

DECEMBER 12

Monday, December 12, 2005

6:00 p.m. to 8:00 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

Minard, Chairman
Fanning, Vice Chair Absent
Prezioso
Unger
Boley
Minear

Mahan, Chairman
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

The meeting was called to order by Mr. Minard, Co-Chair.

The minutes of the November 13 and 14 2005, meeting were approved.

Rita Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia Racing Commission, Greyhound Racing, 178CSR2**, stated that the Board has agreed to technical modifications and responded to question from the Committee.

Ms. Mahan moved that the proposed rule be laid over until the January Interims.

Jeff Blades, Counsel, with the West Virginia Racing Commission responded to question from the Committee.

Linda Lacy, Executive Secretary, with the West Virginia Racing Commission responded to question from the Committee.

Roger White, President of the West Virginia Greyhound Owners and Breeders Association, responded to question from the Committee.

The motion was adopted.

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **Department of Natural Resources, Lifetime Hunting, Trapping and Fishing Licenses, 58CSR67**.

Ms. Mahan moved that the proposed rule be approved.

Steve Brown with the Department of Natural Resources Wildlife Section responded to question from the Committee.

The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Consolidated Public Retirement Board, Benefit Determination and Appeals, 162CSR2**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Consolidated Public Retirement Board, Teacher's Defined Benefit Plan, 162CSR4**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Consolidated Public Retirement Board, Service Credit for Accrued and Unused Sick and Annual Leave, 162CSR8**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Consolidated Public Retirement Board, West Virginia State Police, 162CSR9**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Consolidated Public Retirement Board, Deputy Sheriff Retirement System, 162CSR10**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Division of Motor Vehicles, Denial Suspension, Restriction or Non-Renewal of Driving Privileges, 91CSR5**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Steven O. Dale, Executive Assistant to the Commissioner, with the Division of Motor Vehicles responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Division of Motor Vehicles, Motor Vehicle Dealers and Other Business Regulated by the Division of Motor Vehicles, 91CSR6**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **WV Board of Optometry, Rules of the West Virginia Board of Optometry, 14CSR1**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **WV Board of Optometry, Schedule of Fees, 14CSR5**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Graham explained her abstract on the rule proposed by the **State Tax Department, Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes, 110CSR1I**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **State Tax Department, Business Registration Certificate - Suspension, Cancellation, Refusal to Renew or Refusal to Issue for Failure to Pay Personal Property Taxes, 110CSR12D**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

John Montgomery, Managing Attorney, with the State Tax Department responded to questions from the Committee.

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

Ms. Graham explained her abstract on the rule proposed by the **Department of Agriculture, Animal Disease Control, 61CSR1**, and handout. She also stated that the Board has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Department of Agriculture, Certified Pesticide Applicator Rules, 61CSR12A**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Department of Agriculture, Integrated Pest Management Programs in Schools and Day Care Centers/Facilities, 61CSR12J**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the **WV Board of Osteopathy, Osteopathic Physician Assistants, 24CSR2**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Doren Burrell, Senior Assistant to the Attorney General, responded to questions from the Committee.

Ms. Mahan moved to amend the proposed rule on page four, subsection 2.6.1, by striking out the words 'three (3) physician assistants' and inserting in lieu thereof, the following 'two (2) physician assistants'. The motion was adopted.

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

Ms. Graham explained her abstract on the rule proposed by the **Board of Examiners of Psychologists, Qualifications for Licensure as a Psychologist and/or a School Psychologist, 17CSR3**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Radiologic Technology Board of Examiners, Standards of Ethics, 18CSR5**, and stated that the Board has agreed to technical modifications.

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

Ms. Pauley explained her abstract on the rule proposed by the **WV Board of Dental Examiners, Fees Established by the Board, 5CSR3**.

Mark Harman, Executive Secretary effective January 1, 2006, with the WV Board of Dental Examiners addressed the Committee and responded to questions.

Ms. Mahan moved that the proposed rule be approved.

Jason Webb, Lobbyist for the Dental Hygienists, addressed the Committee and responded to questions.

Richard Stevens with the Dental Assistants addressed the Committee.

The motion was adopted with a 5-3 vote.

Ms. Pauley reviewed her abstract on the rule proposed by the **WV Board of Dental Examiners, Dental Advertising, 5CSR8**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Department of Natural Resources, Miscellaneous Permits and Licenses, 58CSR64**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Dr. Ronn A. Grandia, Executive Director of West Virginia Deer Farmers Association, addressed the Committee.

Joe Calvert with the West Virginia Wildlife Federation addressed the Committee.

Les Shoemaker, Director of Government Affairs, with the West Virginia Farm Bureau addressed the Committee.

Frank Jeslow, Director of the Department of Natural Resources addressed the Committee and responded to questions.

Ms. Mahan moved that the proposed rule be approved as modified.

Paul Johansen with the Division of Natural Resources responded to questions from the Committee.

Ms. Mahan moved the previous question. The motion was rejected.

Further discussion.

Mr. Minard moved that the Board be requested to withdraw the proposed rule. The motion was adopted.

The meeting was adjourned.

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 11, 12 and 13, 2005

Monday, December 12, 2005

6:00 - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

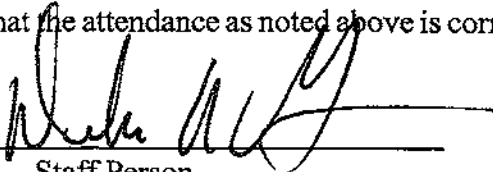
Senate

Minard, Chair _____ ✓
Fanning, Vice Chair _____ ✓
Prezioso _____ ✓
Unger _____ ✓
Boley _____ ✓
Minear _____ ✓

House

Mahan, Chair _____ ✓
Palumbo, Vice Chair _____ ✓
Cann _____ ✓
Pino _____ ✓
Armstead _____ ✓
Overington _____ ✓

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

DECEMBER INTERIM ATTENDANCE

Legislative Interim Meetings
December 11, 12 and 13, 2005

Monday, December 12, 2005

6:00 p.m. - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Minard, Chair
Fanning, Vice Chair
Prezioso
Unger
Boley
Minear

✓
✓
✓
✓
✓
✓

Mahan, Chair
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

✓
✓
✓
✓
✓
✓

minutes of 11/13 & 11/14 approved

WV Racing Commission

Rita explained & answered questions

Mahan adopted
to meet lay over til January to allow Racing Commission

Jeff Blades, Counsel ans'd questions

Linda Lacey, Exec Dir " "

Roger White, Pres WV owners & Breeders Assn

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, December 12, 2005
6:00 p.m. and 8:00 p.m.
Senate Finance Committee Room

1. Approval of Minutes - Meetings of November 13 and 14, 2005
2. Review of Legislative Rules:

Approved ✓

a. **Division of Natural Resources**
Lifetime Hunting, Trapping and Fishing Licenses
58CSR67

- Laid Over
- Approve

*Foot of agenda
Ask to withdraw*

b. **Division of Natural Resources**
Miscellaneous Permits and Licenses
58CSR64

- Approve as Modified

Previous question ~~is~~

Rejected

Steve Brown responds to questions

*Approved ✓
as modified*

Consolidated Public Retirement Board
Benefit Determination and Appeal
162CSR2

- Approve as Modified

*Approved ✓
as modified*

Consolidated Public Retirement Board
Teachers' Defined Benefit Plan
162CSR4

- Approve as Modified

*Approved ✓
as modified*

Consolidated Public Retirement Board
Service Credit for Accrued and Unused Sick and Annual Leave
162CSR8

- Approve as Modified

*Approved ✓
as modified*

Consolidated Public Retirement Board
West Virginia State Police
162CSR9

- Approve as Modified

Approved
as modified

Consolidated Public Retirement Board
Deputy Sheriff Retirement System
162CSR10

- Approve as Modified

Approved
as modified

Division of Motor Vehicles
Denial Suspension, Restriction or NonRenewal of Driving Privileges
91CSR5

