existing under the laws of this or any other state or country, and

any firm, partnership, or association of whatever nature.

2.7. "Pollution Prevention" means any practice that reduces the use of any hazardous substance or amount of a pollutant or contaminant prior to reuse, recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the use and release of hazardous substances, pollutants or contaminants; pollution prevention does not include cross-media pollution transfers that do not result in a net decrease of discharge, emission or impact to the environment, as specified under W. Va. Code §22-25-3; and includes:

2.7.a. "Pollution Prevention", for the purpose of this rule, also means "Source Reduction" as specified under the Pollution Prevention Act (42 U.S.C. §§13101-13109), as follows:

2.7.a.1. "Source Reduction" means any practice that:

2.7.a.1.A. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

2.7.a.1.B. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants;

2.7.a.1.C. Includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control; and,

2.7.a.1.D. Does not alter the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that itself is not integral to and necessary for the production of a product or the providing of a service.

2.7.a.2. "Source at a United States Environmental Protection Agency National Environmental Performance Track Member Facility" means a major or area source located at a facility that has been accepted by the United States Environmental Protection Agency for membership in the National Environmental Performance Track and is still a member of the National Environmental Performance Track as specified under the Pollution Prevention Act (42 U.S.C. §§13101-13109).

2.7.a.3. "Source at an Environmental Excellence Program Member Facility" means a major or area source located at a facility that has been accepted by the department for membership in the environmental excellence program and is still a member of the environmental excellence program.

2.8. "Public Entity" means a political subdivision of the state, including a municipality and its subdivisions, a school district, a regional educational attendance area, an organization composed of political subdivisions of the state; and any department, agency, special purpose district, or other instrumentality of the state or local government.

2.9. "Responsible Official" means one of the following:

2.9.a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

2.9.a.1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or,

2.9.a.2. The secretary approves the delegation of authority to such representative in advance.

2.9.b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or,

2.9.c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this rule, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the United States Environmental Protection Agency).

2.10. "Small Business" means a for-profit or non-profit enterprise that has either gross annual receipts not exceeding \$5 million or total payroll not exceeding \$1.5 million and/or any facility with fewer than fifty full-time employees. A United States business that is independently owned and operated, is not dominant in its field of operation and can qualify under criteria concerning number of employees, average annual receipts or other criteria as outlined by the United States Small Business Administration (CFR Title 13, Part 121, as amended).

2.11. "Supplemental Environmental Project (SEP)" means an environmentally beneficial project which a facility agrees to undertake in settlement of an enforcement action, but which the facility is not otherwise legally required to perform.

2.11.a. "Environmentally Beneficial" means a SEP must improve, protect, or reduce risks to public health, or the environment at large, and, while in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

2.11.b. "In Settlement of an Enforcement Action" means the United States Environmental Protection Agency and/or the

department has the opportunity to help shape the scope of the project before it is implemented and the project is not commenced until after the United States Environmental Protection Agency and/or the department has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).

2.11.c. "Not Otherwise Legally Required to Perform" means the project or activity is not required by any federal, state or local law or regulation, and further, SEPs cannot include actions which the facility is likely to be required to perform as injunctive relief as part of an existing settlement or order in another legal action; or, by a state or local requirement.

2.12. "National Environmental Performance Track" means a United States Environmental Protection Agency program that is a public/private partnership recognizing top environmental performance among participating United States facilities of all types, sizes, and complexity, public and private.

§60-8-3. Purpose and Goals.

3.1. The purpose of this rule is to establish an environmental excellence program that promotes, rewards, and encourages superior environmental performance and enhanced public involvement.

3.2. Eligible facilities may participate at one of three levels: Bronze Leaf, Silver Leaf, and Gold Leaf. The level of participation and the incentives granted are based on the facility's environmental management system, environmental performance goals, and public involvement.

3.3. Nothing in this rule authorizes any violation of federal and/or state law, rule, regulation, and/or legislation.

§60-8-4. Eligibility Criteria for Participation.

Environmental excellence program applicants must meet the following eligibility criteria that may include, but will not be limited to, the following:

4.1. Bronze Leaf environmental excellence program applicants must:

4.1.a. Have documentation of a proven environmental performance record;

4.1.b. Develop and implement an environmental management system within one year of acceptance into the program;

4.1.c. Develop and implement one environmental performance goal within one year of acceptance into the program and two additional environmental performance goals within three years of acceptance into the program;

4.1.d. Develop and implement a plan for public participation within one year of acceptance into the program;

4.1.e. Prepare and submit an annual performance report; and,

4.1.f. Authorize the department to conduct annual facility visitations.

4.2. Silver Leaf environmental excellence program applicants must:

4.2.a. Have documentation of a proven environmental performance record;

4.2.b. Already have developed and implemented an environmental management system;

4.2.c. Already have developed and implemented two environmental performance goals and commit to develop and implement four additional environmental performance goals, and, a small business has the option to already have developed and implemented one environmental performance goal and commit to develop and implement two additional environmental performance goals;

4.2.d. Already have developed and implemented a plan for public participation;

4.2.e. Already have prepared and published an annual performance report; and,

4.2.f. Authorize the department to conduct annual facility visitations.

