

January
2004

JANUARY 16

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 11, 2004
12 p.m. to 4 p.m.
Senate Judiciary Committee Room, 208W

1. Approval of Minutes - December 8 and 9, 2003
2. Review of Legislative Rules:
 - a. Lottery Commission
Limited Video Lottery Rule, 179CSR5
 - b. Environmental Quality Board
Requirements Governing Water Quality Standards, 46CSR1
 - c. Public Service Commission
Rule and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150CSR27
 - d. Division of Motor Vehicles
Administrative Due Process, 91CSR1
 - e. DEP-Division of Mining and Reclamation
Surface Mining Reclamation Rule, 28CSR2
 - f. Division of Natural Resources
Public Land Corporation Rule Controlling the Sale, Lease, Exchange or Transfer of Land or Minerals, 58CSR2
 - g. Division of Highways
Use of State Road Rights of Way and Adjacent Areas, 157CSR6
 - h. Insurance Commissioner
Credit for Reinsurance, 114CSR40
 - i. Board of Risk and Insurance Management
Public Entities Insurance Program, 115CSR2

- j. **Division of Banking**
Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators, 106CSR5
- k. **Board of Risk and Insurance Management**
Preferred Medical Liability and High Risk Medical Liability Program, 115CSR6
- l. **Board of Risk and Insurance Management**
Terms and Conditions Pertaining to Members of Self-Insurance Pools Who Wish to Participate in State Insurance Programs, 115CSR7
- m. **Statewide Addressing and Mapping Board**
Addressing and Mapping Standards and Participation by Public Agencies in Statewide Addressing and Mapping Project, 169CSR2
- n. **Board of Accountancy**
Board Rules and Rules of Professional Conduct, 1CSR1
- o. **Department of Administration**
Leasing Space on Behalf of State Spending Units, 148CSR2
- p. **State Board of Registration for Professional Engineers**
Rule Governing the West Virginia Board of Registration for Professional Engineers, 7CSR1

3. **Other Business**

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 11, 12 and 13, 2004

Sunday, January 11, 2004

12:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

Senate

Ross, Chair

Minard, Vice Chair

Snyder

Unger

Boley

Minear

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House

Mahan, Chair

Thompson, Rick, Vice Chair

Cann

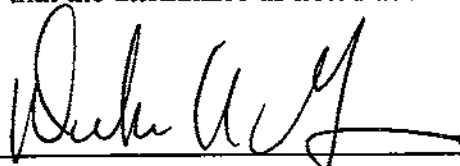
Kominar

Armstead

Faircloth

✓
✓
✓
✓
✓

I certify that the attendance as noted above is correct.



Staff Person

Rule-Making Review Committee
Terri Anderson

Please return to Brenda in Room 132-E or Fax to 347-4819.

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

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Page 24 3.12.a.1. A survey that identifies, on a topographic map of a scale of 1" = 1,000' or less more, structures, perennial and intermittent streams, or renewable resource lands and a narrative indicating whether or not subsidence could cause material damage or diminution of value or use of such structures, or renewable resource lands both on the permit area and adjacent areas within an angle of draw of at least 30° unless a greater area is specified by the Secretary. Provided; however, an angle of draw less than 30° can be requested by the applicant based upon results of site specific analyses and demonstration that a different angle of draw is justified. Computer program packages predicting surface movement and deformation caused by underground coal extraction can be utilized. A survey that identifies, on a topographic map of a scale of 1" = 1,000' or less, larger, location and type of water supplies and a narrative indicating whether or not subsidence could contaminate, diminish or interrupt water supplies both on the permit area and adjacent areas;

Rationale: The change to 38-2-3.12.a.1. is to be consistent with 30 CFR 784.20(a)

7.6 and 7.7 are new sections. There are no direct Federal counterparts

Page 95-99 7.6 Forestland

7.6.a. The Secretary may authorize forestland as a postmining land use only if the following conditions have been met: Provided, however, this subsection only applies to AOC mining operations that propose to utilize auger, area, mountain top and contour methods of mining. Proposed underground mining, coal preparation facilities, coal refuse disposal, haulroads and their related incidental facilities are not subject to the provisions of this subsection but must comply with all other applicable sections of this rule.

7.6.b. Planting Plan

7.6.b.1. A. West Virginia registered professional forester shall develop a planting plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. This plan shall be made a part of the mining permit application. The plans shall be in sufficient detail to demonstrate that the requirements of forestland use can be met. The minimum contents of the plan shall be as follows:

7.6.b.1.A.1. A premining native soils map and brief description of each soil mapping unit to include at a minimum: areal extent expressed in acres, total depth and volume to bedrock, soil horizons, including the O, A, E, B, and C horizon depths, soil texture, structure, color, reaction, bedrock type, and a site index for northern red oak. A site index for white oak for each soil mapping unit should also be provided if available. A weighted, average site index for northern red oak, based on acreage per soil mapping unit, shall be provided for the permitted area.

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7.6.b.1.A.42. A surface preparation plan that includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and tree planting.

7.6.b.1.A.23. Liming and fertilizer plans.

7.6.b.1.A.34. Mulching type, rates and procedures.

7.6.b.1.A.45. Species seeding rates and procedures for application of perennial and annual herbaceous, shrub and vine plant materials for ground cover.

7.6.b.1.A.56. A site specific tree planting prescription to establish forestland to include species, stems per acre and planting mixes.

7.6.b.1.B. Review of the Planting plan.

7.6.b.1.B.1. Before approving a forestland postmining land use, the Secretary shall assure that the planting plan is reviewed and approved by a forester employed the Department of Environmental Protection. Before approving the planting plan, the Secretary shall assure that the reviewing forester has made site-specific written findings adequately addressing each of the elements of the plans. The reviewing forester shall make these findings within 45 days of receipt of the plans.

7.6.b.1.B.2. If after reviewing the planting plan, the reviewing forester finds that the plan complies with the requirements of this section, they shall prepare written findings stating the basis of approval. A copy of the findings shall be sent to Secretary and shall be made part of the Facts and Findings section of the permit application file.

The Secretary shall ensure that the plans comply with the requirements of this rule and other provisions of the approved State surface mining program.

7.6.b.1.B.3. If the reviewing forester finds the plans to be insufficient, the forester shall either:

7.6.b.1.B.3.(a). Contact the preparing forester and the permittee and provide the permittee with an opportunity to make the changes necessary to bring the planting plan into compliance; or,

7.6.b.1.B.3.(a). Notify the Secretary that the planting plan does not meet the requirements of this rule. The Secretary may not approve the surface mining permit until finding that the planting plans satisfy all of the requirements of this rule.

7.6.c. ~~Soil, Soil placement and Grading~~ Soil placement, Substitute material and Grading

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~~7.6.e.1. Soil as used in this subsection is defined as and shall consist of the O, A, E, B, C and Cr horizons or any combination thereof. O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.~~

7.6.c.1. Except for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.

~~7.6.e.2. Except for valley fill faces, a minimum of 24 inches of soil shall be redistributed across the disturbed areas. The use of soil substitutes may be approved by the Secretary on the basis of scientific information provided by the applicant that the substitute material is capable of supporting and maintaining the approved postmining land use and the applicant affirmatively demonstrates that soil is not available. Such information shall be made a part of the permit application.~~

7.6.c.2. The use of topsoil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of topsoil on the permit area is insufficient to meet the depth requirements of 7.6.c.1, the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm, and is in accordance with 14.3.c. The Secretary may allow substitute materials with less than 75% sandstone provided the applicant demonstrates the overburden in the mine area does not contain an adequate volume of sandstone to meet the depth requirements of 7.6.c.1, or the quality of sandstone in the overburden does not meet the requirements of this rule. Such information shall be made a part of the permit application.

7.6.c.3. Soil shall be placed in a loose and non-compacted manner while achieving a static safety factor of 1.3 or greater. Grading and tracking shall be minimized to reduce compaction. Final grading and tracking shall be prohibited on all areas that are equal to or less than a 30 percent slope. ~~Organic debris such as forest litter and roots may be left on and in the soil.~~ Organic debris such as forest litter, tree tops, roots, and root balls may be left on and in the soil.

7.6.c.4. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

7.6.d. Liming and Fertilizing

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7.6.d.1. Lime shall be required where the average soil pH is less than 5.0. Lime rates will be used to achieve a uniform soil pH of 5.5. Soil pH may vary from 5.0 to a maximum of ~~6.5~~ 7.5, from place to place across the reclaimed area with no more than 10% of the site below 5.5 pH and no more than 10% of the site above 6.5 pH. An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species

7.6.d.2. The Secretary shall require the permittee to fertilize based upon the needs of trees and establishment of ground cover to control surface soil erosion. ~~A minimum of 500~~ Between 200 and 300 lbs./acre of 10-20-10 fertilizer shall be applied with the ground cover seeding. Other fertilizer materials and rates may be used only if the Secretary finds that the substitutions are appropriate based on soil testing performed by State certified laboratories.

