

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

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Department of Environmental Protection TITLE NUMBER: 60

CITE AUTHORITY: §22-25-4

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Environmental Excellence Program Rule

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Stephanie R. Timoney
Authorized Signature

\$5.40

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

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**SERIES 8
ENVIRONMENTAL EXCELLENCE PROGRAM RULE**

OFFICE WEST VIRGINIA
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. -- _____ 2005.

1.4. Effective Date. -- _____ 2005.

§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fee, if any) and who has been notified of one of the following actions: admission, non-admission, or application withdrawn (by applicant or department).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, preserve 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.

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.

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.

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:

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 section 14.6.e.

§60-8-9. Incentives

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 includes:

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 include:

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.