- Approve as Modified

Approved
as modified

Division of Motor Vehicles
Motor Vehicle Dealers and Other Business Regulated by the Division of Motor Vehicles
91CSR6

- Approve as Modified

Approved

WV Board of Optometry
Rules of the West Virginia Board of Optometry
14CSR1

- Approve

Approved

WV Board of Optometry
Schedule of Fees
14CSR5

- Approve

Approved

State Tax Department
Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes
110CSR11

- Approve

Approved
as modified

State Tax Department
Business Registration Certificate - Suspension, Cancellation, Refusal to Renew or Refusal to Issue for Failure to Pay Personal Property Taxes
110CSR12D

- Approve as Modified

n. **Department of Agriculture**
Animal Disease Control
61CSR1

- Approve as Modified

Approved
as modified

Department of Agriculture
Certified Pesticide Applicator Rules
61CSR12A

- Approve as Modified

Approved
as modified

Department of Agriculture
Integrated Pest Management Programs in Schools and Day Care
Centers/Facilities
61CSR12J

- Approve as Modified

Approved
as modified
and amended

WV Board of Osteopathy
Osteopathic Physician Assistants
24CSR2

- Approve as Modified
Amended 3 to 2 PA's

Approved
as modified

Board of Examiners of Psychologists
Qualifications for Licensure as a Psychologist and/or a
School Psychologist
17CSR3

- Approve as Modified

Laid over ✓

West Virginia Racing Commission
Greyhound Racing
178CSR2

- Approve as Modified

Approved
as modified

Radiologic Technology Board of Examiners
Standard of Ethics
18CSR5

- Approve as Modified

Approved
5-3

WV Board of Dental Examiners
Fees Established by the Board
5CSR3

- Approve

Approved
as modified

WV Board of Dental Examiners
Dental Advertising
5CSR8

- Approve as Modified

3. Other Business

DECEMBER INTERIM ATTENDANCE

Legislative Interim Meetings
December 11, 12 and 13, 2005

Monday, December 12, 2005

6:00 p.m. - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Minard, Chair ✓
Fanning, Vice Chair ✓
Prezioso ✓
Unger ✓
Boley ✓
Minear ✓

Mahan, Chair ✓
Palumbo, Vice Chair ✓
Cann ✓
Pino ✓
Armstead ✓
Overington ✓

Minard called meeting to order
Approval of Minutes
move Racing to first
move 58CSR 64 to foot

- Racing Comm. 178CSR 2
Rita Explained & answered questions
Mahan moved by over rule
Jff Blades, Counsel racing commission answer ?'s
Linda Racy answer ?'s
Roger White ^{President of the} WU Grayhound ^{OWNERS?} Breeders ASSOC ? answered ?
Motion approved - rule laid over

- DNR 58CSR 67
Debra explained & answered questions
Mahan moved the rule
Steve Brown, with wildlife section, DNR, answered ?'s
Approved ~~and passed~~

- CPRB 162CSR2
Debra explained
Mahaw moved
Approved as modified

- CPRB 162CSR4
Debra explained & answered ?'s
Mahaw moved
Approved as modified

- CPRB 162CSR8
Debra explained
Mahaw moved
Approved as modified

- CPRB 162CSR9
Debra explained
Mahaw moved
Approved as modified

- CPRB 162CSR10
Debra explained
Mahaw moved
Approved as modified

- DMU 91CSR5
Debra explained & answered questions
Steve Dale w/DMU answered ?'s
Mahaw moved - Approved as modified

- DMU 91CSR6

Debra explained

Mahan moved

Approved as modified

- Optometry 14CSR1

Debra explained

Mahan moved

Approved

- Optometre 14CSR5

Debra explained

Mahan moved

Approved

- State Tax 110CSR11

Debra explained

Mahan moved

Approved

- State Tax 110CSR12D

Debra explained ; answered ?'s

John Montgomery w/ Tax Dept. answered ?'s

Mahan moved

Approved as modified

- Agriculture 61CSR1
Debra explained rule; handout
Mahaw moved
Approved as modified

- Agriculture 61CSR12A
Debra explained
Mahaw moved
Approved as modified

- Agriculture 61CSR12J
Debra explained
Mahaw moved
Approved as modified

- Osteopathy 24CSR2
Debra explained; answered questions
Doreen Burrell answered questions
Mahaw moved rule
Mahaw amendment from osteo^{tech} from 3 to 2
Approve amendment
Approve as modified

- Psychologists 17CSR3
Debra explained
Mahaw
Approved as modified

- Rad. Tech. 18CSR5
Debra explained
Mahan moved
Approved as modified

- Dental 5CSR3
Rita explained
Mark Harman, executive secretary of W Bd of Dental ^{effective 11/100} _{examined}
Mahan moved
Jason Webb, lobbyist for Dental Hygienists Association ^{addressed the Comm and answered ?'s}
Richard Stevens w/ Dental Assistants ^{addressed the Comm and answered ?'s}
addressed the Committee

Approved ~~XXXXXXXXXX~~
5-3 vote

- Dental 5CSR8
Rita Explained
Mahan moved
Approved as modified

- DNR 58CSR64
- Debra explained & answered ?'s
- Dr. Grandia, Executive Director addressed the committee
- Bob Calogret, WW Wildlife Federation Addressed the committee
- Les Shoemaker, ^{Director} addressed the committee
- Frank Teslow, Director of DNR addressed the Comm. ; answered ?'s
- Mahan moved

- Paul Johansen answered ?'s
- moved previous question (move as modified)
- Noes have it to move on the rule - further discussion
- Minard ask could it be worked out or agree to withdrawal - answer is no
- asked the Division to withdrawal
- motion disapproved
- motion to withdrawal
- motion adopted

meeting adjourned

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12.12.05

TIME: 8:12pm

NAME

Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker

Mahan, Virginia, Co-Chair

Palumbo

~~Thompson, Rick, Vice Chair~~

Cann, Samuel

Pino

~~Kominar, Steven~~

Armstead, Tim

Overington

~~Fairecloth, Larry V.~~

Yes
Nay
Absent
~~Yes~~ Yes
Nay
~~Yes~~ Nay

SENATE

Tomblin, Earl Ray, President

Minard

~~Ross, Michael, Co-Chair~~

Fanning

~~Minard, Joseph, Vice-Chair~~

Rezias

~~Snyder, Herb~~

Unger, John

Boley, Donna

Minear, Sarah

TOTAL

Yes
Absent
~~Nay~~ Yes
Absent
Yes
Absent
Yes
5 yes 3 Nay

RE:

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, December 12, 2005
6:00 p.m. and 8:00 p.m.
Senate Finance Committee Room

1. **Approval of Minutes** - Meetings of November 13 and 14, 2005
2. **Review of Legislative Rules:**
 - a. **Division of Natural Resources**
Lifetime Hunting, Trapping and Fishing Licenses
58CSR67
 - Laid Over
 - Approve
 - b. **Division of Natural Resources**
Miscellaneous Permits and Licenses
58CSR64
 - Approve as Modified *moved to foot of agenda*
 - c. **Consolidated Public Retirement Board**
Benefit Determination and Appeal
162CSR2
 - Approve as Modified
 - d. **Consolidated Public Retirement Board**
Teachers' Defined Benefit Plan
162CSR4
 - Approve as Modified
 - e. **Consolidated Public Retirement Board**
Service Credit for Accrued and Unused Sick and Annual Leave
162CSR8
 - Approve as Modified
 - f. **Consolidated Public Retirement Board**
West Virginia State Police
162CSR9
 - Approve as Modified