7.6.e. Revegetation

7.6.e.1. Temporary erosion control vegetative cover shall be established as contemporaneously as practical with backfilling and grading until a permanent tree cover can be established. This cover shall consist of a combination of native and domesticated non-competitive and non-invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs. All species shall be slow growing and compatible with tree establishment and growth. The ground vegetation shall be capable of stabilizing the soil from excessive erosion, but the species should be slow growing and non-invasive to allow the establishment and growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (lb./acre) are strongly recommended: winter wheat or oats (~~20~~ 10 lbs./acre), fall seeding, foxtail millet (~~10~~ 5 lbs./acre), summer seeding, weeping lovegrass (3 lbs./acre or redbud at 5 lbs./acre), kobe lespedeza (5 lbs./acre), birdsfoot trefoil (~~15~~ 10 lbs./acre), perennial rye grass (10 lbs./acre) and white clover (~~4~~ 3 lbs./acres). Kentucky 31 fescue, sericia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. Alternate seeding rates and composition will be considered on a case by case basis by the Secretary and may be approved if site specific conditions necessitate a deviation from the above. All mixes shall be compatible with the plant and animal species of the region and forestland use.

7.6.e.2. The selection of trees and shrubs species shall be based each species' site requirements (soil type, degree of compaction, ground cover, competition, topographic position and aspect) and in accordance with the approved planting plan prepared by a registered professional forester. The stocking density of woody plants shall be at least 500 plants per acre.

~~7.6.e.2.A. The stocking density for trees shall be at least 315 plants per acre. There shall be a minimum of four species of trees, to include at least one higher value hardwood species (black cherry, white oak, red oak, black oak, chestnut oak, sugar maple, red maple, hickory and yellow poplar) and at least three lower value hardwoods or~~

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~~softwoods species (white ash, hybrid poplar, sweet gum, all pines, sycamore, spruces, larch, dogwood, black locust and black alder). There shall be at least 90 high value hardwoods plants per acre and 225 lower value hardwood or softwood plants per acre (75 plants per acre for each species selected).~~

7.6.e.2.A. The stocking density for trees shall be at least 350 plants per acre. There shall be a minimum of five species of trees, to include at least three higher value hardwood species (white oak, northern red oak, black oak, chestnut oak, white ash, sugar maple, black cherry and yellow poplar) and at least two lower value hardwoods or softwoods species (all hickories, red maple, basswood, cucumber magnolia, sycamore, white pine, Virginia pine and pitch x loblolly hybrid pine). There shall be at least 210 high value hardwoods plants per acre and 140 lower value hardwood or softwood plants per acre (70 plants per acre for each species selected).

~~7.6.e.2.B. The stocking density of shrubs and other woody plants shall not exceed 185 plants per acre.~~ The stocking density of shrubs and other woody plants shall not exceed 150 plants per acre. There shall be a minimum of three species of shrubs or other woody plants (black locust, bristly locust, dogwood, Eastern redbud, black alder, bigtooth aspen and bicolor lespedeza, (50 plants per acre for each species selected).

7.6.f. Standards for Success

7.6.f.1. The success of vegetation shall be determined on the basis of tree and shrub survival and ground cover.

7.6.f.2. Minimum success standard shall be tree survival (including volunteer tree species) and/or planted shrubs per acre equal to or greater than four hundred and fifty (450) trees per acre and a seventy percent (70%) ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter during the growing season of the last year of the responsibility period; and

7.6.f.3. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine such success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

7.7. Wildlife

7.7.a. The Secretary may authorize wildlife as a postmining land use only if the following conditions have been met. This subsection applies to all AOC mining operations that propose a postmining land use of wildlife. The Secretary shall ensure that the plans comply with the requirements of this rule and other provisions of the approved State surface mining program.

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7.7.b. Planting Plan

7.7.b.1. A wildlife biologist employed by the West Virginia Department Division of Natural Resources shall develop a planting plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. This plan shall be made a part of the mining permit application. The plans shall be in sufficient detail to demonstrate that the requirements of wildlife use can be met. The minimum contents of the plan shall be as follows:

7.7.b.1.A.1. Surface preparation plan that includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and planting.

7.7.b.1.A.2. Liming and fertilizer plans.

7.7.b.1.A.3. Mulching type, rates and procedures.

7.7.b.1.A.4. Species seeding rates and procedures for application of perennial and annual herbaceous, shrub and vine plant materials for ground cover.

7.7.b.1.A.5. A site specific tree/shrub planting prescription to establish wildlife to include species, stems per acre and planting mixes.

7.7.c. ~~Soil, Soil placement and Grading~~ Soil placement, Substitute material and Grading

~~7.7.c.1. Soil as used in this subsection is defined as and shall consist of the O, A, E, B, C and Cr horizons or any combination thereof. O horizon means the top most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.~~

7.7.c.1. Except for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.

~~7.7.c.2. Except for valley fill faces, a minimum of 24 inches of soil shall be redistributed across the disturbed areas. The use of soil substitutes may be approved by the Secretary on the basis of scientific information provided by the applicant that the substitute material is capable of supporting and maintaining the approved postmining land use and the applicant affirmatively demonstrates that soil is not available. Such information shall be made a part of the permit application.~~

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7.7.c.2. The use of topsoil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of topsoil on the permit area is insufficient to meet the depth requirements of 7.6.c.1, the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm, and is in accordance with 14.3.c. The Secretary may allow substitute materials with less than 75% sandstone provided the applicant demonstrates the overburden in the mine area does not contain an adequate volume of sandstone to meet the depth requirements of 7.6.c.1, or the quality of sandstone in the overburden does not meet the requirements of this rule. Such information shall be made a part of the permit application.

7.7.c.3. Soil shall be placed in a loose and non-compacted manner while achieving a static safety factor of 1.3 or greater. Grading and tracking shall be minimized to reduce compaction. Final grading and tracking shall be prohibited on all areas that are equal to or less than a 30 percent slope. ~~Organic debris such as forest litter and roots may be left on and in the soil.~~ Organic debris such as forest litter, tree tops, roots, and root balls may be left on and in the soil.

7.7.c.4. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

7.7.d. Liming and Fertilizing

7.7.d.1. Lime shall be required where the average soil pH is less than 5.0. Lime rates will be used to achieve a uniform soil pH of 5.5. Soil pH may vary from 5.0 to a maximum of ~~6.5~~ 7.5, from place to place across the reclaimed area with no more than 10% of the site below 5.5 pH and no more than 10% of the site above 6.5 pH. An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species

7.7.d.2. The Secretary shall require the permittee to fertilize based upon the needs of trees and establishment of ground cover to control surface soil erosion. A minimum of ~~500~~ 300 lbs./acre of 10-20-10 fertilizer shall be applied with the ground cover seeding. Other fertilizer materials and rates may be used only if the Secretary finds that the substitutions are appropriate based on soil testing performed by State certified laboratories.

7.7.~~d~~e. Revegetation

7.7.~~d~~e.1. Temporary erosion control vegetative cover shall be established as contemporaneously as practical with backfilling and grading until a permanent tree cover can be established. This cover shall consist of a combination of native and domesticated

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non-competitive and non-invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs. All species shall be slow growing and compatible with tree establishment and growth. The ground vegetation shall be capable of stabilizing the soil from excessive erosion, but the species should be slow growing and non-invasive to allow the establishment and growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (lb./acre) are strongly recommended: winter wheat (20 lbs./acre), fall seeding, foxtail millet (10 lbs./acre), summer seeding, weeping lovegrass (3 lbs./acre or redtop at 5 lbs./acre), kobe lespedeza (5 lbs./acre), birdsfoot trefoil (15 lbs./acre), perennial rye grass (10 lbs./acre) and white clover (4 lbs./acres). Kentucky 31 fescue, sericia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. Alternate seeding rates and composition will be considered on a case by case basis by the Secretary and may be approved if site specific conditions necessitate a deviation from the above. Areas designated, as openings containing only grasses shall in accordance with the approved planting plan specified in under subsection 7.7.a. of this rule.

7.7. ~~d~~e.2. The selection of trees and shrubs species shall be based each species' site requirements (soil type, degree of compaction, ground cover, competition, topographic position and aspect) and in accordance with the approved planting plan specified in under subsection 7.7.a. of this rule. The stocking density of woody plants shall be at least 500 plants per acre. Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this rule. In all instances, there shall be a minimum of four species of tree or shrub, to include at least ~~one~~ two hard mast producing species.

7.7.e f. Standards for Success

7.7. ~~e~~ f.1. The success of vegetation shall be determined on the basis of tree and shrub survival and ground cover.

7.7. ~~e~~ f.2. Minimum success standard shall be tree survival (including volunteer tree species) and/or planted shrubs per acre equal to or greater than four hundred and fifty (450) trees per acre and a seventy percent (70%) ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter during the growing season of the last year of the responsibility period; . Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this rule.

7.7. ~~e~~ f.3. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine such success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in

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determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

Rationale: The new sections 7.6 and 7.7 are being added to standards for forestland and Wildlife. There are no direct Federal counterparts.