4.3. Gold Leaf environmental excellence program applicants must:

4.3.a. Have documentation of a proven environmental performance record;

4.3.b. Already have developed and implemented an environmental management system;

4.3.c. Already have developed and implemented two environmental performance goals and commit to develop and implement four additional environmental performance goals, and, a small business has the option to already have developed and implemented one environmental performance goal and commit to develop and implement two additional environmental performance goals, and one additional environmental performance goal that must be a capital improvement project;

4.3.d. Already have developed and implemented a plan for public participation;

4.3.e. Already have prepared and published an annual performance report; and,

4.3.f. Authorize the department to conduct annual facility visitations.

4.4. Participation in, and recognition of, federal programs. If the applicant's facility is registered and/or a member of an environmental excellence program implemented by the United States Environmental Protection Agency, such as the National Environmental Performance Track, the applicant automatically qualifies to participate in the environmental excellence program at the Silver Leaf level unless the secretary determines that the applicant has not met all of the environmental excellence program eligibility criteria for participation at the Silver Leaf level as specified under subsection 4.2.

§60-8-5. Environmental Performance Record.

Environmental excellence program applicants and environmental excellence program members must meet the following environmental performance record requirements that may include, but will not be limited to, the following:

5.1. All persons, who operate a facility in West Virginia, are eligible to seek entry into the environmental excellence program and/or retain environmental excellence program designation, and are required to demonstrate compliance with all environmental laws by having documentation of a proven environmental performance record. A facility has a proven record of compliance with environmental laws if none of the following criminal, civil, or administrative actions apply to the facility or its employees:

5.1.a. Criminal actions.

5.1.a.1. Corporate criminal conviction or plea for felony violations of environmental laws involving the corporation and/or corporate officer within the past five (5) years preceding the filing of the initial environmental excellence program application;

5.1.a.2. Corporate criminal conviction or plea for misdemeanor violations of environmental laws involving the corporation and/or corporate officer within the past three (3) years preceding the filing of the initial environmental excellence program application;

5.1.a.3. Criminal conviction or plea of employee at the same facility for violations of environmental laws within the past five (5) years preceding the filing of the initial environmental excellence program application;

5.1.a.4. Ongoing criminal investigation and/or prosecution of corporation, corporate officer, and/or employee at the same facility for violations of environmental laws; and,

5.1.a.5. Responsibility of a corporation, corporate officer, and/or employee, as determined by a court of appropriate jurisdiction, for an illegal action that caused substantial endangerment to the public health, safety, and/or welfare and/or to the environment.

5.1.b. Civil actions.

5.1.b.1. Assessment by an environmental appeals board or court of appropriate jurisdiction of any civil fine, penalty, and/or supplemental environmental project (SEP) where the total amounts exceeds \$10,000.00 for violations of any environmental law within a three-year period before filing the initial environmental excellence program application; and,

5.1.b.2. Responsibility of a corporation, corporate officer, and/or employee, as determined by a court of appropriate jurisdiction, for an illegal action that caused substantial endangerment to the public health, safety, and/or welfare and/or to the environment.

5.1.c. Administrative actions.

5.1.c.1. Administrative settlement, entered into with the department within a three-year period before filing the initial environmental excellence program application, where the total amount of the administrative assessments, fines, penalties, and/or SEP's exceeds \$25,000.00; and.

5.1.c.2. Planned, but not yet filed, administrative action at the facility.

5.2. In the case of a change of ownership, the secretary will consider the environmental performance record of the new owner or operators in determining whether the environmental excellence program applicant and/or current member meet the requirements of this rule.

5.3. In the case of a new facility, the secretary will consider the environmental performance record of other facilities owned and/or operated by the same entity, and in such a case, an entity's overall environmental performance record will be considered in determining the facility's ability to achieve superior environmental performance.

§60-8-6. Environmental Management System.

Environmental excellence program applicants and environmental excellence program members must meet the following environmental management system requirements that may include, but will not be limited to, the following:

6.1. Environmental excellence program applicants and environmental excellence program members must demonstrate conformance to environmental management system requirements through:

6.1.a. Registration or certification to an environmental standard, such as ISO 14001 or equivalent, as approved by the secretary; or,

6.1.b. Bronze Leaf environmental excellence program designation that includes a commitment to the development, implementation, and management of an environmental management system, by a date provided by the applicant and approved by the secretary, that must operate in accordance with a one-year environmental management system cycle as evidenced by an environmental management system audit; and, after one year in the environmental excellence program, already have developed, implemented, and managed an environmental management system; or,

6.1.c. Silver Leaf environmental excellence program designation that includes already developed, implemented, and managed environmental management systems, that operate in accordance with a one-year environmental management system cycle as evidenced by an environmental management system audit; or,

6.1.d. Gold Leaf environmental excellence program designation that includes already developed, implemented, and managed environmental management systems, that operate in accordance with a one-year environmental management system cycle as evidenced by an environmental management system audit.