- g. **Consolidated Public Retirement Board**
Deputy Sheriff Retirement System
162CSR10
- Approve as Modified
- h. **Division of Motor Vehicles**
Denial Suspension, Restriction or NonRenewal of Driving Privileges
91CSR5
- Approve as Modified
- i. **Division of Motor Vehicles**
Motor Vehicle Dealers and Other Business Regulated by the Division of Motor Vehicles
91CSR6
- Approve as Modified
- j. **WV Board of Optometry**
Rules of the West Virginia Board of Optometry
14CSR1
- Approve
- k. **WV Board of Optometry**
Schedule of Fees
14CSR5
- Approve
- l. **State Tax Department**
Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes
110CSR1I
- Approve
- m. **State Tax Department**
Business Registration Certificate - Suspension, Cancellation, Refusal to Renew or Refusal to Issue for Failure to Pay Personal Property Taxes
110CSR12D
- Approve as Modified
- n. **Department of Agriculture**
Animal Disease Control
61CSR1
- Approve as Modified

- o. **Department of Agriculture**
Certified Pesticide Applicator Rules
61CSR12A
 - Approve as Modified

 - p. **Department of Agriculture**
Integrated Pest Management Programs in Schools and Day Care Centers/Facilities
61CSR12J
 - Approve as Modified

 - q. **WV Board of Osteopathy**
Osteopathic Physician Assistants
24CSR2
 - Approve as Modified ? Amended

 - r. **Board of Examiners of Psychologists**
Qualifications for Licensure as a Psychologist and/or a School Psychologist
17CSR3
 - Approve as Modified

 - s. **West Virginia Racing Commission**
Greyhound Racing moved to front of the agenda
178CSR2 laid over
 - Approve as Modified

 - t. **Radiologic Technology Board of Examiners**
Standard of Ethics
18CSR5
 - Approve as Modified

 - u. **WV Board of Dental Examiners**
Fees Established by the Board
5CSR3
 - Approve

 - v. **WV Board of Dental Examiners**
Dental Advertising
5CSR8
 - Approve as Modified
3. **Other Business**

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: LRMRC

Date 12:12:05

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
RON GARDNER	P.O. Box B Fraziers Butte	West Virginia Deer Farmers	X
MARC HARMAN		WV Bd. of DENTAL EX.	if needed
Joe Calvert	Crab Orchard, WV Farm Bureau	WV Wildlife Federation	Yes
Frank Jegero	DNR		

DECEMBER 13

Tuesday, December 13, 2005

12:00 p.m. to 2:00 p.m.

Legislative Rule-Making
Review Committee
(Code S29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Minard, Chairman
Fanning, Vice Chair Absent
Prezioso
Unger
Boley
Minear

Mahan, Chairman
Palumbo, Vice Chair
Cann
Pino
Armstead Absent
Overington

The meeting was called to order by Ms. Mahan, Co-Chair.

Brian Skinner, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Administration - Leasing Section, Leasing Space on Behalf of State Spending Units, 148CSR2**, and stated that the Board has agreed to technical modifications.

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

Joe Altizer, Associate Counsel, explained his abstract on the rule proposed by the **Department of Environmental Protection - Office of Air Quality, Mercury Budget Trading Program to Reduce Mercury Emissions, 45CSR37** and responded to questions from the Committee.

Don Garvin, Legislative Coordinator, with the WV Environmental Council addressed the Committee.

David Flannery with the West Virginia Chamber of Commerce addressed the Committee and responded to questions.

John Benedict, Director, with the Office of Air Quality addressed the Committee and responded to questions.

Ms. Boley moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Department of Environmental Protection - Office of Air Quality, Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides, 45CSR39**.

Mr. Palumbo moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer explained his abstract on the rule proposed by the **Department of Environmental Protection - Office of Air Quality, Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides, 45CSR40.**

Mr. Palumbo moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed her abstract on the rule proposed by the **Department of Environmental Protection - Office of Air Quality, Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide, 45CSR41.**

Mr. Palumbo moved that the proposed rule be approved. The motion was adopted.

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **West Virginia State Auditor's Office, State Purchasing Card Program, 155CSR7,** and stated that the Board has agreed to technical modifications.

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

Ms. Pauley reviewed her abstract on the rule proposed by the **West Virginia Conservation Agency, State Conservation Committee, 63CSR1,** stated that the Board has agreed to technical modifications and responded to questions.

Joe Gumm with the Tiger Valley Conservation District responded to questions from the Committee.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained her abstract on the rule proposed by the **WV State Fire Commission, Standards for the Certification and Continuing Education of Municipal, County, and other Public Sector Building Code Officials, Building Code Inspectors, and Plans Examiners, 87CSR7,** stated that the Board has agreed to technical modifications.

Doren Burrell, Senior Assistant to the Attorney General and Counsel to the WV State Fire Commission, responded to questions from the Committee.

Anthony Carrico with the Office of the State Fire Marshal responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Public Water Systems, 64CSR3**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Walter Ivey with the Bureau for Public Health responded to questions from the Committee.

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

Ms. Graham explained her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Reportable Diseases, Events and Conditions, 64CSR7**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Ann Spaner with the Bureau for Public Health responded to questions from the Committee.

Chris Curtis, Commissioner for the Bureau for Public Health, responded to questions from the Committee.

Loretta Hatty with the Bureau for Public Health responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Assisted Living Residences, 64CSR14**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Fees for Permits, 64CSR30**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Brad Cockran with the Office of Health Services responded to questions from the Committee.

Stan Walls with the Beckley/Raleigh County Health Department responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Lead Abatement Licensing, 64CSR45**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

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

Ms. Graham explained her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Cancer Registry, 64CSR68**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Ms. Hatty responded to question from the Committee.

John Law with the Department of Health and Human Resources responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Alzheimer's/Dementia Special Care Units and Programs, 64CSR85**, and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Bureau for Public Health, Department of Health and Human Resources, Regulation of Opioid Treatment Programs, 64CSR90**, and stated that the Board has agreed to technical modifications.

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

Connie Bowling, 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 responded to questions from the Committee.

Mr. Palumbo moved that proposed rule be laid over until the January Interims. The motion was adopted.

The meeting was adjourned.

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 11, 12 and 13, 2005

Tuesday, December 13, 2005

12:00 - 2:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

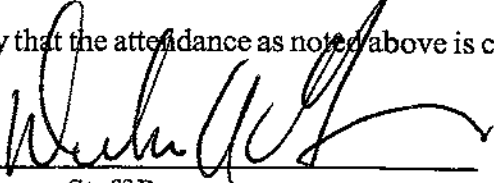
Senate

Minard, Chair ✓
Fanning, Vice Chair ✓
Prezioso ✓
Unger ✓
Boley ✓
Minear ✓

House

Mahan, Chair ✓
Palumbo, Vice Chair ✓
Cann ✓
Pino ✓
Armstead ✓
Overington ✓

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, December 13, 2005
12:00 p.m. and 2:00 p.m.
Senate Finance Committee Room

1. **Review of Legislative Rules:**
 - a. **Department of Administration - Leasing Section**
Leasing Space on Behalf of State Spending Units
148CSR2
 - b. **Department of Environmental Protection- Office of Air Quality**
Mercury Budget Trading Program to Reduce Mercury Emissions
45CSR37
 - c. **Department of Environmental Protection- Office of Air Quality**
Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides
45CSR39
 - d. **Department of Environmental Protection- Office of Air Quality**
Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides
45CSR40
 - e. **Department of Environmental Protection- Office of Air Quality**
Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide
45CSR41
 - f. **WV State Auditor's Office**
State Purchasing Card Program
155CSR7
 - g. **West Virginia Conservation Agency**
State Conservation Committee
63CSR1
 - h. **WV State Fire Commission**
Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code Officials, Building Code Inspectors, and Plans Examiners
87CSR7