Page 104 9.3.g. On areas to be developed for forest land and/or wildlife use, success of vegetation shall be determined on the basis of tree and shrub survival and ground cover. Minimum standards for woody plants shall be seventy percent (70%) ground cover of legumes and perennial grasses, and four hundred fifty (450) trees (including volunteer tree species) and/or planted shrubs per acre for the growing season of the last year of the responsibility period

Substandard areas shall not exceed one-fourth (1/4) acre in size nor total more than twenty percent (20%) of the area seeded or planted. A professional wildlife biologist employed by the West Virginia Department Division of Natural Resources shall develop a planting plan that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this subsection. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine revegetation success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

Rationale: The change to 38-2-9.3.g. is to be consistent with 30 CFR 816.116(b) and to codify an existing procedure.

Page 167 14.15.a.1. Spoil returned to the mined-out area shall be backfilled and graded to the approximate original contour unless a waiver is granted pursuant to W. Va. Code §22-3-13(e)(2) and this rule with all highwalls eliminated. Backfilling and grading of all disturbed areas will be done in a manner which eliminates spoil piles and depressions, returns all slopes to the angle of repose or lesser slopes so as to achieve a static safety factor of 1.3 or greater, minimizes erosion and water pollution both off and on the site, supports the postmining land use, and covers all coal seams, acid-producing or toxic-forming materials, and combustible material with non-toxic and non-combustible material.

Rationale: The change to 38-2-14.14.a.1. is to clarify when an variance from returning the land to approximate original contour can be granted.

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Page 171 14.15.g. Variance – Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the standards set forth in this subsection, if on the basis of site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible and demonstrate that the variance being sought will comply with section 5.6 of this rule. Furthermore, the amount of bond for the operation shall be based on the maximum amount per acre specified in WV Code §22-3-12(eb)(1). The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

Rationale: The change to 38-2-15.g. is to reinsert deleted language whose removal was not approved by the Federal Office of Surface. Federal Register dated December 3, 2002.

Page 188-189 20.1.a.6. When a permit has been revoked, In lieu of the inspection frequency established in paragraphs 20.1.a.1 and 20.1.a.2 of this subsection, the Secretary shall inspect each revoked site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year. In selecting an alternate inspection frequency, the Secretary shall first conduct a complete inspection of the site and provide public notice. The Secretary shall place a notice in the newspaper with the broadest circulation in the locality of the revoked mine site providing the public with a 30-day period in which to submit written comments. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of Department of Environmental Protection Office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period. Following the inspection and public notice, the Secretary shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

20.1.a.6.A. Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

20.1.a.6.B. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

20.1.a.6.C. The degree to which erosion and sediment control is present and functioning;

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20.1.a.6.D. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

20.1.a.6.E. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

20.1.a.6.F. Based on a review of the complete and partial inspection report record for the site during at least two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

Rationale: The change to 38-2-20.1.a. is to be consistent with 30 CFR 840.11(g) and (h).

Page 207 22.5.a. Controlled Placement. All coal refuse sites shall be placed in new or existing disposal areas within a permit area designated for this purpose. Coal mine refuse shall be hauled or conveyed and placed in a controlled manner to:

Rationale: The change to 38-2-22.5.a. is to be consistent with 30 CFR 816.81(a)

Page 211- 214 Delete entire Section 38-2-23 Special Authorization for Coal Extraction as an Incidental Part of Development of Land for Commercial Residential, Industrial or Civic Use.

Remaining Sections are renumbered accordingly.

Rationale: the Federal Office of Surface Mining did not approve this section and there is a required program amendment to remove it.

Page 215 – 220 §38-2-24 Exemption for Coal Extraction Incidental to Extraction of Other Minerals.

24.1. Exemption determination. The term other minerals as used in this section means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material. No later than 90 days after filing of an administratively complete request for exemption, the Secretary shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this ~~part~~ section, and shall notify the person making the request and persons submitting comments on the application of the determination and the basis for the determination. The determination of exemption shall be based upon information contained in the request and any other information available to the regulatory authority at that time. If the Secretary

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

fails to provide a determination as specified in this section, an applicant who has not begun extraction may commence pending a determination on the request unless the Secretary issues an interim finding, together with reasons, therefore, that the applicant may not begin coal extraction. Any adversely affected person by a determination of the Secretary pursuant to this section may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the determination. The filing of an appeal does not suspend the effect of the determination.

24.2. Contents of request for exemption. An request for exemption shall be made part of a quarrying application and shall include at a minimum:

24.2.a. The names and business address of the requestor to include a street address or route number;

24.2.b. A list of the minerals to be extracted;

24.2.c. Estimates of annual production of coal and the other minerals over the anticipated life of the operation;

24.2.d. A reasonable estimate of the number of acres of coal that will be extracted;

24.2.e. Evidence of publication of a public notice for an application for exemption. The notice that an application for exemption has been filed with the Secretary shall be published in a newspaper of general circulation in the county in which the operation is located and shall be published once and provide a thirty day comment period. The public notice must contain at a minimum:

24.2.e.1. The quarrying number identifying the operation;

24.2.e.2. A clear and accurate location map of a scale and detail found in the West Virginia General Highway Map. The map size will be at a minimum four inches (4") x four inches (4"). Longitude and latitude lines and north arrow will be indicated on the map and such lines will cross at or near the center of the quarrying operation;

24.2.e.3. The names and business address of the requestor to include a street address or route number;

24.2.e.4. A narrative description clearly describing the location of the quarrying operation;

24.2.e.5. The name and address of the Department of Environmental Protection Office where written comments on the request may be submitted;

24.2.f. Geologic cross sections, maps or plans of the quarrying operation determine the following information:

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

24.2.f.1. The locations (latitude and longitude) and elevations of all bore holes;

24.2.f.2. The nature and depth of the various strata or overburden including geologic formation names and/or geologic members;

24.2.f.3. The nature and thickness of any coal or other mineral to be extracted;

24.2.g. A map of appropriate scale which clearly identifies the coal extraction area versus quarrying area;

24.2.h. A general description of coal extraction and quarrying activities for the operation;

~~24.2.i. Estimates of annual production of coal and the other minerals;~~

24.2.j.i. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted;

24.2.k.j. If coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted;

24.2.l.k. The basis for all annual production, revenue, and fair market value estimates;

24.2.m.l. A summary of sale commitments and agreements, if any, that the applicant has received for future delivery of other minerals to be extracted from the mining area, or a description of potential markets for the other minerals;

24.2.n.m. If the other minerals are to be commercially used by the applicant, a description specifying the use; and

24.2.o.n. Any other information pertinent to the qualification of the operation as exempt.

24.3. Requirements for exemption.

24.3.a. Activities are exempt from the requirements of the Act if all of the following are satisfied:

24.3.a.1. The ~~cumulative~~ production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16 2/3 percent of the total ~~cumulative~~ annual production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

24.3.a.2. Coal is extracted from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

24.3.a.3. The ~~cumulative~~ revenue derived from the coal extracted from the mining area, determined annually does not exceed fifty (50) percent of the total ~~cumulative~~ revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, ~~determined annually~~. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

24.3.b. Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

24.3.b.1. Each other mineral upon which an exemption under this ~~part~~ section is based must be a commercially valuable mineral for which a market exists or which is quarried in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

24.3.b.2. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

24.4. Conditions of exemption.

A person conducting activities covered by this part shall:

24.4.a. Maintain on-site the information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and the Department's exemption approval;

24.4.b. Notify the Department of Environmental Protection upon the completion or permanent cessation of all coal extraction activities.

24.5. Stockpiling of minerals.

24.5.a. Coal extracted and stockpiled may be excluded from the calculation of annual production until the time of its sale, transfer to a related entity or use:

24.5.a.1. Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

24.5.a.2. For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

24.5.b. The Department of Environmental Protection shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

The Department of Environmental Protection may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

24.5.b.1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

24.5.b.2. Except as provided in ~~paragraph 24.5.b.3.~~ paragraph 24.5.b.3. of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

24.5.b.3. The Department of Environmental Protection may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in ~~paragraph 24.5. b.2.~~ paragraph 24.5. b.2. of this section if the operator can demonstrate to the Department of Environmental Protection's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

24.5.b.4. The Department of Environmental Protection may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by ~~paragraphs 24.5.b.2. and 3.~~ paragraphs 24.5.b.2. and 3. of this section based on additional information available to the Department of Environmental Protection.

24.6. Revocation and enforcement.

24.6.a. The Department of Environmental Protection shall conduct an annual compliance review of the operation requesting exemption.

24.6.b. If the Department of Environmental Protection has reason to believe that a specific operation was not exempt at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department of Environmental Protection shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the Department of Environmental Protection within 30 days that the operation in question should continue to be exempt.

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

24.6.c. If the Department of Environmental Protection finds that an operator has not demonstrated that activities conducted in the operation area qualify for the exemption, the Department of Environmental Protection shall revoke the exemption and immediately notify the operator and interveners. If a decision is made not to revoke an exemption, the Secretary shall immediately notify the operator and interveners.