~~6.2. Environmental excellence program applicants and environmental excellence program members must provide documentation~~

of an environmental management system, appropriate to the nature, scale, and potential environmental impacts of the facility, that:

6.2.a. Adopts an environmental policy, approved by the responsible official or operate under an adopted corporate environmental policy, that must demonstrate a high level of commitment to environmental management through the establishment of guiding principles, that:

6.2.a.1. Articulates the environmental excellence program member's mission, vision, and core values;

6.2.a.2. Emphasizes continual environmental improvement; and

6.2.a.3. Promotes multi-media pollution prevention through the development, implementation, and management of an effective multi-media pollution prevention program that:

6.2.a.3.A. Adopts an environmental policy that documents the environmental excellence program member's philosophy of multi-media pollution prevention that promotes:

6.2.a.3.A.1. Eliminates or reduces wastes at the source of generation;

6.2.a.3.A.2. Reuses wastes, including purchases of recycled material; and

6.2.a.3.A.3. Promotes environmentally sound, on-site and off-site, recycling;

6.2.a.3.B. Establishes and maintains a facility-specific multi-media pollution prevention program that:

6.2.a.3.B.1. Adopts and posts a multi-media pollution prevention policy, as specified under subparagraph 6.2.a.3.A that is signed by a responsible official;

6.2.a.3.B.2. Conducts periodic multi-media pollution prevention program assessments that identify opportunities

for eliminating wastes at the source, and promotes reuse and recycling;

6.2.a.3.B.3. Establishes multi-media pollution prevention program goals that specify the environmental media and types of pollution to be prevented or reduced, implementation activities, and projected time frames; and

6.2.a.3.B.4. Records and maintains reports to demonstrate progress on pollution prevention technologies;

6.2.a.3.C. Participates, formally, in the environmental excellence program by being a member in good standing in a recognized multi-media pollution prevention program;

6.2.a.4. Acknowledges the importance of and provide for communication with the public as specified under subdivision 6.2.j and section 8;

6.2.a.5. Emphasizes environmental compliance, with relevant environmental laws, legislation, and regulations, that:

6.2.a.5.A. Demonstrates compliance with all applicable environmental laws, legislation, regulations and other environmental requirements that:

6.2.a.5.A.1. Provides to the department, as part of the environmental excellence program application, a statement signed by a responsible official that he or she has reviewed the environmental excellence program compliance record and that, to the best of his or her knowledge, the environmental excellence program member is in compliance with all applicable environmental requirements and has no outstanding unresolved past or current violation that has not been corrected or, in the case of renewal, resolved by the environmental excellence program member's adherence to a binding compliance schedule to abate the violation;

6.2.a.5.A.2. Addresses any violation cited in a notice of violation by

resolving the violation, making a showing to the secretary that the violation did not occur, or in the case of a renewal, being in compliance with a binding schedule agreed to by the secretary, to correct any violation specified in a notice of violation issued by the secretary; and

6.2.a.5.A.3. Provides documentation that the facility has not been found by the secretary to be in violation of environmental requirements established by a local unit of government as specified under section 5;

6.2.a.5.B. Provides a binding and significant or measurable reduction in wastes below what would otherwise be required by applicable environmental requirements or include a significant or measurable reduction of pollutants if the environmental excellence program member does not meet the requirements as specified under subparagraph 6.2.a.5.A, then the secretary will consider an application for membership into the environmental excellence program; and

6.2.a.5.C. Provides documentation of a proven environmental performance record in the case of a change of ownership and control whereas the secretary will consider the environmental performance record of the new owner or owners in determining whether the requirements of this rule have been met and whether the secretary has approved membership into the environmental excellence program;

6.2.a.6. Recognizes that every individual at the facility can contribute to continual environmental performance and continual environmental improvement.

6.2.b. Establishes and maintains environmental management programs and procedures that:

6.2.b.1. Identifies the environmental aspects and environmental impacts of the environmental excellence program member's activities, products, and services over which the environmental excellence program member can be expected to

have an influence to determine the activities, products, or services that have or can have significant impacts on the environment, and ensure that the impacts and opportunities for continual environmental improvement are considered in setting the environmental excellence program member's environmental objectives and environmental targets; and

6.2.b.2. Develops and implements environmental objectives, environmental targets, and environmental management programs within each organizational level of the environmental excellence program member's organizational hierarchy;

6.2.c. Establishes a procedure to provide for a regular environmental management system audit that assures that there is an effective mechanism in place to promptly and adequately respond to and address any noncompliance with applicable environmental laws and any nonconformance with environmental management system requirements that are found;

6.2.d. Identifies specific organizational operations and activities, products, and services that have significant environmental impact or the potential for significant environmental impact, and have procedures in place that:

6.2.d.1. Monitors and measures the operations and activities, products, and services;

6.2.d.2. Assures that the operations and activities, products, and services remain within acceptable parameters;

6.2.d.3. Includes provisions to implement prompt correction if a deviation occurs; and

6.2.d.4. Provides for systematic review of records and reports on environmentally related actions relative to the operations and activities, products, and services.