- i. **Bureau for Public Health, Department of Health and Human Resources**
Public Water Systems
64CSR3
- j. **Bureau for Public Health, Department of Health and Human Resources**
Reportable Diseases, Events and Conditions
64CSR7
- k. **Bureau for Public Health, Department of Health and Human Resources**
Assisted Living Residences
64CSR14
- l. **Bureau for Public Health, Department of Health and Human Resources**
Fees for Permits
64CSR30
- m. **Bureau for Public Health, Department of Health and Human Resources**
Lead Abatement Licensing
64CSR45
- n. **Bureau for Public Health, Department of Health and Human Resources**
Cancer Registry
64CSR68
- o. **Department of Health and Human Resources, Office of Health Facility Licensure and Certification**
Alzheimer's/Dementia Special Care Units and Programs
64CSR85
- p. **Division of Health, Department of Health and Human Resources**
Regulation of Opioid Treatment Programs
64CSR90
- q. **Division of Highways**
Use of State Road Rights of Way and Adjacent Areas
157CSR6
- r. **Insurance Commissioner**
Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors
114CSR2

- s. **Insurance Commissioner**
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8
- t. **Insurance Commissioner**
West Virginia Essential Property insurance Association
114CSR21
- u. **Insurance Commissioner**
Medicare Supplemental Insurance
114CSR24
- v. **Insurance Commissioner**
Nonrenewal of Property Insurance Policies
114CSR74
- w. **Insurance Commissioner**
*Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements*
114CSR75

2. **Other Business**

DECEMBER INTERIM ATTENDANCE

Legislative Interim Meetings
December 11, 12 and 13, 2005

Tuesday, December 13, 2005

12:00 p.m. - 2:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Minard, Chair ✓
Fanning, Vice Chair ✓
Prezioso ✓
Unger ✓
Boley ✓
Miner ✓

Mahan, Chair ✓
Palumbo, Vice Chair ✓
Cann ✓
Pino ✓
Armstead
Overington ✓

DOA - Leasing

Brian explained

Palumbo

Approved as mod

DEP - Mercury Budget training

Joe distributed info & explained the rule & responded
to questions

Don Garvin, Leg Coord WR Environmental Council question

Dave Flannery, spoke and responded to questions

John Benedict, Dir. Div of Air Quality addressed the C

Boley

Approve

DEP - Control of Annual Nitrogen ~~oxide~~ Oxide Emissions

Joe explained

P

Approve

DEP - Ozone Season

Joe explained

Approve

DEP - Sulphur Dioxide

Joe explained

Approve as mod

Auditor

WV Conservation Agency

Rita explained & responded to questions.

Joe Gum, rep WV Conserv. Districts responded to q's

Approve as mod

Biley

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, December 13, 2005
12:00 p.m. and 2:00 p.m.
Senate Finance Committee Room

1. Review of Legislative Rules:

Approved & as modified Department of Administration - Leasing Section
Leasing Space on Behalf of State Spending Units
148CSR2

- Approve as Modified

Approved & Department of Environmental Protection- Office of Air Quality
Mercury Budget Trading Program to Reduce Mercury Emissions
45CSR37

- Approve

Approved & Department of Environmental Protection- Office of Air Quality
Control of Annual Nitrogen Oxide Emissions to Mitigate
Interstate Transport of Fine Particulate Matter and Nitrogen
Oxides
45CSR39

- Approve

Approved & Department of Environmental Protection- Office of Air Quality
Control of Ozone Season Nitrogen Oxide Emissions to Mitigate
Interstate Transport of Ozone and Nitrogen Oxides
45CSR40

- Approve

Approved & as modified Department of Environmental Protection- Office of Air Quality
Control of Annual Sulfur Dioxide Emissions to Mitigate
Interstate Transport of Fine Particulate Matter and Sulfur
Dioxide
45CSR41

- Approve as Modified

Approved & as mod. fixed WV State Auditor's Office
State Purchasing Card Program
155CSR7

- Approve as Modified

10. ✓
Approved
as
modified

West Virginia Conservation Agency
State Conservation Committee
63CSR1

- Approve as Modified

11. ✓
Approved
as modified

WV State Fire Commission
Standards for the Certification and Continuing Education of
Municipal, County, and Other Public Sector Building Code
Officials, Building Code Inspectors, and Plans Examiners
87CSR7

- Approve as Modified

12. ✓
Approved
as modified

**Bureau for Public Health, Department of Health and Human
Resources**
Public Water Systems
64CSR3

- Approve as Modified

13. ✓
Approved as
modified

**Bureau for Public Health, Department of Health and Human
Resources**
Reportable Diseases, Events and Conditions
64CSR7

- Approve as Modified

14. ✓
Approved
as modified

**Bureau for Public Health, Department of Health and Human
Resources**
Assisted Living Residences
64CSR14

- Approve as Modified

15. ✓
Approved
as modified

**Bureau for Public Health, Department of Health and Human
Resources**
Fees for Permits
64CSR30

- Approve as Modified

16. ✓
Approve as
modified

**Bureau for Public Health, Department of Health and Human
Resources**
Lead Abatement Licensing
64CSR45

- Approve as Modified

n. **Bureau for Public Health, Department of Health and Human Resources**
Cancer Registry
64CSR68

Approved
as modified

- Approve as Modified

o. **Department of Health and Human Resources, Office of Health Facility Licensure and Certification**
Alzheimer's/Dementia Special Care Units and Programs
64CSR85

Approved
as modified

- Approve as Modified

p. **Division of Health, Department of Health and Human Resources**
Regulation of Opioid Treatment Programs
64CSR90

Approved
as modified

- Approve as Modified

q. **Division of Highways**
Use of State Road Rights of Way and Adjacent Areas
157CSR6

Laid
over

- Approve

r. **Insurance Commissioner**
Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors
114CSR2

- Approve as Modified

s. **Insurance Commissioner**
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8

- Approve as Modified

t. **Insurance Commissioner**
West Virginia Essential Property insurance Association
114CSR21

- Approve

u. **Insurance Commissioner**
Medicare Supplemental Insurance
114CSR24

- Approve

v. **Insurance Commissioner**
Nonrenewal of Property Insurance Policies
114CSR74

- Approve

w. **Insurance Commissioner**
Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements
114CSR75

- Approve

2. **Other Business**

DECEMBER INTERIM ATTENDANCE

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December 11, 12 and 13, 2005

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12:00 p.m. - 2:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Minard, Chair _____
Fanning, Vice Chair _____
Prezioso _____ ✓
Unger _____ ✓
Boley _____ ✓
Miner _____ ✓

Mahan, Chair _____ ✓
Palumbo, Vice Chair _____ ✓
Cann _____ ✓
Pino _____ ✓
Armstead _____
Overington _____ ✓

Mahan called to order

Administration
- 184CSR 2

Brian explained
Palumbo moved
Approved as modified

- AIR 45CSR 37

Joe explained & answered questions
Dow Garrison, Legislative coordinator, addressed the Committee
David Flannery ^{change} ₂₀₀₅ addressed the Committee & answered ?'s
John Benedict, Director, A&Q, addressed Committee & answered ?'s
Boley moved
Approved

- Air 45CSR39
Joe explained
Palumbo moved
Approved

- Air 45CSR40
Joe explained
Palumbo moved
Approved

- Air 45CSR41
Joe explained
Palumbo moved
Approved ~~as modified~~

- State Auditor 155CSR7
Debra explained
Palumbo moved
Approved as modified

- Conservation 63CSR1
Rita explained & answered ?'s
? Joe WU Conservation responded to ?'s
Boley moved
Approve as modified