24.6.d. Any adversely affected person by a determination of the Secretary pursuant to this section may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the determination. The filing of an appeal does not suspend the effect of the determination.

24.6.e. Direct enforcement.

24.6.e.1. An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of §22-3 or §38-2 that occurred prior to the revocation of the exemption. Provided, however, an operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should to know that the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of §22-3 or §38-2 that occur during the period of the activities.

24.6.e.2. Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained, and shall comply with the reclamation standards of ~~§22-4 or §38-3~~ §22-3 or §38-2 with regard to conditions, areas, and activities existing at the time of revocation or denial.

24.7. Reporting requirements.

24.7.a.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file a quarterly production report with the Department of Environmental Protection containing the information specified in ~~paragraph b.~~ 25.7.a.3. of this section.

24.7.a.2. The report shall be filed no later than 30 days after the end of each quarter.

24.7.a.3. The information in the report shall cover:

24.7.a.3.A. Quarterly production of coal and other minerals, and

24.7.a.3.B. The cumulative production of coal and other minerals.

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

24.7.a.3.C. The number of tons of coal stockpiled;

24.7.a.3.D. The number of tons of other minerals stockpiled by the operator.

24.7.b.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file an annual production report with the Department of Environmental Protection containing the information specified in 25.7.b.3. of this section.

24.7.b.2. The report shall be filed no later than 30 days after the end of year.

24.7.b.3. The information in the report shall include:

24.7.b.3.a. The number of tons of extracted coal sold in bona fide sales and the total revenue derived from these sales;

24.7.b.3.b. The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of this coal;

24.7.b.3.c. The number of tons of coal stockpiled;

24.7.b.3.d. The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from these sales;

24.7.b.3.e. The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of these minerals; and

24.7.b.3.f. The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

24.7.b.3.g. The annual production of coal and other minerals and the annual revenue derived from coal and other minerals.

24.7.b.h. The annual production of coal and other minerals and the annual revenue derived from coal and other minerals during the preceding year.

24.8. Public Availability of Information.

24.8.1. Except as provided in 25.8.2, all information submitted to the Secretary shall be made immediately available for public inspection and copying at the office with jurisdiction over coal mining in the locality of the subject exempt operation, until at least three (3) years after expiration of the period during which the subject mining area is active.

Summary of Proposed Changes to the Surface Mining Rule for 2004 Legislative Session

38-2 December 19, 2003

24.8.2 The Secretary may keep information submitted to the Secretary confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and if the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule.

24.8.3. Information requested to be held as confidential under subsection 25.8 shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

24.9. Right of Inspection and Entry.

24.9.1 Authorized representatives of the Secretary and the Secretary of the U.S. Department of the Interior shall have the right to conduct inspections of operations claiming exemption.

24.9.2. Each authorized representative of the Secretary and the Secretary of the U.S. Department of the Interior conducting an inspection under this administrative regulation shall:

24.9.2.a. Have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

24.9.2.b. At reasonable times and without delay, have access to and copy any records relevant to the exemption; and

24.9.2.c. Have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

24.9.3. No search warrant shall be required with respect to any activity under 24.9.1 and 24.9.2., except that a search warrant may be required for entry into a building.

Rationale: The change to 38-2-25 is to be consistent with 30 CFR 702.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 11, 2004
12 p.m. to 4 p.m.
Senate Judiciary Committee Room, 208W

1. Approval of Minutes - December 8 and 9, 2003

2. Review of Legislative Rules:

Approved
as modified ✓

a. Lottery Commission ✓
Limited Video Lottery Rule, 179CSR5

- Lay Over December 8
- Technical Modifications

Laid over ✓

b. Environmental Quality Board ✓
Requirements Governing Water Quality Standards, 46CSR1

- No Action Taken December 8
- No Action Taken November 16
- Laid over from October 21, 2003
- NO Technical Modifications

Laid over ✓

c. Public Service Commission ✓
Rule and Regulations for the Transportation of Coal by
Commercial Motor Vehicles, 150CSR27

- Technical Modifications

Approved ✓

d. Division of Motor Vehicles ✓
Administrative Due Process, 91CSR1

- Joe

Approve
as mod. Red ✓

e. DEP-Division of Mining and Reclamation ✓
Surface Mining Reclamation Rule, 28CSR2
38CSR2

- Rita

Approved ✓
as modified

f. **Division of Natural Resources** ✓
Public Land Corporation Rule Controlling the Sale, Lease, Exchange or Transfer of Land or Minerals, 58CSR2

- Rita

Tuesday

g. **Division of Highways** ✓
Use of State Road Rights of Way and Adjacent Areas, 157CSR6

- Rita

Approved ✓
as modified

h. **Insurance Commissioner** ✓
Credit for Reinsurance, 114CSR40

- Debra

Approved ✓
as modified

i. **Board of Risk and Insurance Management** ✓
Public Entities Insurance Program, 115CSR2

- Debra

Approved as modified

j. **Division of Banking** ✓
Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators, 106CSR5

- Technical Modifications

Approved as modified

k. **Board of Risk and Insurance Management** ✓
Preferred Medical Liability and High Risk Medical Liability Program, 115CSR6

- Technical Modifications

Approved ✓
as modified

l. **Board of Risk and Insurance Management** ✓
Terms and Conditions Pertaining to Members of Self-Insurance Pools Who Wish to Participate in State Insurance Programs, 115CSR7

- Technical Modifications

Approve ✓
as modified

m. **Statewide Addressing and Mapping Board** ✓
Addressing and Mapping Standards and Participation by Public Agencies in Statewide Addressing and Mapping Project, 169CSR2

- Lay Over December 8
- Technical Modifications

Approved as modified

11. Board of Accountancy
Board Rules and Rules of Professional Conduct, 1CSR1

- Technical Modifications

Approved as modified

12. Department of Administration
Leasing Space on Behalf of State Spending Units, 148CSR2

- Technical Modifications

Approved as modified

13. State Board of Registration for Professional Engineers
Rule Governing the West Virginia Board of Registration for Professional Engineers, 7CSR1

- Technical Modifications

3. Other Business

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 11, 2004
12 p.m. to 4 p.m.
Senate Judiciary Committee Room, 208W

1. Approval of Minutes - December 8 and 9, 2003

2. Review of Legislative Rules:

modified

a. Lottery Commission
Limited Video Lottery Rule, 179CSR5

- Lay Over December 8
- Technical Modifications

~~Foot of agenda~~
Foot of agenda

b. Environmental Quality Board
Requirements Governing Water Quality Standards, 46CSR1

- No Action Taken December 8
- No Action Taken November 16
- Laid over from October 21, 2003
- NO Technical Modifications

Tuesday

c. Public Service Commission
Rule and Regulations for the Transportation of Coal by
Commercial Motor Vehicles, 150CSR27

- Technical Modifications

as filed

d. Division of Motor Vehicles - *make sure Joe emailed*
Administrative Due Process, 91CSR1 *via abstract*

- ~~NO~~ NO mods!!

modified

e. DEP-Division of Mining and Reclamation *make sure Rita*
Surface Mining Reclamation Rule, 28CSR2 *emailed via*

- *Rita* Modifications *abstract*

modified f. Division of Natural Resources - make sure Rita emailed abstract
Public Land Corporation Rule Controlling the Sale, Lease, Exchange or Transfer of Land or Minerals, 58CSR2

- Rita Modifications

LAY OVER → Division of Highways ON TUESDAY
Use of State Road Rights of Way and Adjacent Areas, 157CSR6

- ?

modified h. Insurance Commissioner
Credit for Reinsurance, 114CSR40

- Debra Modification

modified i. Board of Risk and Insurance Management
Public Entities Insurance Program, 115CSR2

- Debra

modified j. Division of Banking Correct Abstract
Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators, 106CSR2

- Technical Modifications

~~Tuesday~~ modified k. Board of Risk and Insurance Management
Preferred Medical Liability and High Risk Medical Liability Program, 115CSR6

- Technical Modifications

modified l. Board of Risk and Insurance Management
Terms and Conditions Pertaining to Members of Self-Insurance Pools Who Wish to Participate in State Insurance Programs, 115CSR7

- Technical Modifications

modified m. Statewide Addressing and Mapping Board
Addressing and Mapping Standards and Participation by Public Agencies in Statewide Addressing and Mapping Project, 169CSR2

- Lay Over December 8
- Technical Modifications

modified n.

Board of Accountancy
Board Rules and Rules of Professional Conduct, 1CSR1

- Technical Modifications

modified o.

Department of Administration
Leasing Space on Behalf of State Spending Units, 148CSR2

- Technical Modifications

modified p.