6.2.e. Establishes necessary reporting and record keeping that documents the environmental status of all operations and activities, products, and services;

~~6.2.f. Establishes and maintains procedures to identify and track the environmental training needs of all personnel who have responsibility or authority over activities, products, and services that have significant environmental impact or the potential for significant environmental impact;~~

~~6.2.g. Establishes and maintains procedures to respond to and report, as appropriate, accidents, malfunctions, spills, upsets, and other emergency situations and to mitigate any associated environmental impacts, and provides for a review of the procedures after the occurrence of an accident or emergency;~~

~~6.2.h. Defines the authority, responsibility, and methodology for an environmental management system audit for correcting and preventing nonconformance with the procedures set forth in the environmental management system;~~

~~6.2.i. Develops and maintains procedures for internal communication of the environmental management system and environmental issues between personnel across all functional and organizational levels; and~~

~~6.2.j. Establishes and maintains an effective public communication process and procedures for communicating information on environmental issues, significant environmental impacts, and the environmental management system with the public, including the local community and environmental interest groups that facilitate and encourage public understanding and dialogue on environmental issues;~~

§60-8-7. Environmental Performance Goals.

7.1. The applicant must propose environmental performance goals that it intends to implement and achieve for the achievement of superior environmental performance. Environmental performance goals may be achieved through the implementation of environmental management programs, capital improvement projects, or other discernable programs.

7.2. The applicant must describe the program or project that it intends to implement to achieve superior environmental performance.

7.3. The applicant must quantify the environmental performance goals that the proposed program or project must achieve in terms of numerical standards or percent reductions.

7.4. The proposal must include objective standards by which the environmental performance goal must be monitored, measured, and evaluated with respect to the environmental performance baseline.

§60-8-8. Public Participation.

8.1. Environmental excellence program applicants and environmental excellence program members must demonstrate public participation through the development, implementation, and management of a public participation plan to ensure that the environmental performance goals are understood and supported.

8.2. Environmental excellence program applicants and environmental excellence program members must develop a public participation plan that may include, but will not be limited to, the following:

8.2.a. Identifies and assesses issues and concerns of the public that are affected by an environmental management program, capital improvement project, other discernable program, issue, or long-term plan;

8.2.b. Defines objectives of environmental excellence program member involvement effort that broadly addresses public concerns as well as planning and environmental management program, capital improvement project, or other discernable program development goals, where the objectives must guide the outreach activities and can be established as part of the initial phase of public participation activities and usually do not change over the course of the effort;

8.2.c. Identifies pertinent public participation activities; including development, implementation, and management of a community advisory panel; that considers the target audience, intended message, and any environmental excellence program member budget constraints;

8.2.d. Evaluates environmental excellence program member efforts based on achievement of environmental excellence program member objectives with well designed milestones during the public participation process, and understands that issues and concerns change over time and that the environmental excellence program member public participation plan should reflect those changes; and,

8.2.e. Distributes annual performance report to the public on an annual basis as specified under subsection 14.6.e.

§60-8-9. Incentives

Environmental excellence program members are eligible for incentives that may include, but will not be limited to, the following:

9.1. The department will grant recognition and regulatory incentives that are commensurate with the quantity and quality of environmental performance goals selected by the member. Bronze Leaf members must only be entitled to recognition incentives. Silver and Gold Leaf members are entitled to recognition and regulatory incentives.

9.2. Recognition Incentives.

9.2.a. The department will issue a numbered certificate of recognition to each participant in the program that specifies the level of achievement, i.e. Bronze, Silver, or Gold Leaf, and a unique facility identification number;

9.2.b. The department will identify each member on an internet site maintained by the department at <http://www.wvdep.org>;

9.2.c. The department will annually provide notice of the participation of each member in the program to newspapers in the area in which each member operates; and,

9.2.d. Members may use an environmental excellence program logo selected by the department on written materials produced by the member.

9.3. Regulatory and Administrative Incentives.

9.3.a. Silver and Gold Leaf members must be entitled to regulatory and administrative incentives that are commensurate with the degree of superior environmental performance achieved by the participating member.

9.3.a.1. General Incentives.

9.3.a.1.A. Low priority for routine inspections. The department will conduct any inspections of the member's facility at the lowest frequency permitted under law, except that the department may conduct an inspection whenever it has reason to believe that a participant is out of compliance with the environmental performance agreement or any environmental law;

9.3.a.1.B. Single point of contact with department for all permitting actions. The department will assign an employee to be the primary interface with the member to provide technical support and guidance on permitting actions and permitting activities;

9.3.a.1.C. Credit, dollar-for-dollar, for environmental excellence program triennial renewal fee toward permit fees;

9.3.a.1.D. A network established to promote the environmental excellence program and its members to recognize the accomplishments of environmental excellence program members and to provide networking opportunities with department officials and other members; and,

9.3.a.1.E. Letter in good standing provided by the department to environmental excellence program member in order to obtain financial support from a financial investor that provides incentives to firms that promote environmental and social performance.

9.3.a.2. Air Incentives.

9.3.a.2.A. Flexible permits. The department will work with members to design flexible permits that are designed to reduce permitting costs and uncertainty and allow for planned process changes for operating flexibility; and,

9.3.a.2.B. Reduced reporting frequency and simplified reporting requirements for facilities governed by Maximum Available Control Technology (MACT). Facilities subject to MACT reporting requirements may be entitled to the reduced and simplified reporting provisions for National Environmental Performance Track members promulgated by the United States Environmental Protection Agency, 40 CFR §63.10 and §63.16.

9.3.a.3. Water Incentives.