- Fire 87CSR

Debra explained

Doreen Burrell, counsel to the Commission, answered ?'s

Anthony Carrico, State Fire Marshal, answered ?'s

Palumbo motion

Approved as modified

- Health 64CSR3

Debra explained ; answered ?'s

Walter Jay answered ?'s

Palumbo

Approve as modified

- Health 64CSR7

Debra explained ; answered ?'s

Ann Spaner answered ?'s

Chris Cuetto, Commissioner of Public Health, answered ?'s

Body request for last 5 years of TB

Loretta Hattis answered ?'s

Palumbo moved

Approved as modified

- Health 64CSR14

Debra explained

Palumbo moved

Approved as modified

- Health 64CSR30

Debra explained & answered ?'s

Brad Cockran Office of Health Services answered ?'s

Stan Walls, Beckly/Raleigh City Health Dept. answered ?'s

Palumbo moved

Approved as modified

- Health 64CSR45

Debra explained & answered ?'s

Palumbo moved

Approved as modified

- Health 64CSR68

Debra explained & answered ?'s

Loretta Hattis answered ?'s

John Law answered ?'s

Ovenington moved

Approved as modified

- Health 64CSR85

Debra explained

Palumbo moved

approved as modified

- Health 64CSR90

Debra explained

Palumbo moved

Approved as modified

- Highways 157 CSR6

Connie explained & answered ?'s

Palumbo motion to lay over

motion approved to lay over

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
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148CSR2
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Mercury Budget Trading Program to Reduce Mercury Emissions
45CSR37
 - Approve
 - c. **Department of Environmental Protection- Office of Air Quality**
Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides
45CSR39
 - Approve
 - d. **Department of Environmental Protection- Office of Air Quality**
Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides
45CSR40
 - Approve
 - e. **Department of Environmental Protection- Office of Air Quality**
Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide
45CSR41
 - ~~Approve as Modified~~
 - f. **WV State Auditor's Office**
State Purchasing Card Program
155CSR7
 - Approve as Modified

- g. **West Virginia Conservation Agency**
State Conservation Committee
63CSR1
- Approve as Modified
- h. **WV State Fire Commission**
Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code Officials, Building Code Inspectors, and Plans Examiners
87CSR7
- Approve as Modified
- i. **Bureau for Public Health, Department of Health and Human Resources**
Public Water Systems
64CSR3
- Approve as Modified
- j. **Bureau for Public Health, Department of Health and Human Resources**
Reportable Diseases, Events and Conditions
64CSR7
- Approve as Modified
- k. **Bureau for Public Health, Department of Health and Human Resources**
Assisted Living Residences
64CSR14
- Approve as Modified
- l. **Bureau for Public Health, Department of Health and Human Resources**
Fees for Permits
64CSR30
- Approve as Modified
- m. **Bureau for Public Health, Department of Health and Human Resources**
Lead Abatement Licensing
64CSR45
- Approve as Modified

- n. **Bureau for Public Health, Department of Health and Human Resources**
Cancer Registry
64CSR68
- Approve as Modified
- o. **Department of Health and Human Resources, Office of Health Facility Licensure and Certification**
Alzheimer's/Dementia Special Care Units and Programs
64CSR85
- Approve as Modified
- p. **Division of Health, Department of Health and Human Resources**
Regulation of Opioid Treatment Programs
64CSR90
- Approve as Modified
- q. **Division of Highways**
Use of State Road Rights of Way and Adjacent Areas
157CSR6
- Approve *lay over*
- r. **Insurance Commissioner**
Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors
114CSR2
- Approve as Modified
- s. **Insurance Commissioner**
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8
- Approve as Modified
- t. **Insurance Commissioner**
West Virginia Essential Property insurance Association
114CSR21
- Approve
- u. **Insurance Commissioner**
Medicare Supplemental Insurance
114CSR24
- Approve

v. **Insurance Commissioner**
Nonrenewal of Property Insurance Policies
114CSR74

- Approve

w. **Insurance Commissioner**
Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements
114CSR75

- Approve

2. **Other Business**

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: LRMRC
Please print or write plainly.

Date 12.13.05

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
DON GARVIN	PO Box 666 Buckhannon, WV 26201	WV Environmental Council	X
Dave Flannery	PO Box 553 Charleston WV	WV Chamber of Commerce	X
Ann Spaner	Bureau for Public Health	same	X only if com. has questions
Loretta Haddy	"	"	"
Randy Curtis	"	WV "	" only if questions
Stan Wells	1602 Harper Rd Beckley	Beckley Raleigh Health Dept	only if questions
Chuck HAMSHEN	PO Box 3825 Chas	Assoc. of Local Health Dept	only if COM HAS QUESTIONS
Brad Cochran	Bureau for Public Health	same	only if questions
Walter Ivey	Bureau for Public Health	same	only if questions

Rule 6.
Mercury
rule
if com. questions



West Virginia Environmental Council

1324 Virginia Street East ~ Charleston, WV 25301
(304) 346-5905 www.wvecouncil.org

Mercury Rules (Rules 16 and 37)

Rules 45-CSR 16 and 37 are for mercury and implement the Bush Administrations mercury Cap and Trade rule announced March 15, 2005. These rules actually delay any specific action to reduce mercury until after 2010. They are being challenged in federal court, because they actually represent significant roll-backs from existing Clean Air Act requirements for "Maximum Achievable Control Technology" (MACT), normally used for hazardous air pollutants such as mercury. More importantly, the Bush Administration mercury rules exempt power plant emissions of a range of other hazardous pollutants such as nickel, cadmium, dioxin, etc. from MACT requirements.

However, EPA on Oct. 21, has indeed "re-opened" the comment period on the final mercury rule (and the corresponding "section 112" rule which exempts power plants from a number of other hazardous waste emissions standards).

Power plants are currently estimated to emit around 48 tons per year, nationwide. Under the proposed "Cap and Trade" program, EPA would rely on other programs like CAIR which requires scrubbers to reduce mercury emissions from the current 48 tons per year, down to 38 tons per year by 2012, and require further reductions down to 15 tons per year by 2018. Under the previous MACT rule, power plants would have to put on "Maximum Achievable Control Technology" which EPA estimated would reduce mercury emissions by about 90 % (down to 5 tons per year) by 2008. More recent EPA modeling suggests that, under the Cap and trade rule, even their 15 ton limit would not be achieved till some time after 2020.

Rule 45-CSR-16.

This rule is mostly "clean-up." The only substantive change is that it adds SubPart HHHH to the standards excluded from this rule (Rule 16). Since SubPart HHHH is the new mercury standards, it is not clear why it is being excluded here, unless it is because the new Rule 37 adopts the EPA mercury rule and so DEP avoids listing it twice.

Rule 45-CSR-37

Given that fish in every stream in West Virginia exceeds safe mercury levels, we clearly have the conditions to call this a crisis.

At a minimum, section 60.1 should be amended by adding a new subsection 60.1.d that would require, an analysis of the Total Daily Maximum Load for mercury for all waters within 50 miles of the transferee's Hg Budget Unit, and permits demonstrating compliance with water quality limits for mercury.

But, generally, EPA has not adopted a new standard yet, so neither should West Virginia.

**Representing West Virginia "Special Interests":
People Who Want to Breathe Clean Air and Drink Clean Water**

Mercury – Why the Bush Mercury Proposal Doesn't Protect Our Families

Toxic mercury hurts our health and quality of life. Coal-fired power plants are the country's largest unregulated source of mercury pollution, accounting for a third of all airborne mercury. This pollution rains down on our rivers and lakes where it accumulates in the food chain, especially in fish. To reduce mercury pollution, power plants must make significant cuts.

New analyses have shown that one in six women of childbearing age have mercury blood levels that are unsafe for a fetus. This means that more than 600,000 children are born each year at risk for developmental problems and learning disabilities.

Breastfed infants and developing fetuses are exposed when their mothers consume tainted fish, which can result in lowered intelligence, learning problems, and brain damage. Anyone who eats contaminated fish is at risk, particularly children. In adults, mercury exposure can cause irreversible damage to the brain and cardiovascular system, and can reduce fertility.