State Board of Registration for Professional Engineers
Rule Governing the West Virginia Board of Registration
for Professional Engineers, 7CSR1

- Technical Modifications

3. Other Business

Sunday, January 11, 2004

12:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

Senate

Ross, Chair _____

Minard, Vice Chair _____

Snyder _____

Unger _____

Boley _____

Miner _____

House

Mahan, Chair _____

Thompson, Rick, Vice Chair _____

Cann _____

Kominar _____

Armstead _____

Faircloth _____

minutes approved

a. 179 CSR 5

Doc explained to panel w.t. rule
John Musgrave, Dir. WV Lottery,
responded 1 yr. Lr. com. @
John Melta, Army - Lottery - responded
1 yr. Lr. com. @

~~pgs 22-23~~

Arnold - modified - agency - "No"
Arnold - amendment

34 + 35 pgs 22 + 23

Crute vote "No" Boley - Minard vote "Yes"

Minard - modified

d DMV 91CSR1

Doc explained to panel - responded 1 yr.
Steve Hale - Jll Minard - Army - DMV
Minard - as felix

~~DEP 38CSR2~~

f DNR 58CSR2

rap repland t ml, rprndd lgs ©
Mike Wither: Chief real estate public land DNR
rprndd lgs 2, 1 cmle ©
Mahan - mafid

~~Munard move to long Det EQB xuli
mt Tuesday, dtd 21 mt ©~~

(b) EQB

Joe replan whn bt rcds r ©
Lubij - technical advisor - ~~adviser~~ adres to
r r rprndd lgs
Munard ~~Ag Don~~ fl v taguda

(c) DEP 38CSR2

rap repland t ml ©
Mahan - modified

(h) 114CSR40

day repland t ml ©
Gani Aloni - ms cmle - repland t ml ©
Munard - modified

(i) 115 CSR 2 BRIM

dag replans to ml^o respndd l gr
Lr cmte^o

Chuck Jones - drch v brn - respndd l
gr Lr cmte^o

Jeff VanGuilder - alrny of Brn -
respndd l gr Lr cmte^o

Mchan - modified

(n) 105 SR1 Accncy

dek replans to ml^o respndd l gr^o
Mchan - modified

(m) 169 CSR 2 - stwid adrs of mg of Bd^o

dek - replans - respndd l gr^o

Joe Starostick ^{causa} respndd l gr Lr cmte^o

Phily Neel - lobster - surveyor

adrsd to cmte & respndd l gr

Mchan - modified

o. Admin 148 CSR 2

dek - replans to ml^o

Nenna Lipscomb - admi - respndd l
gr Lr cmte^o

Steve Zoeller (?) drch combat services - ~~brn~~

leasng - respndd l gr Lr cmte^o

Minaid - modified rule - response
1. lease w/n 30 days

Mahan - modified

p. Engineers: 7 CSR1

cal - explains the rule, responds to gr ①
war - led to make "civil fine" to
"civil penalty"

lesley - executive order - response

1 gr 2 / rule ①

Mahan - modified

j. Banking: 106 (CSR 5)

cal - explains to rule n

Bob Lammont, Counsel, response to

gr 2 / rule ①

Mahan - modified

k. Brn: 115 CSR 6

cal - explains to rule ① response to gr

Conne - to prepare bill to delete

conflict in Code - authorization

Mahan - modified

l Brum: 1150527

cat - plans to rule

Chuck Jones - direct - advised to come

plans modifications, responds

l gs

~~Mahan~~ Mahan - modified - adopted

Mahan - modified

Sunday, January 11, 2004

12:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair

Minard, Vice Chair

Snyder

Unger

Boley

Miner

✓
✓
✓
✓
✓
✓

House

Mahan, Chair

Thompson, Rick, Vice Chair

Cann

Kominar

Armstead

Faircloth

✓
✓
✓
✓
✓
✓

lottery

I explained posture

Musgrave responded to questions

Modify to remove pp 22 & 23

Amend

Approve as mod

mistaken
rejected

DMU - Admin Due Process

Joe explained

Jill Dunn, Gen Counsel DMU

Approved

DMU - Public Land

Rita explained

Withers responded to questions

Approve as mod

Mahan
adapted

EQD

Joe explained posture

Libby Chaffield, Technical Advisor - Bd not willing to enter into further negotiations on amendments; responded to questions

~~for~~ laid over

EQD - Transp. of Coal - laid over

DIEP - Mining & Reclamation

Rita explained

Approve as mod

Moham

Insurance Commissioner - Credit for Reins

I explained

Gene Dine responded to questions

Approve as modified

GRM - Public Entities

I explained

Chuck Jones, Dir Brim responded to questions

Jeff Van Guilder

Bd of Reclamation

Don explained

Approve as mod

Moham

State-wide Addressing & Mapping SAs

Don reviewed

Joe Stratak responded to q's from C

Phil Reale, WVA's Prof Surveyors addressed

Mahan Approve as mod

DOA - Leasing Space

Dan explained

Donna ~~Buty~~ Lipscomb responded to q's

Otave Zoeller responded to q's

Minard Maturity - 30 days

Mahan Approve as mod

Professional Engineers

Dan explained & responded to q's

healy [?] Grazier, exec dir of Bd

Mahan Approve as mod

DOB - Res. Mortgage Lenders

Connie explained

Bob Lamont, Counsel Div. of Banking

Mahan Approve as mod
edited

BRIM - Preferred Med Liability

Connie explained

Connie to prepare legislation

Mahan Approve as mod

BRIM - Terms & Conditions

Connie explained

Chuck Jones explained proposed mod. based on concerns of municipal league; responded to q's

Mahan ↗ Approve as mod

Mahan ↘ Modify to add provided

JANUARY 13

Tuesday, January 13, 2004 The minutes have not been approved.

3 p.m. to 5 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Minard, Vice Chairman
Snyder
Unger
Boley
Minear

Mahan, Chairman
Thompson, Vice Chairman
Cann
Kominar
Armstead
Faircloth

The meeting was called to order by Mr. Ross, Co-Chairman.

Joe Altizer, Associate Counsel, explained the rule proposed by the **Public Service Commission-Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150CSR27**, stated that the Commission has agreed to technical modifications and responded to questions.

Jefferson Davis, Weight Enforcement Officer with the Public Service Commission; Bill Raney, representing the West Virginia Coal Association; Delegate Caputo; and Fred Van Kirk, Commissioner of Highways; addressed the Committee and responded to questions.

Mr. Cann moved to amend the proposed rule on page 1, section 1.1., by striking the words "public highways" and inserting in lieu thereof "coal resource transportation roads" and, on page 7, Section 4.4., by striking the last two sentences of that section. The motion was adopted. Ms. Mahan and Mr. Thompson voted "No".

Ms. Mahan moved that the proposed rule be approved as modified and amended. The motion was adopted.

Rita Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **Division of Highways-Use of State Road Rights of Way and Adjacent Areas, 157CSR6**, and stated that the Division has

agreed to technical modifications. She and Bill Light, Chief of Outdoor Advertising with the Division of Highways, responded to questions from the Committee.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the *Environmental Quality Board-Requirements Governing Water Quality Standards, 46CSR1*. He explained proposed amendments, which were distributed to members of the Committee, and responded to questions.

Libby Chatfield, Technical Advisor to the Board; and Don Garvin, representing the West Virginia Environmental Council; addressed the Committee and responded to questions.

Mr. Snyder moved to amend the proposed rule.

Ms. Minear moved to amend the proposed rule.

Mr. Snyder moved to amend the proposed rule by combining the amendments as proposed by all parties. The motion was adopted.

Mr. Snyder moved that the proposed rule be approved but with no recommendation as to the amendments. The motion was adopted.

Mr. Unger directed the staff to write a letter to the Environmental Quality Board requesting that the Board give its position on each amendment.

Mr. Thompson moved that the Committee direct its staff to: prepare the Committee's report and submit the report to the Clerk's office of each House; draft a bill of authorization for each rule contained in the report; and cause the bills to be introduced in each House with the members of the Committee as sponsors in their respective Houses. The motion was adopted.

The meeting was adjourned.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, January 13, 2004
3 p.m. to 5 p.m.
Senate Judiciary Committee Room, 208W

1. **Review of Legislative Rules:**
 - a. **Environmental Quality Board**
Requirements Governing Water Quality Standards, 46CSR1
 - b. **Public Service Commission**
Rule and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150CSR27
 - c. **Division of Highways**
Use of State Road Rights of Way and Adjacent Areas, 157CSR6
2. **Other Business**

Amendments

On pages 5 and 6, by deleting existing section 5.2.c. and replacing it with the following:

"5.2.c. If a discharge will cause or contribute to concentrations of pollutants which exceed criteria for the protection of human health set forth in Appendix C at a public water supply intake, such discharge shall not be allowed unless a mixing zone has been assigned by the Director, after consultation with the Commissioner of the Bureau of Public Health, to prevent interference with the Category A use. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be mixed to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake.";

On page 5, by deleting section 5.2.h.6.;

On page 7, by adding to the end of section 6.1, the following sentence:

"Only those waters at the point of intake for a public water supply are designated for Water Supply, Public (Category A).";

On page 8, by deleting section 6.2. and replacing it with the following:

"6.2. Category A - Water Supply, Public - This category is used to describe surface waters which, after conventional treatment, are regularly used for public consumption. Compliance with the Category A criteria in Appendix D, Table 1, will be determined at the surface water intakes for the public water supplies identified in Appendix B."