9.3.a.3.A. Waiver of permit modification fees as specified under W. Va. Code of State Rules §47-26-6; and,

9.3.a.3.B. Reduced frequency for filing discharge monitoring reports (DMR) with the department. Participants may be entitled to file DMRs on a quarterly basis. Other required documents are to be kept on file at the facility and made available upon request.

9.3.a.4. Waste Incentives.

9.3.a.4.A. Reduced permitting requirements for generators of hazardous wastes. Facilities that generate hazardous wastes may accumulate hazardous wastes up to 180 days, and in certain cases 270 days, without a Resource Conservation and Recovery Act (RCRA) permit or interim status provided the facility follows the Performance Track facility extended time requirements promulgated by the

United States Environmental Protection Agency, 40 CFR §262.34.

§60-8-10. Procedures for Application

10.1. To participate in the environmental excellence program, the facility must submit an environmental excellence program application on a form provided by the department that includes information pertaining to the facility that demonstrates compliance with and conformance to the eligibility requirements as specified under section 4, that may include but will not be limited to, the following:

10.1.a. Identification and contact information regarding the applicant facility; parent company; point-of-contact; street address; mailing address (if different from facility address); physical location and geographic boundary of the facility; city; state; zip code; phone number; facsimile number; electronic mail address; website address; environmental excellence program level applying for, whether Bronze Leaf, Silver Leaf, or Gold Leaf; and desired incentives;

10.1.b. Background and an identification of the environmental requirements that demonstrate the major federal, state, tribal, and/or local environmental laws that are applicable;

10.1.c. Environmental performance record that demonstrates compliance with all environmental laws as evidenced by a signature by a responsible official and conformance to section 5;

10.1.d. Environmental management system that demonstrates conformance with the environmental excellence program and environmental management system audit requirements as specified under section 6;

10.1.e. A description of the environmental performance goals and past achievements and future commitments that demonstrate superior environmental performance as specified under section 7;

10.1.f. Public participation to ensure that the environmental excellence program is broadly supported, its environmental implications are fully understood, and provides for ongoing engagement of the public as specified under section 8;

10.1.g. A Summary of public comments received by the applicant and the department during the public review period and the applicant's response to the comments received; and,

10.1.h. Environmental excellence program application certification, signed by a responsible official, that demonstrates compliance with and conformance to the terms and conditions for eligibility criteria for participation, procedures for application, and incentives in the environmental excellence program as specified under this section and sections 4 and 9.

10.2. The department will distribute environmental excellence program requests for applications to potential environmental excellence program members and the public on November 1 and May 1 of each year.

10.3. Due dates for submission of environmental excellence program applications to the department are February 1 through April 30 and August 1 through October 31 of each year.

§60-8-11. Notice.

11.1. Before submitting an application to the department, the applicant must provide for a public review of the application and related documentation for a period of not less than 30 days. The applicant must notify the department of its intention to submit an application for environmental excellence program designation not less than 30 days before the end of the public review period. Public review will, at a minimum, include posting a notice in a local newspaper of the applicant's intent to file the environmental excellence program application and of the availability of the application and related documentation for review. The application and related documentation must be

made available at a local public library or other public building for not less than 30 days. The public notice must allow for comments to be made to the applicant or the department.

§60-8-12. Action on Application.

12.1. The department will complete its initial review of the environmental excellence program application within 14 days of receipt of the application that must include a cursory review of the application inventorying the contents and issuing a letter to the applicant detailing any shortcomings or acknowledging its completeness.

12.2. The department will publish, in the department calendar maintained on an internet site at <http://www.wvdep.org>, a notice of receipt of the application and related documentation and of the availability of the application and related documentation for public review and comment not less than 30 days before the department makes a decision on the application.

12.3. Within 60 days of receipt of a complete application, unless an extension of time is requested by the applicant, the department will consider public comments, determine whether the criteria of these rules have been met, and notify the applicant, in writing, whether the applicant is eligible to participate in the environmental excellence program.

12.4. The department will provide public notice of its decision regarding the eligibility of the applicant to participate in the environmental excellence program within 30 days after rendering its decision concerning eligibility.

12.5. In cases where the department determines that the applicant is eligible to participate in the program, the department may hold an informational meeting on the applicant's proposal.

12.6. Within 30 days after the public notice specified under subsection 12.4, interested persons may request that the department grant them authorization to participate under the negotiations as specified under section 13. The

secretary will determine whether a person who makes a request under this section must participate in the negotiations based on whether the person has demonstrated sufficient interest in the issues raised by the application for eligibility to warrant that participation.

12.7. Any person adversely affected by the secretary's eligibility determination may appeal to the environmental quality board, pursuant to the provisions of article one [§22B-1-1 et seq.], chapter twenty-two-b of the West Virginia Code.

12.8. The department will determine whether the environmental excellence program applicant meets the requirements of this rule and will inform the environmental excellence program applicant of acceptance into the environmental excellence program at the Bronze Leaf or Silver Leaf or Gold Leaf designation by January 1 of each year.

§60-8-13. Environmental Performance Agreement.

13.1. Upon the secretary's determination that the applicant is eligible to participate in the environmental excellence program, the department will begin negotiations concerning an environmental performance agreement with the environmental excellence program applicant and any person or persons to whom the department granted permission as specified under subsection 12.6.