Mercury and Fish Consumption – The U.S. Food and Drug Administration has issued a consumer advisory for pregnant women, women of childbearing age, nursing mothers and young children to avoid swordfish, tilefish, shark and king mackerel because of high mercury levels. Health departments in 44 states have issued fish consumption advisories. Of these, 11 states have consumption advisories for every inland water body for at least one fish species; 6 states have consumption advisories for canned tuna, and 8 have statewide coastal marine advisories for king mackerel. In July 2002, an independent committee of food safety advisors convened by the FDA recommended that consumption advisories also be issued for canned tuna.

The Bush Plan -- Unfortunately, the Bush administration's plan to reduce mercury pollution from power plants does too little, too late to protect our families and our communities. EPA has said it intends to finalize a plan by March 2005 to reduce toxic air pollution from the nation's oil- and coal-fired power plants.

The Bush administration plan actually takes longer and lets more mercury stay in the environment, compared to moving forward with the current law. It would:

- Delay affordable reductions in mercury pollution from power plants by a decade, and allow six to seven times more mercury into the nation's air than the Clean Air Act requires.
- Allow some plants to avoid cutting mercury pollution by purchasing pollution credits from other cleaner plants. The Clean Air Act does not allow this, and it increases the chances that toxic "hotspots" could develop.
- Ignore more than 60 other toxic air pollutants from power plants, such as dioxin and arsenic, which also pose significant health threats.

We need a stronger mercury rule to protect public health and the environment.

Source: www.cleartheair.org

NY Times
November 14, 2005

Groups Propose Alternative to E.P.A. Rules on Mercury
By MICHAEL JANOFSKY

WASHINGTON, Nov. 13 - Concerned that new federal standards on mercury emissions will not produce more immediate health benefits, two national groups of state and local air quality regulators have developed a plan to yield fewer emissions in less time.

The groups say at least 20 states have shown interest in the plan, which was conceived in response to complaints from environmentalists and some Democrats in Congress over federal rules to eliminate significant amounts of mercury from air and water.

Details of the plan are expected to be released Monday by the regulators' groups, the **State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials.**

Coal-fired power plants in the United States emit about 48 tons of mercury a year, causing health risks that include developmental problems for fetuses and young children, largely through the consumption of fish. Currently, 45 states have fish advisories, warning their residents about mercury contamination in their waters.

In March, the Environmental Protection Agency announced the first federal rules to control mercury emissions from power plants. Until then, the plants had been exempt from federal standards for sources of toxic emissions. The rules require a 21 percent reduction in mercury emissions within five years - a level that would not require new controls - and a reduction of 70 percent by 2018.

States are allowed to adopt their own emission reduction plans provided the plans exceed federal standards. The regulators' plan is designed to achieve reductions of at least 80 percent by 2008.

"Almost everybody agrees that the federal mercury control program is severely flawed," said Bill Becker, executive director of the two groups. "This is a very powerful tool, even if states don't adopt it in toto. It's a technologically feasible and cost effective alternative to the E.P.A. plan."

The regulators' concerns echo those raised by environmental groups and Democrats after the E.P.A. rules were adopted.

But the plan drew criticism from industry groups that have defended the E.P.A. rule, saying the costs for mercury controls would be passed on to consumers at a time when energy bills have risen with record prices for oil and natural gas.

Industry groups also say that control devices for mercury are not sufficient to produce the reductions promised by the regulators' plan and would result in a switch from coal to natural gas, which is cleaner but more costly.

About STAPPA and ALAPCO

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) are the two national associations of air quality officials in the states, territories and major metropolitan areas throughout the country. The members of STAPPA and ALAPCO have primary responsibility for implementing our nation's air pollution control laws and regulations. The associations serve to encourage the exchange of information and experience among air pollution control officials; enhance communication and cooperation among federal, state and local regulatory agencies; and facilitate air pollution control activities that will result in clean, healthful air across the country. STAPPA and ALAPCO share joint headquarters in Washington, DC.

For further information, contact STAPPA and ALAPCO at 444 North Capitol Street, NW, Suite 307, Washington, DC 20001 (telephone: 202-624-7864; fax: 202-624-7863; email 4cleanair@4cleanair.org) or visit our associations' web site at www.4cleanair.org.

Comparison of EPA's Mercury Rule and STAPPA/ALAPCO's Model

1. Deadlines

- a. EPA has two phases—2010 and 2018; The 2018 deadline may actually extend into the 2020's when "banking" is used.
- b. STAPPA/ALAPCO Model has two phases—2008 and 2012.

2. Emission Reductions

- a. EPA—Phase I—21% reduction from current levels, based on collateral benefits; Phase II—69% reduction.
- b. STAPPA/ALAPCO Model—Phase I—80% capture; Phase II—90-95% capture.

3. Requirements for New Facilities

- a. EPA requires sources to meet New Source Performance Standards.
- b. STAPPA/ALAPCO Model requires state of the art technology, updated on a periodic basis.

4. Trading

- a. EPA allows interstate trading of mercury emissions.
- b. STAPPA/ALAPCO Model prohibits interstate trading.

5. Additional Flexibilities

- a. EPA relies on trading for flexibility.
- b. STAPPA/ALAPCO Model provides for compliance on a "rolling average," intrastate averaging in Phase I (provided it is limited to the same owner) and extensions of Phase I deadlines (under Option 2) if multi-pollutant control commitments are made.
- c. States also have existing flexibility mechanisms.

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

For Immediate Release

Contact: Bill Becker (202) 624-7864

STATE, LOCAL GOVERNMENT OFFICIALS UNVEIL 'MODEL' RULE TO CLEAN UP TOXIC MERCURY

AIM TO ACHIEVE UP TO 95% CONTROL AT POWER PLANTS

(Washington, DC, November 14, 2005) – State and local air pollution control authorities today unveiled what they call a “quicker, more effective approach” to cleaning up toxic mercury pollution than a “highly flawed rule” issued by the U.S. Environmental Protection Agency (EPA).

Under the auspices of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), the state and local regulators have developed a “model rule” that could be adapted by air agencies around the nation. It would require that electric power companies eliminate up to 95 percent of their toxic mercury emissions by 2012. This flexible cleanup strategy would have two phases, with interim controls – and associated emission reductions – required by 2008.

This model rule calls for far deeper cuts in toxic mercury emissions from electric power plants than federal rules issued this year by the U.S. Environmental Protection Agency (EPA) and would require the cleanup to be achieved more than a decade earlier. Unlike the federal approach, the state/local plan would not permit power companies to “trade” mercury emissions.

“We all agree that mercury is a dangerous neurotoxin – something that threatens the health of babies and adults alike – and that coal-burning power plants are a significant source of mercury emissions,” said John A. Paul, Supervisor of the Regional Air Pollution Control Agency in Dayton, Ohio and President of ALAPCO. “The real question is, what's the best way to address this problem?”

“We believe our plan is a much better way to go. EPA's approach would allow too much mercury for too long. The STAPPA/ALAPCO model rule gives state and local authorities a better option as they move forward on this issue,” added Eddie Terrill, Director of the Oklahoma Air Quality Division and President of STAPPA.

- more -

Mercury pollution has been linked to serious health problems ranging from damage to the brains of infants -- making it more difficult for children to learn -- to heart attacks in adults. Forty-five states have fish advisories warning people to avoid or limit eating mercury-contaminated fish. The Food and Drug Administration has cautioned pregnant and nursing mothers, especially, to avoid or limit consumption of some mercury-tainted fish, including canned tuna.

Coal-burning electric power plants are the largest unregulated source of mercury in the nation.

"Mercury emissions from coal-fired electric plants pose a serious threat to public health and the environment," explained Mr. Paul. "This is a problem that requires a swift and effective response."