On page 8, section 6.2.d. by striking the sentence that reads "The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source." and inserting a new Section 6.2.e. to read as follows:

"Section 2.e. The manganese human health criterion shall only apply within a five-mile zone above the surface water intake of the public water supplies described above."

On page 8, section 6.3.b., following the words "(see Appendix A for a representative list.)" by inserting the following: "Provided, That the streams added to Appendix A and approved by the Legislature during the 2004 regular session shall be deemed as streams nominated to be included in the list, and may only be considered trout waters pursuant to this rule after public comment

is received from each county where the stream is located, to allow meaningful opportunity for review and comment by persons who live or own property along such streams, and then promulgated in this rule as trout waters during a subsequent legislative session."

On page 11, section 7.2.a.2., by deleting the entire section;

On page 18, by inserting a new section 8.5, to read as follows:

"The chronic criterion of 5 ug/1 for dissolved selenium in Category B use waters contained in Appendix C, Table 1, section 121.b shall expire and be deleted effective on September 1, 2004 and on that date be replaced with the following standard, absent an affirmative determination by the Environmental Quality Board prior to that date that some other standard should apply, and promulgated by emergency rule: The concentration of selenium in whole-body fish tissue shall not exceed 7.9 ug/g on a dry weight basis and the 4 day average of selenium dissolved in the water shall not exceed 185 ug/1 more than once every 3 years on the average."

Beginning on page 60, by striking the following parameters and their related values from Appendix C, Table 1:

Acenaphthene, Acrolein, Anthracene, Asbestos, Benzidine, Benzo(a)anthracene, Benzo(a)Pyrene, Benzo, (b)Fluoranthene, Benzo(k)Fluoranthene, Bis(2-Chloroethyl)Ether, Bis(2-Chloroisopropyl), Ethern, Bis(2-Ethylhexyl)Phthalate, Bromoform, Butylbenzyl Phthalate, Chlorodibromomethane, 2-Chloronaphthalene, Chlorophenoxy Herbicide (2,4-D), Chlorophenoxy Herbicide (2,4,5 - TP), Chloropyrifos, Chrysene, 4,4'-DDD, 4,4'-DDE, Demeton, Dibenzo(a,h)Anthracene, 3,3'-Dichlorobenzidine, Dichlorobromomethane, 1,2-Dichloropropane, 1,3-Dichloropropene, Diethyl Phthalate, Dimethyl Phthalate, Di-n-Butyl Phthalate, Dinitrophenols, 1,2-Diphenylhydrazine, alpha-Endosulfan, beta-Endosulfan, Endosulfan Sulfate, Endrin Aldehyde, Ether Bis (Chloromethyl), Fluorene, Guthion, Heptachlor Epoxide, Hexachlorobutadiene, Hexachlorocyclo-hexane-Technical, Hexachlorocyclo-pentadiene, Hexachloroethane, Ideno(1,2,3-cd)Pyrene, Isophorone, Malathion, Methyl Bromide, Methylene Chloride, Mirex, Nitrobenzene, Nitrosamines, Nitrosodibutylamine, N, Nitrosodiethylamine, N, N-Nitrosodimethylamine, N-Nitrosodi-n-Propylamine, N-Nitrosodiphenylamine, Nitrosopyrrolidine, N, Parathion, Pentachlorobenzene, Pyrene, Sulfide - Hydrogen Sulfide, Tetrachlorobenzene, 1,2,4,5, 1,2-Trans-Dichloroethylene, Tributyltin (TBT), 1,2,4-Trichlorobenzene, 1,1,2-trichloroethane, Trichlorophenol, 2,4,5-;

On page 31, by restoring the existing list of public water supplies in Appendix B.";

And,

On page 60, Appendix C Table 1, by replacing the aluminum criterion of "87 x CFs" with "750 x CFs".

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 11, 12 and 13, 2004

Tuesday, January 13, 2004

3:00 - 5:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

Senate
Ross, Chair _____ ✓
Minard, Vice Chair _____ ✓
Snyder _____ ✓
Unger _____ ✓
Boley _____ ✓
Minear _____ ✓

House
Mahan, Chair _____ ✓
Thompson, Rick, Vice Chair _____ ✓
Cann _____ ✓
Kominar _____ ✓
Armstead _____ ✓
Faircloth _____ ✓

I certify that the attendance as noted above is correct.



Staff Person

Rule-Making Review Committee
Terri Anderson

Please return to Brenda in Room 132-E or Fax to 347-4819.

Amendment # 1
LRMRC 1-11-04
46CSR1

Proposed Chamber
Amendment

Amendment to 46 CSR 1
Water Quality Rule

_____ moves to amend the bill by deleting the following parameters and their related values from Appendix C Table 1:

Parameter Number in proposed standard	Parameter	CAS Number
1	Acenaphthene	83329
2	Acrolein	107028
7	Anthracene	120127
10	Asbestos	1332214
13	Benzidine	92875
14	Benzo(a)anthracene	56443
15	Benzo(a)Pyrene	50328
16	Benzo(b)Fluoranthene	205992
17	Benzo(k)Fluoranthene	207089
22	Bis(2-Chloroethyl)Ether	111444
23	Bis(2-Chloroisopropyl) Ether	108601
24	Bis(2-Ethylhexyl)Phthalate	117817
25	Bromoform	75252
26	Butylbenzyl Phthalate	85687
33	Chlorodibromomethane	124481
35	2-Chloronaphthalene	91587
37	Chlorophenoxy Herbicide (2,4-D)	94757
38	Chlorophenoxy Herbicide (2,4,5 -TP)	94757
39	Chloropyrifos	2921882
42	Chrysene	218019
45	4,4'-DDD	72548
46	4,4'-DDE	72559
48	Demeton	8065483
49	Dibenzo(a,h)Anthracene	53703
53	3,3'-Dichlorobenzidine	91941
54	Dichlorobromomethane	75274
58	1,2-Dichloropropane	78875
59	1,3-Dichloropropene	542756
61	Diethyl Phthalate	84662
63	Dimethyl Phthalate	131113
64	Di-n-Butyl Phthalate	84742
66	Dinitrophenols	25550587
68	1,2-Diphenylhydrazine	122667
69	alpha-Endosulfan	959988
70	beta-Endosulfan	33213659
71	Endosulfan Sulfate	1031078
73	Endrin Aldehyde	7421934
74	Ether Bis(Chloromethyl)	542881
78	Fluorene	86737
80	Guthion	86500

Parameter Number in proposed standard	Parameter	CAS Number
83	Heptachlor Epoxide	1024573
85	Hexachlorobutadiene	87683
86	Hexachlorocyclo-hexane-Technical	319868
87	Hexachlorocyclo-pentadiene	77474
88	Hexachloroethane	67721
89	Ideno(1,2,3-cd)Pyrene	193395
91	Isophorone	78591
93	Malathion	121755
97	Methyl Bromide	74839
98	Methylene Chloride	75092
100	Mirex	2385855
103	Nitrobenzene	98953
104	Nitrosamines	
105	Nitrosodibutylamine, N	924163
106	Nitrosodiethylamine, N	55185
107	N-Nitrosodimethylamine	62759
108	N-Nitrosodi-n-Propylamine	621647
109	N-Nitrosodiphenylamine	86306
110	Nitrosopyrrolidine, N	930552
113	Parathion	56382
114	Pentachlorobenzene	608935
121	Pyrene	129000
127	Sulfide - Hydrogen Sulfide	7783064
130	Tetrachlorobenzene, 1,2,4,5	95943
136	1,2-Trans-Dichloroethylene	156605
137	Tributyltin (TBT)	
138	1,2,4-Trichlorobenzene	120821
140	1,1,2-trichloroethane	79005
142	Trichlorophenol, 2,4,5-	95954

provided by EQB

NEW POLLUTANTS PROPOSED FOR ADDITION TO WV WQS RULE

	POLLUTANT	SURROUNDING STATES WITH PARAMETER CURRENTLY INCLUDED IN WQS						
		MD	VA	PA	DE	Oh. R.	KY	WV
1	Acenaphthene	X	X	X		X	X	
2	Acrolein	X		X	X	X	X	
3	Anthracene	X	X	X		X	X	
4	Asbestos	X				X		
5	Benzidine	X		X	X	X	X	
6	Benzo(a)Anthracene	X	X	X		X	X	
7	Benzo(a)Pyrene	X	X	X	X	X	X	
8	Benzo(b)Fluoranthene	X	X	X		X	X	
9	Benzo(k)Fluoroanthene	X	X	X		X	X	
10	Bis(2-Chloroethyl)Ether			X	X	X	X	
11	Bis(2-Chloroisopropyl)Ether			X		X	X	
12	Bis(2-Ethylhexyl)Phthalate	X		X	X	X	X	
13	Bromoform	X	X	X	X	X		
14	Butylbenzyl Phthalate	X	X	X		X	X	
15	Chlorodibromomethane	X	X	X		X	X	
16	2-Chloronaphthalene	X		X		X	X	
17	Chlorophenoxy Herbicide (2,4,5-TP)							
18	Chlorophenoxy Herbicide (2,4-D)		X		X	X		
19	Chloropyrene		X		X			
20	Chrysene	X	X	X		X	X	
21	4,4'DDD	X	X	X		X	X	
22	4,4'-DDE	X	X	X		X	X	
23	Chlorophenol		X					
24	Dibenzo(a,h)Anthracene	X	X	X	X	X	X	
25	3,3'-Dichlorobenzidine	X	X	X	X	X	X	
26	Dichlorobromomethane	X	X	X		X	X	
27	1,2-Dichloropropane	X		X		X	X	
28	1,3-Dichloropropene	X			X	X	X	
29	Diethyl Phthalate	X	X	X	X	X	X	
30	Dimethyl Phthalate	X		X	X	X	X	
31	Di-n-Butyl Phthalate	X		X	X	X	X	
32	Dinitrophenols (2,4, dinitrophenol?)			X?		X?	X?	
33	1,2-Diphenylhydrazine	X		X	X	X	X	
	alpha-Endosulfan	X	X	X	X?	X	X	