13.2. The environmental performance agreement will include information pertaining to environmental performance record, environmental management system, environmental performance goals, public participation, incentives, annual performance report, annual facility visitations, and application fees and triennial renewal fees as specified under section 18.

13.3. The department will conclude negotiations within 12 months of beginning negotiations unless the applicant and the department agree to an extension.

13.4. If negotiations as specified under subsection 13.1 result in a draft environmental

performance agreement, the department will provide public notice about the draft environmental performance agreement in the geographic area in which the subject facility or activity, product, and service is located or performed. The draft environmental performance agreement must be made available at a local public library or other public building for not less than 30 days. The public notice must allow for comments to be made to the department.

13.5. After providing public notice of a draft environmental performance agreement, the department will hold a public meeting in the geographic area in which the subject facility or activity, product, and service is located or performed to further discuss the draft environmental performance agreement. The department will consider all public comments received during the public comment period under subsection 13.4 and at the public meeting before finalizing the environmental performance agreement.

13.6. The term of the environmental performance agreement will be three years.

§60-8-14. Annual Performance Report.

14.1. Each member facility must complete and submit an annual performance report that demonstrates to the department and the public the eligibility criteria for participation, environmental performance record, environmental management system, environmental performance goals, public participation, incentives, annual facility visitations, and maintenance of the environmental performance agreement. For environmental excellence program Silver Leaf members that already participate in the United States Environmental Protection Agency National Environmental Performance Track, submission of the National Environmental Performance Track annual performance report may be accepted in lieu of this requirement as determined by the secretary.

14.2. Annual performance reports may include, but will not be limited to, the following:

14.2.a. Self-certification of the facility's environmental excellence program that demonstrates compliance with and conformance to environmental excellence program membership eligibility criteria for participation as specified under section 4;

14.2.b. Summary of the facility's environmental performance record as specified under section 5;

14.2.c. Summary of the facility's environmental management system assessment activities and progress towards meeting environmental management system requirements including environmental objectives, environmental targets, and environmental management programs, including brief descriptions of audits conducted and improvements made, as specified under section 6;

14.2.d. Information on progress made in meeting the facility's environmental performance goals as specified under section 7;

14.2.e. Summary of the facility's public participation plan and associated activities as specified under section 8;

14.2.f. Summary of the facility's incentives as specified under section 9; and,

14.2.g. Summary of the facility's annual facility visitation as specified under section 15.

14.3. Due date for the annual performance report is April 1 of each year, beginning with April 1st following the year in which an environmental excellence program applicant is accepted into the program, and annually thereafter, and therefore the annual performance report will be based on a calendar year.

14.4. Confidential business information should not be included in the annual performance report as the department will make the report available to the public.

14.5. Review of the annual performance report is performed by the department to identify

significant problems, and if found, the annual performance report will be revised and reviewed by the department, and if accepted, will make the report available to the public.

14.6. Distribution of the annual performance report to the public is required by the environmental excellence program member on an annual basis and the department expects each facility to select and document a means consistent with situations and the public participation plan as specified under section 8.

14.7. Supporting documentation must be maintained on-site to enable the environmental excellence program member to prepare the annual performance report and to make the report readily accessible to the department upon request.

§60-8-15. Annual Facility Visitations.

15.1. The department will conduct annual facility visitations with environmental excellence program members to evaluate the effectiveness of the environmental excellence program and compliance with the environmental performance agreement.

§60-8-16. Procedures for Retention, Renewal, or Termination of Environmental Excellence Program Designation.

16.1. Retention of environmental excellence program designation requires that an environmental excellence program member, at least 30 days before the anniversary date of the current environmental excellence program designation, submit a renewal request, supporting information, and a certification that the environmental excellence program member meets the requirements as specified under sections 4, 5, 6, 7, 8, 9, 14, and 15.

16.2. The supporting information as specified under section 14 includes an annual performance report that specifically describes the status of the activities, products, and services and details the actions undertaken to maintain and implement the environmental management system as specified under section 6.

16.3. A renewal request must include a statement by the responsible official that demonstrates that the environmental excellence program member is in compliance with and conforms to all applicable environmental requirements and has no outstanding unresolved violations, or is in compliance with and conforms to a binding schedule to correct and prevent any outstanding violations.

16.4. The secretary will terminate the environmental excellence program designation if, after the effective date of the current environmental excellence program designation, the secretary determines that the environmental excellence program member:

16.4.a. Failed to meet the requirements of the environmental performance record as specified under section 5 or:

16.4.a.1. Failed to promptly and adequately correct and prevent a violation of environmental requirements as specified under section 5.

16.4.b. Failed to meet the requirements of the environmental management system as specified under section 6;

16.4.c. Failed to meet the requirements of the environmental performance goals as specified under section 7;

16.4.d. Failed to meet the requirements of public participation as specified under section 8;

16.4.e. Failed to meet the requirements of the incentives as specified under section 9;

16.4.f. Significantly or repeatedly abused its designation as an environmental excellence program member, by claiming or implying environmental excellence program designation for facilities and/or persons other than those identified in the application as specified under section 10;

16.4.g. Failed to meet the requirements of the environmental performance agreement as specified under section 13;

16.4.h. Failed to meet the requirements of the annual performance report as specified under section 14; and,

16.4.i. Failed to meet the requirements of annual facility visitations as specified under section 15.