After abruptly discontinuing a stakeholder process several years ago, EPA drafted and, earlier this year, issued rules that would call for a gradual reduction in mercury emissions over the next two decades. Under EPA's rules, overall emissions would drop by 69 percent. But, according to EPA's own projections, because power companies would be allowed to "trade" the right to pollute and could "bank" early reductions, the 69 percent reduction probably would not be achieved until about 2025.

"This federal approach is highly flawed and deficient," said STAPPA and ALAPCO's Executive Director, S. William Becker. "Even though effective pollution control technologies are available today, EPA would not require any mercury-specific pollution controls before 2018," noted Mr. Becker, who added that "mercury 'hot spots' could occur because power companies would be allowed to trade the right to pollute."

By contrast, the state and local model rule would require 90- to 95-percent control of mercury by 2012. Companies would not be permitted to "trade" emissions with each other or to "bank" them. The model rule also provides several options for companies to achieve a targeted 80-percent interim reduction of mercury by 2008. Studies have shown that such effective cleanup could be achieved without reducing coal use and with minimal impact on monthly electric bills.

"The model rule would protect public health by using technologies that are available and rapidly entering the commercial market," explained Mr. Terrill. "It is aimed at providing state and local governments with the tools needed to deal with this dangerous poison," he added.

###

PRESS RELEASE

RELEASE DATE: November 14, 2005

CONTACT: David C. Foerter, 202.457.0911

ICAC APPLAUDS STAPPA/ALAPCO RELEASE OF MERCURY CONTROL MODEL RULE

Flexibility in Model Rule Provides an Effective Approach for Significant Reductions in Mercury Emissions

Washington, D.C. The Institute of Clean Air Companies ("the Institute" or "ICAC"), the nonprofit national association of companies that manufacture and supply stationary source air pollution control technology and monitoring systems, applauds the STAPPA/ALAPCO release of a strong but flexible model rule to guide state and local control programs to substantially reduce mercury emissions at coal-fired power generators.

Following widespread disappointment and legal challenges of the U.S. Environmental Protection Agency's (EPA) controversial Clean Air Mercury Rule (CAMR), finalized earlier this year, the STAPPA/ALAPCO model rule has been eagerly anticipated by states and others. *"We believe the limits and timing contained in the model rule are feasible, particularly given the phasing in of the program and other compliance flexibilities outlined by STAPPA/ALAPCO,"* said David Foerter, the Executive Director for ICAC. The phased timing allows power generators to consider mercury specific control technologies, or alternatively, control technologies that reduce mercury as an added benefit when reducing other air pollution emissions. *"What works well for our industry,"* stated Mr. Foerter, *"are regulatory requirements that encourage use of a range of available control technologies and provide timing and other implementation flexibility."* ICAC recently announced that over a dozen commercial mercury specific control systems have been purchased by power companies in the past few months.

"The model rule would result in greater reductions in mercury emissions being achieved sooner than what would be accomplished under CAMR," said Mr. Foerter. *"However, the model rule is balanced such that it provides compliance options using two phases, the use of annual rolling averages, and averaging of emissions across sources at a facility; thus providing the flexibility to prevent any threat to a source's ability to continue to generate power."*

As compared with either maximum achievable control technology (MACT) regulation, or CAMR, *"the STAPPA/ALAPCO model rule better reflects the capabilities of mercury control technologies that are currently commercially available today and gives power generators options in selecting the most cost effective approach for each plant,"* said Mr. Foerter.

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ICAC represents air pollution control technology companies committed to working with a broad spectrum of stakeholders to ensure clean air policy that promotes public health, environmental benefit, and industrial progress.

Report Accuses EPA of Slanting Analysis

Hill Researchers Say Agency Fixed Pollution Study to Favor Bush's 'Clear Skies'

By Juliet Eilperin

Washington Post Staff Writer

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The Bush administration skewed its analysis of pending legislation on air pollution to favor its bill over two competing proposals, according to a new report by the Congressional Research Service.

The Environmental Protection Agency's Oct. 27 analysis of its plan — along with those of Sens. Thomas R. Carper (D-Del.) and James M. Jeffords (I-Vt.) — exaggerated the costs and underestimated the benefits of imposing more stringent pollution curbs, the independent, nonpartisan congressional researchers wrote in a Nov. 23 report. The EPA issued its analysis — which Carper had demanded this spring, threatening to hold up the nomination of EPA Administrator Stephen L. Johnson — in part to revive its proposal, which is stalled in the Senate.

The administration's "Clear Skies" legislation aims to achieve a 70 percent cut in emissions of sulfur dioxide and nitrogen oxide after 2018, while Carper's and Jeffords's bills demand steeper and faster cuts and would also reduce emissions of carbon dioxide, which are linked to global warming. The Bush plan would also cut emissions of neurotoxic mercury by 70 percent, while Jeffords's bill reduces them by 90 percent.

"Although it represents a step toward understanding the impacts of legislative options, EPA's analysis is not as useful as one could hope," the Research Service report said. "The result is an analysis that some will argue is no longer sufficiently up-to-date to contribute substantially to congressional debate."

The congressional report, which was not commissioned by a lawmaker as is customary, said the EPA analysis boosted its own proposal by overestimating the cost of controlling mercury and playing down the economic benefits of reducing premature deaths and illnesses linked to air pollution.

EPA estimated the administration's plan would cost coal-fired power plants as much as \$6 billion annually, compared with up to \$10 billion in Carper's measure and as much as \$51 billion for Jeffords's. It calculated that Bush's proposal would produce \$143 billion a year in health benefits while Carper's would generate \$161 billion and Jeffords would yield \$211 billion. Carper's measure would achieve most of its reductions by 2013, while Jeffords's bill would enact even more ambitious pollution cuts by 2010.

EPA spokeswoman Eryn Witcher said the agency based its cost estimates on mercury controls by gathering comments from boilermaker workers, power companies and emission control companies, whereas the Research Service used a single study to reach its conclusions on mercury.

"Clear Skies delivers dramatic health benefits across the nation without raising energy costs and does it with certainty and simplicity, instead of regulation and litigation," Witcher said. "Because of our commitment to see this become a reality, EPA went above and beyond to provide the most comprehensive legislative analysis of air ever prepared by the agency, so it does a real disservice to this discussion to have a report that largely ignores and misinterprets our analysis."

But aides to Carper and Jeffords said they felt vindicated by the congressional study.

"The CRS report backs up a lot of what we initially said about EPA's latest analysis, that it overstated the costs of controlling mercury and understated the overall health benefits of Senator Carper's legislation," said Carper spokesman Bill Ghent. "The report clearly states that there's no reason to settle for the president's Clear Skies plan because the legislation doesn't clean the air much better than current law."

Why West Virginia Rates are Increasing

Fuel (Coal) and Purchased Power Expenses

- Coal costs increased approximately 19% from 2004 to 2005, and are projected to rise another 11% from 2005 to 2006
Approximate overall impact on W.Va. retail rates – \$72.0 million (8.9%)

Service Reliability Improvements

- Wyoming-Jacksons Ferry 765 kV Transmission Reinforcement – \$283 million total Appalachian Power investment
West Virginia's share is \$128 million – **Approximate impact on W.Va. retail rates – \$9.4 million (1.1% rate increase)**
- Other Transmission and Distribution Reliability Improvements – Vegetation management and tree trimming
\$10 million increased annual W.Va. expenditures (**1.2% rate increase**)

Environmental Investments (flue gas desulfurization units, or scrubbers)

- Mountaineer Plant – In Service 1/2007 – \$532 million total Appalachian Power investment
West Virginia's share is \$241 million – **Approximate impact on W.Va. retail rates – \$34.5 M (4.3% rate increase)**
- John Amos Unit 3 – In Service 1/2008 – \$462 million total AEP investment (Ohio Power Company investment – \$305 million; Appalachian Power investment – \$157 million) – **Approximate impact on W.Va. retail rates – \$10.5 million (1.3% rate increase)**
- John Amos Units 1 and 2 – In Service 1/2009 – \$584 million total Appalachian Power investment
Approximate impact on WV retail rates – \$39.5 M (4.8% rate increase)

Mountaineer Plant (1) New Haven, W.Va.