	POLLUTANT	SURROUNDING STATES WITH PARAMETER CURRENTLY INCLUDED IN WQS						
		MD	VA	PA	DE	Oh. R.	KY	WV
35	beta-Endosulfan	X	X	X	X?	X	X	
36	Endosulfan Sulfate	X		X	X?	X	X	
37	Endrin Aldehyde			X		X	X	
38	Ether, Bis(Chloromethyl)					X?		
39	Fluorene	X	X	X		X	X	
40	Gamma-Hexachlorocyclohexane		X				X	
41	Heptachlor Epoxide	X	X	X		X	X	
42	Hexachlorobutadiene	X		X	X	X	X	
43	Hexachlorocyclo-hexane- Technical (Lindane?)	X ?	X?	X?	X?	X?	X?	
44	Hexachlorocyclopentadiene	X		X	X	X	X	
45	Hexachloroethane	X		X	X	X	X	
46	Ideno(1,2,3-cd)Pyrene	X	X	X		X	X	
47	Isophorone	X	X	X	X	X	X	
48	Maldathion		X					
49	Methyl Bromide	X				X	X	
50	Methylene Chloride	X		X		X	X	
51	Mirex		X					
52	Nitrobenzene	X	X	X	X	X		
53	Nitrosamines					X		
54	Nitrosodibutylamine,N					X		
55	Nitrosodiethylamine,N					X		
56	N-Nitrosodimethylamine	X		X	X	X	X	
57	N-Nitrosodi-n-Propylamine	X		X	X	X	X	
58	N-Nitrosodiphenylamine	X		X	X	X		
59	Nitrosopyrrolidine,N					X		
60	Parathion		X					
61	Pentachlorobenzene					X		
62	Pyrene	X	X	X		X		
63	Sulfide Hydrogen Sulfide		X					
64	Tetrachlorobenzene,1,2,4,5-					X		
65	1,2-Trans-Dichloroethylene	X		X		X		
66	Triobutyltin (TBT)	X	X					
67	1,2,4 - Trichlorobenzene	X	X	X	X	X		
68	1,1,2-Trichloroethane	X		X	X	X		
69	Trichlorophenol,2,4,5-					X		

Notes:

Shaded rows indicate parameters for which only aquatic life criteria are proposed for addition to the WV Water Quality Standards. No human health criteria are proposed for addition for these parameters.

WV The above parameters proposed for addition to the WV Water Quality Standards are included in EPA's National Recommended Water Quality Criteria: 2002. This December 2002 document included new parameters and updated criteria for existing parameters as well as criteria added by EPA to its National Recommended Criteria in 1999.

MD Maryland's Water Quality Standards became effective in June 2001.

VA Virginia has a "final draft Water Quality Standards" which is not yet effective. This update will add many of the parameters above which are not yet part of the Virginia Water Quality Standards.

PA According to EPA's web site, the latest amendments to Pennsylvania's criteria became effective on August 2, 2001. Thus, these standards likely would not include parameters added by EPA in 2002.

DE Delaware's Water Quality Standards were last amended on August 11, 1999. Thus, these standards likely would not include parameters added by EPA to its National Recommended Water Quality Criteria in 2002. Delaware is currently undergoing a triennial review in which they are adding many of the pollutants that are in EPA's National Recommended Water Quality Criteria : 2002 document. Delaware's goal is to finalize these changes by spring 2004.

OH Ohio has watershed specific water quality standards. For this analysis, only the Ohio River standards were viewed since that is the watershed most applicable to a review of West Virginia Water Quality Standards. These standards became effective December 30, 2002.

KY The effective water quality standards in Kentucky, used in this analysis, have a 1999 effective date and thus likely would not include parameters added by EPA to its National Recommended Water Quality Criteria in 2002. Kentucky is currently (fall 2003) updating its water quality criteria and it appears that they are incorporating the majority of criteria from U.S. EPA's National Recommended Water Quality Criteria: 2002. If all criteria contained in Kentucky's proposed rule are finalized, the majority of the 69 pollutants would then be included in Kentucky's water quality standards.

_____ moves to amend 46CSR1 as follows:

On page 8, Section 6.3.b., to read:

6.3.b Category B2 - Trout waters. - As defined in §2.20, herein (see Appendix A for a representative list.) Provided, That the streams added to Appendix A and approved by the Legislature during the 2004 regular session shall be deemed as streams nominated to be included in the list, and may only be considered trout waters pursuant to this rule after public comment is received from each county where the stream is located, and then promulgated as trout waters during a subsequent legislative session. Public comment shall consist of publishing the list of streams in the county in a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The notice shall contain, in abbreviated form, a description of each stream, the impact of such designation on those who use the stream, and the address of the board to send comments. The notice shall state that written comments on the stream will be accepted until a specified date, within thirty days after the first date of publication of the notice. The publication area of the notice required by this section is the county or counties in which any portion of the proposed permit area is located.

**Selenium Standards
Amendment to 46 CSR 1**

[Senator/Delegate] moves to amend [name of current rulemaking proposal] by providing that the the chronic criterion of 5 ug/l for dissolved selenium in Category B use waters in proposed Appendix C, Table 1, section 121.b shall expire and be deleted effective on September 1, 2004 and on that date be replaced with the following standard, absent an affirmative determination by the Environmental Quality Board prior to September 1, 2004 that some other standard should apply:

"The concentration of selenium in whole-body fish tissue shall not exceed 7.9 ug/g on a dry weight basis and the 4 day average of selenium dissolved in the water shall not exceed 185 ug/l more than once every 3 years on the average."

Amendment 2.4

**Aluminum Standards
Amendment to 46 CSR 1**

[Senator/Delegate] moves to amend [name of current rulemaking proposal]_ by inserting the following with the following amendment:

Replace the chronic aluminum criterion of $87 \times \text{CF}^3$ for Category B uses in Appendix C, Table 1, section 5 with $750 \times \text{CF}^3$

**Manganese Standard
Amendment to 46 CSR 1**

[Senator/Delegate] moves to amend [name of current rulemaking proposal] by inserting the following with the following amendments:

6.2.d All other surface water intakes where the water is used for human consumption. (See Appendix B for partial listing of Category A waters; see section 7.2.a.2, herein for additional requirements of Category 1 waters). ~~The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source.~~

6.2.e The manganese human health criterion shall only apply within a five-mile zone above the surface water intake of the public water supplies described above.

Also, the reference in proposed Appendix C, Table 1 at section 93 should be amended as follows:

93 Manganese (see §6.2.d & .e)

Amendment # 4
LRMPC 1-11-04
46CSR1

manufacturing assets
amendment

**Changes to Water Quality Standards to Clarify that the
Category A Use does not Apply State-wide
December 9, 2003**

1. Delete 46 C.S.R. 1-5.2.c and replace it with the following:

5.2.c If a discharge will cause or contribute to concentrations of pollutants which exceed criteria for the protection of human health set forth in Appendix C at a public water supply intake, such discharge shall not be allowed unless a mixing zone has been assigned by the Director, after consultation with the Commissioner of the West Virginia Bureau of Public Health, to prevent interference with the Category A use. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake.

2. Delete Section 5.2.h.6.

3. Add the following as the third sentence in Section 6.1:

Only those waters at the point of intake for a public water supply are designated for Water Supply, Public (Category A).

4. Delete Section 6.2 and replace it with the following:

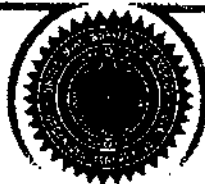
6.2 Category A - Water Supply, Public - This category is used to describe surface waters which, after conventional treatment, are regularly used for public consumption. Compliance with the Category A criteria in Appendix D, Table 1, will be determined at the surface water intakes for the public water supplies identified in Appendix B.