16.5. The secretary will advise a facility of his or her intent to terminate the environmental excellence program designation not less than 30-days before terminating the environmental excellence program membership.

16.6. There is no appeal of the secretary's environmental excellence program membership termination decision.

16.7. A person operating a facility in West Virginia, that was a former environmental excellence program member, may reapply for environmental excellence program designation at any time as long as the environmental excellence program applicant meets the requirements of this rule.

§60-8-17. Impact on Incentives from Termination of Environmental Excellence Program Designation.

17.1. Upon the secretary's termination of an environmental excellence program designation, all incentives, provided to the former environmental excellence program member and as specified under section 9, will be terminated and/or restricted as provided in this section and as determined by the secretary.

§60-8-18. Application Fees and Triennial Renewal Fees.

18.1. An application fee of one thousand dollars (\$1,000.00) must be paid by the environmental excellence program applicant and is to be submitted at the time the application is filed in the form of a check payable to the Department of Environmental Protection for deposit in the Environmental Excellence Program Administrative Fund for environmental excellence program

administration, provided that an applicant which qualifies as a "small business" must pay an application fee of three hundred dollars (\$300.00), and provided further that the application fee will be waived for all public entities seeking membership in the environmental excellence program.

18.2. A triennial renewal fee of five hundred dollars (\$500.00) must be paid by the environmental excellence program member and is to be submitted at the time the renewal is filed in the form of a check payable to the West Virginia Department of Environmental Protection for deposit in the Environmental Excellence Program Administrative Fund for environmental excellence program administration, provided that an environmental excellence program member which qualifies as a "small business" must pay a triennial renewal fee of one hundred and fifty dollars (\$150.00), and provided further that the triennial renewal fee will be waived for all members that are public entities.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
PUBLIC INFORMATION OFFICE

IN THE MATTER OF:

PROPOSED RULE 60CSR8

Environmental Excellence Rule

TRANSCRIPT OF PROCEEDINGS had or testimony of adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 17th day of July, 2007, commencing at 7:00 p.m. and concluding at 7:30 p.m., at the office of the West Virginia Department of Environmental Protection, 601 57th Street, S.E., Cooper's Rock Training Room, Charleston, Kanawha County, West Virginia, pursuant to notice to all interested parties.

BEFORE: GREG ADOLFSON, Facilitator, Executive Office

ORIGINAL

NANCY MCNEALY
CERTIFIED COURT REPORTER

Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

APPEARANCES: No one appeared.

I N D E X

Reporter's Certificate.....Page 6

1 MR. ADOLFSON: Good evening. My name is Greg
2 Adolfson, and I'm the Facilitator for tonight's meeting.
3 The purpose of tonight's hearing is to accept comments on
4 Proposed Rule 60 Code of State Regulations Section 8,
5 Environmental Excellence Rule.

6 Please make sure you have signed in and
7 indicated if you are going to make a comment. Comments
8 shall be limited to the proposed revisions to the rule.
9 Copies of the rules are available from the Secretary of
10 State's Office or from the DEP webpage at
11 [www.WVDEP.org/2008 Rules](http://www.WVDEP.org/2008_Rules).

12 We are here this evening to listen to your
13 comments and questions and include them in the official
14 record. Written comments must be submitted to the West
15 Virginia Department of Environmental Protection Public
16 Information Office, at 601 57th Street, S.E., Charleston,
17 West Virginia, 25304. Comments may also be e-mailed to
18 Comments@WVDEP.org. The meeting is being recorded, and the
19 comment period will end at the conclusion of the hearing.

20 First up to comment?

21 (No response.)

22 MR. ADOLFSON: And if there are no initial
23 comments, we will wait until the entire hearing period is
24 over before we close.

1 (WHEREUPON, a recess was taken,
2 after which the proceedings
3 continued as follows:)

4 MR. ADOLFSON: This completes our official
5 comment period. We will file our rule with our responses
6 to your comments with the Secretary of State's Office.
7 Please sign up to be on our public notice mailing list, and
8 you can reach us at 304-926-0440. Thanks again for your
9 interest and your participation.

(WHEREUPON, the hearing was closed.)

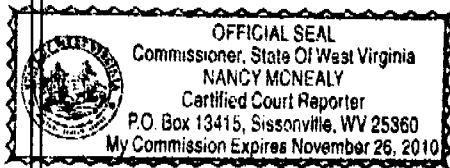
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
PUBLIC INFORMATION OFFICE

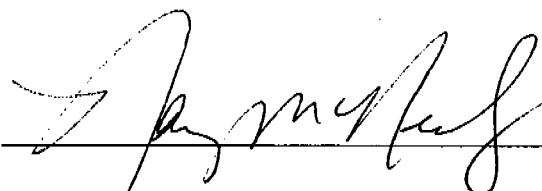
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim
Reporter and Commissioner of West Virginia, do hereby
certify that the foregoing is, to the best of my skill and
ability, a true and accurate transcript of all the
proceedings as set forth in the caption hereof.

Given under my hand this 20th day of July,
2007.

My commission expires November 26, 2010.