Owned 100% by Appalachian Power

Constructing an FGD (scrubber) system that will:

- Reduce SO2 emissions by up to 95%
- Permit the use of high sulfur coal currently prohibited by environmental restrictions
- Generate excess emission credits to offset emissions at other W.Va. plants not being scrubbed (Kanawha River Plant, Philip Sporn Plant, Kammer Plant)

Cost apportioned 45% to W.Va., 46% to Va., 9% to Others

Philip Sporn Plant (2) New Haven, W.Va.

Owned 29% by Appalachian Power, 71% by Ohio Power

- No FGD planned at this time
- Will use emission credits from other AEP plants and will continue to burn low sulfur coal

Cost apportioned 13% to W.Va., 13% to Va., 71% to Ohio and 2% to Others

John E. Amos Plant (3) Winfield, W.Va.

Owned 70% by Appalachian Power, 30% by Ohio Power

Constructing an FGD (scrubber) system on all generating units that will:

- Reduce SO2 emissions by up to 95%
- Permit the use of high sulfur coal currently prohibited by environmental restrictions
- Generate excess emission credits to offset emissions at other W.Va. plants not being scrubbed (Kanawha River Plant, Philip Sporn Plant, Kammer Plant)

Cost apportioned 31.5% to W.Va., 32.2% to Va., 30% to Ohio and 6.3% to Others

Mitchell Plant (4) Moundsville, W.Va.

Owned 100% by Ohio Power

Constructing an FGD (scrubber) system on all units that will:

- Reduce SO2 emissions by up to 95%
- Permit the use of high sulfur coal currently prohibited by environmental restrictions
- Generate excess emission credits to offset emissions at other W.Va. plants not being scrubbed (Kanawha River Plant, Philip Sporn Plant, Kammer Plant)

Cost assigned 100% to Ohio

Kammer Plant (5) Moundsville, W.Va.

Owned 100% by Ohio Power

- No FGD planned at this time
- Will use emission credits from other AEP plants and will continue to burn low sulfur coal

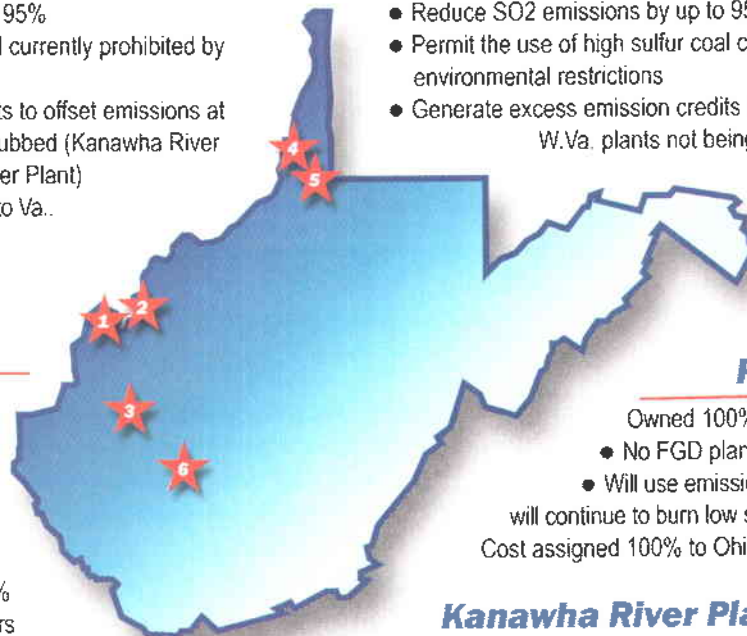
Cost assigned 100% to Ohio

Kanawha River Plant (6) Glasgow, W.Va.

Owned 100% by Appalachian Power

- No FGD planned at this time
- Will use emission credits from other AEP plants and will continue to burn low sulfur coal

Cost apportioned 45% to W.Va., 46% to Va. and 9% to Others



AEP COMPLIANCE PLANS

The 1990 Clean Air Act Amendments established the Title IV program as a two-phase, market-based allowance system designed to lower SO₂ pollution levels. The second phase of the program went into effect in 2000. The Title IV cap for total annual allowance allocations to utilities firmly restricts emissions and ensures that environmental benefits are achieved and maintained. The flexibility of the allowance program allowed AEP to cost effectively choose to install Flue Gas Desulfurization (FGD) Systems at strategic facilities and use low sulfur coal at other facilities to comply with Title IV. Use of the FGD systems during Phase I reduced AEP's allowance consumption, thus allowing the accumulation of a significant pool of allowances that could be used in subsequent years to comply with the more stringent caps set in Phase II. AEP's strategy for complying with Title IV includes the continual evaluation of alternative fuel strategies, opportunities to purchase SO₂ allowances, and possible post-combustion technologies in order to lower the overall cost-impact of compliance.

Planning for SO₂ allowances and emissions is performed for the AEP System through the integrated resource planning process and a continuous review of current and projected emissions, allowance availability, fuel and SO₂ market prices and proposed regulatory changes. Projected emissions, including future fuel switching or installation of FGD technologies, are compared to the available current and projected inventory to determine the amount of allowances that are required to ensure compliance and incorporates the lead time necessary to permit and install SO₂ capture technologies.

The AEP allowance pool has continued to shrink during Phase II of the program and allowance prices have increased, prompting the need for additional FGD systems at AEP facilities. Also, in early 2005, the U.S. EPA announced the Clean Air Interstate Rule (CAIR). The CAIR calls for significant reduction of SO₂ and NO_x from electric utilities. The CAIR annual SO₂ reduction program will be administered through the Title IV Program and implemented in a 2-phase process in 2010 and 2015. Under the CAIR rule, SO₂ allowances with a 2010-2014 vintage must be surrendered at a 2:1 ratio. Likewise, SO₂ allowances with a vintage of 2015 and forward must be surrendered at a 2.86:1 ratio. These surrender ratios will effectively force reductions of approximately 75 percent by Phase II of the CAIR program. These allowance targets translate into average SO₂ emission rates of 0.4 lbs/mmBtu in 2010 and less than 0.3 lbs/mmBtu in 2015. These rates can only be achieved on average by scrubbing existing coal-fired power plants. While AEP has a few fuel switching options that it is pursuing as part of its compliance plan, the level of SO₂

reductions required is so substantial that a significant portion of AEP's coal fired capacity must be scrubbed by 2010.

In response to CAIR and other newly promulgated regulatory programs, AEP has conducted an economic analysis using a state of the art computer model that allows AEP to optimize retrofit pollution control and capacity decisions over the time period modeled, taking into account future changes in conditions and emission caps. The key outputs include a least cost compliance plan, compliance costs and projected emissions. The analysis conducted by AEP indicated that FGD systems and SCRs being installed over the next 5 years are all part of a least cost compliance plan to meet current and the newly finalized EPA regulations. AEP determined under all scenarios, that major investments in FGD systems, fuel switching, and SCRs are a robust part of the least cost compliance plan.

The specific plants selected are excellent candidates for FGD projects since they already have or are installing SCRs for NO_x control. As a result, these plants will be able to maximize the co-benefits of mercury control when they also install the FGD systems. Also, the very low emission rates resulting from combined FGD/SCR installations will allow the facilities to be dispatched at higher capacity factors which makes the installations more cost effective since more tons of SO₂ and NO_x are removed for a given capital cost. The economics of installing FGD systems at these individual plants are also the most cost effective options because they are generally larger, more efficient units with relatively good transportation access to low cost, high sulfur coal.