5. Delete Section 7.2.a.2.

6. Restore the list of public water supplies in Appendix B.

United Mine Workers of America

CECIL E. ROBERTS
INTERNATIONAL PRESIDENT



TELEPHONE
(703) 208-7220
FAX (703) 208-7132

UNITED MINE WORKERS' HEADQUARTERS
6315 LEE HIGHWAY

Blairfax, VA

22031 2218

January 13, 2004

Hon. Robert Kiss, Speaker of the House of Delegates
Hon. Earl Ray Tomblin, President of the Senate

Re: Legislative Rulemaking Concerning Coal Resource Transportation System (CRTS); Rules Adopted by the Public Service Commission, by Order of November 21, 2003, 150 C.S.R. Series 27

Gentlemen:

The International Union, United Mine Workers of America, submits the following comments concerning the above-referenced regulations, hereinafter referred to as Coal Transportation Rules ("CTR"), recently adopted by the Public Service Commission to implement the Coal Resource Transportation System ("CRTS") established under Senate Bill No. 583, 2003 Regular Session.¹ The rules have been submitted by the Commission to the Legislature. The UMWA submitted comments in the course of the proposed rule making and notes that some of its suggestions were adopted by the Commission. In the following, the UMWA addresses both the matters which it believes were not properly resolved by the Commission and those that were, at least in part:

1. Waiver of Coal Transportation Rules – The Commission adopted the suggestion of the UMWA that notice be provided whenever exceptions from the rules were sought but did not accept the comment that the Commission establish standards for such exceptions. While recognizing the need for notice, the CTR did not provide for any lapse of time between the time legal notice is published and the request for exceptions are either heard (for which notice should be given) and decided. Although essential in any situation, adequate notice and the opportunity to review the application and submit relevant information for consideration by the Commission is all the more important because the Commission has taken the position that the situations for which waivers could be considered are too varied to establish any standards.

Safety Inspection and Training -- In response to the UMWA's request that safety checks and inspections and training requirements be set forth in the CTS, the Commission pointed out that it already borrows certain provisions from the Federal Highway Administration on these matters. Since conclusion, the importance of enforcement of these regulations, both from the point of view of the employees working in or around the trucks and communities through which the trucks pass cannot be overstated, the UMWA urges you to impress upon the Commission the importance of full enforcement of safety and training requirements.

Effective date -- The Commission stood firm in the face of industry requests to delay implementation of Senate Bill 583 until finalization and designation of the CRTS. The UMWA urges you to do the same.

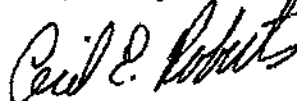
Penalty for failing to file timely reports -- The PSC proposed and finally adopted a maximum penalty of "up to \$100" for violations of the all-important timely and accurate reporting of coal shipments and scoffed at our characterization of the maximum amount of the penalty as being "peanuts." Unfortunately, the UMWA has witnessed an erosion of the effectiveness of mine safety enforcement through the trivialization of mine safety fine procedure. The Commission represented that if, upon experience, the amount of the administrative sanction appears insufficient, "the Commission will revisit this issue ...". Any fine should, in any event, not be less than \$100. Otherwise, we encourage you to monitor the Commission in this regard, as the UMWA intends to do.

Public access to reports -- The Commission, as required by the Freedom of Information Act,² correctly recognized that reports required by SB 583 to be filed with the Commission are public information within the meaning of the FOIA. There is a very narrow exception in Senate Bill 583, West Virginia Code §17C-17A-3(B)(1), for any "trade secrets" which may be present in documents collected in the very limited context of "inspections" by the "Commission" of "all trucking-related records of shippers ...". In response to certain industry arguments which attempted to use §17C-17A-3(B)(1) to broaden this narrow exception for trade secrets revealed during the course of inspections by the Commission, the Commission noted that §3(B)(1) is not intended to protect reports filed with the Commission. The only possible exception to the public information status of those reports would be the "trade secrets" exception to FOIA, which is narrowly defined.³ It is difficult to understand how the weight of a commodity being shipped from one point to another could ever constitute a trade secret. The Commission wisely, and as required by FOIA, left resolution of these questions to the FOIA.

Delay in issuance of citations -- With regard to the administrative procedure for issuance of citations set forth in §5, the Commission has changed the mandatory requirement that its staff "will issue a notice of violation no later than thirty days from the date of the citation ..." to a permissive "may." §§5.3 and 5.4. Absent some acceptable explanation of this change, the thirty-day regulation appears to be reasonable and no reason is offered as to why it would take more than thirty days in the normal course of business to issue such a citation. The modification does not even set another maximum

period of time; instead, the amendment removes any requirement that the notice of violation be issued within a finite period of time. Actually, at the onset of a program, it is important to establish the credibility and effectiveness of the enforcement efforts. For that reason, the thirty-day maximum in the original proposed rules should be maintained.

Respectfully submitted,



Cecil Roberts

cc: Members of Rules Committee

Endnotes

1. The statute primarily in question is found at West Virginia Code §17C-17A-1 et seq.
2. West Virginia Code §29B-1-1, et seq.
3. West Virginia Code §29B-1-4(1).

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: _____

Date _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Allan S. Tweedle.	Kanawha City E Council 25304	E Council	
Karen Price	WVMA		
Les Shoemaker Jr	WVFB		
Bill RANEY	WVCA		
Chris Hamilton	WVCAAS	WV Coal	
Tom Boyd	WVCOE Charleston		
Cory DeMarco	WVONGA Charleston	WV OIL & NATURAL GAS ASSOC	
Chuck Boggs	WVPSG		
Mike Browning	WVPSG Brooks St	WVPSG	
Jeff DAVIS	710 Central, CHAS.	WV PSC	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Date 1/13/04
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
<i>W. L. Lester</i>	1509 Hansford St.	WV Outdoor Adv. Assoc.	
Brian D. Conley	135 Colonial Dr.	WV Outdoor Adv. Assoc.	✓
JOHN E. Liller	924 4 th St West Hunt.	WV Outdoor Adv. Assoc.	
JOHN L. RAY	1509 Hansford St.	WV Outdoor Adv. Assoc.	
SAM PARKINS	1509 Hansford St.	WV Outdoor Adv. Assoc.	
Ted HARVEY	4500 MacCorkle Csw	WmWA	IF NEEDED
DON GARVIN	Rt. 6 Rt. 6, Box 627 Buckhannon	WV Environmental Council	✓
Shane Barker	1415 Lee St. B.	HEPC	
William Light	1900 Kan. Bldg. Charleston	WV DOT	
<i>J. J. White</i>	4519 B-5 Wash St. E.	WV DOT	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: _____

Date _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
F CRABTREE	201 BROOKS ST, CHAS	PSC	
G. Edge H	701 Brooks St Chas	PSC	
Ken Ward J	Charleston-Laurette	_____	

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, January 13, 2004
3 p.m. to 5 p.m.
Senate Judiciary Committee Room, 208W

1. Review of Legislative Rules:

Amended
a. ~~Environmental Quality Board~~
Requirements Governing Water Quality Standards, 46CSR1

- Foot of Agenda January 11
- No Action Taken December 8
- No Action Taken November 16
- Laid over from October 21, 2003
- NO Technical Modifications

modify amendment
b. ~~Public Service Commission~~
Rule and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150CSR27

- No Action Taken January 11
- Technical Modifications

modified
c. ~~Division of Highways~~
Use of State Road Rights of Way and Adjacent Areas, 157CSR6

- No Action Taken January 11
- Rita

2. Other Business

Tuesday, January 13, 2004

3:00 - 5:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair ✓
Minard, Vice Chair ✓
Snyder ✓
Unger ✓
Boley ✓
Minear ✓

House

Mahan, Chair ✓
Thompson, Rick, Vice Chair ✓
Cann ✓
Kominar ✓
Armstead ✓
Faircloth ✓

Old 1 od b Ross

b 150 CSR 27

gpi explained to rule 10 responded 1 go 10
Richard Hitt, Council PSC, responded 1

gs 2 r cmle 10

Jefferson Davis - w/ ref on spec PSC,
responded 1 gs 2 r cmle 10

Bill Rarnig, w/ Coal Assn, responded
1 gs 2 r cmle 10

Del Caputo - adv to cmle r responded 1
gs 10

Fred Van Kirk - Cmsh v Suway, responded
1 gs 2 r cmle 10

Cann modify 4.4 kmpl rpt of regnts
shps U 80,000

Agency age w/ modifca. (7) No

Cant - amndm - Yes Mahan, Thompson "No"

~~Moran amndm -~~

Mahan - modified + amndm

- c. Highways 157 CSR 6
rep - pplar to ml (0)
Bill Light - respndd l gr
Bria Connelly -
Munard - modified

a. EQB 46 CSR 1

pa pplar to ppl v t ml, upland
amndms delibuld l cmle mlbr,
respndd l gr (0)

Lily Chaffell - lcncl advn EQB
respndd l gr L cmle (0)

Don Gardner w/ environml Council -
adrsd to cmle (0) respndd l
gr (0)

Snyder amndms

Nuclear amndm ~~adrsd~~ get L Jue

Snyder - as amndd to a pres
adpld

Amper - s field - v remurdat x
x amams adplor

Wngs - dret sf x rit li x
Bd - psd - eC amurdm

Thmpm - rpt mot - adplor