Certified Verbatim Reporter

SIGN-IN SHEET

Please check the box provided if you will be making comments

[illegible]

From: <wvml@wvml.org>
To: "Patricia White" <PWHITE@wvdep.org>, <jhallinan@hallinanlaw.com>, <clharris@hsc.wvu.edu>, <rick@lcpsd.com>, <braney@wvcoal.com>, <karen@wvma.com>
Date: Tue, Jun 12, 2007 3:23 PM
Subject: Re: Environmental Excellence Rule

All,

My comments to this rule:

I support this program wholeheartedly. We should practice innovative ideas like these more.

However, I have never cared for the fees attached to the process and would like to see them eliminated. The program is an excellent one and should be funded, but I believe we are the only state to assess application fees for this type of voluntary program.

The fees would have to be detrimental to participation and I would like to see the funds derived from another source.

Lisa Dooley
WV Municipal League

----- Original Message -----

From: Patricia White
To: jhallinan@hallinanlaw.com ; clharris@hsc.wvu.edu ; rick@lcpsd.com ; braney@wvcoal.com ; karen@wvma.com ; wvml@wvml.org
Cc: Greg Adolfson ; John Benedict ; Jessica Greathouse ; Ken Ellison ; Karen Watson ; Lisa McClung ; Randy Huffman
Sent: Tuesday, May 29, 2007 3:14 PM
Subject: Environmental Excellence Rule

Council Members: Please find attached the Environmental Excellence Rule. We are proposing revisions to the current rule. We apologize for sending you one more rule at this date; however, the rule was inadvertently omitted from the rule package we sent you previously. We will have someone at the meeting to discuss the rule. Thanks, Karen Watson

Trish White
WVDEP - Executive Office
601 57th Street, SE
Charleston, WV 25304

(304) 926-0499 ext. 1283 Phone
(304) 926-0447 Fax
pwhite@wvdep.org

----- Original Message -----

From: Patricia White
To: jhallinan@hallinanlaw.com ; clharris@hsc.wvu.edu ; rick@lcpsd.com ; braney@wvcoal.com ; karen@wvma.com ; wvml@wvml.org
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WVDEP - Executive Office
601 57th Street, SE
Charleston, WV 25304

(304) 926-0499 ext. 1283 Phone
(304) 926-0447 Fax
pwhite@wvdep.org

CC: "Greg Adolfson" <GADOLFSON@wvdep.org>, "John Benedict" <JBENEDICT@wvdep.org>, "Jessica Greathouse" <JGREATHOUSE@wvdep.org>, "Ken Ellison" <KELLISON@wvdep.org>, "Karen Watson" <KWATSON@wvdep.org>, "Lisa McClung" <LMCCLUNG@wvdep.org>, "Randy Huffman" <RHUFFMAN@wvdep.org>

PUBLIC COMMENT—60CSR8

Received From: Kathleen Panek
Owner
Gillum House Bed and Breakfast

A comment was received via e-mail before July 17, 2007, through comments@wvdep.org. It was inadvertently deleted due to the uploading of a new e-mail software application.

The comment is being summarized as follows: "The commenter recommends that the Application Fees and Triennial Renewal Fees are eliminated."

RESPONSE TO COMMENTS—60CSR8

The following is a response to the comments provided during the public comment period on the Department of Environmental Protection's rule, 60CSR8-- "Environmental Excellence Program." Written comments were accepted until July 17, 2007. A public hearing was held on July 17, 2007. Written comments were received and each will be addressed below.

I. COMMENTER: Ms. Lisa Dooley, Executive Director, West Virginia Municipal League

COMMENT I.A: Section §60-8-18 – Application Fees and Triennial Renewal Fees.

The commenter recommends that the application fees and triennial renewal fees are eliminated. The commenter also acknowledges that West Virginia is the only state to assess application fees and triennial renewal fees with similar voluntary programs in other states nationwide. The commenter also acknowledges that the application fees and triennial renewal fees would be detrimental to participation and would like to see funding derived from another source.

RESPONSE I.A. The DEP disagrees with the commenter that Section §60-8-18 – Application Fees and Triennial Renewal Fees should be eliminated from the Environmental Excellence Program Rule. The Secretary of the DEP has established a reasonable application fee and triennial renewal fee to recover costs to the department for program administration such as reviewing applications; developing, negotiating, and publicizing an environmental performance agreement; reviewing annual performance reports; coordinating annual facility visitations; etc. An "Environmental Excellence Program Administrative Fund" was created, pursuant to the statute, in the state treasury for deposit of fees dedicated and appropriated to the DEP for program administration. An application fee of one thousand dollars (\$1,000.00 and \$300.00 for small businesses) must be paid by the applicant to cover the first three years of membership and a triennial renewal fee of five hundred dollars (\$500.00 and \$150.00 for small businesses) must be paid by the member at each three year anniversary date. The application fee and triennial renewal fee shall be waived for all public entities seeking membership in the Environmental Excellence Program.

II. COMMENTER: Ms. Kathleen Panek, Owner, Gillum House Bed and Breakfast

COMMENT II.A: Section §60-8-18 – Application Fees and Triennial Renewal Fees.

The commenter recommends that the application fees and triennial renewal fees are eliminated.

RESPONSE II.A. See Response I. A above.