



west virginia department of environmental protection

Executive Office
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0440
Fax: (304) 926-0447

Jim Justice, Governor
Austin Caperton, Cabinet Secretary
dep.wv.gov

Environmental Protection Advisory Council 2017 Annual Report

I. INTRODUCTION

This Annual Report is submitted in accordance with W. Va. Code § 22-1-9(e)(6), to apprise the Joint Committee on Government and Finance of the activities undertaken by the Environmental Protection Advisory Council for the period of January 1, 2017 through December 31, 2017. The Council was created in 1994 by an Act of the West Virginia Legislature, and it is currently organized and administered within the auspices of the Department of Environmental Protection (“DEP”). In addition to the preparation and submission of this Report, the Council’s mission, set forth in W. Va. Code § 22-1-9, embraces the following duties:

- (1) To consult with and advise the DEP Cabinet Secretary on program and policy development, problem solving, and other appropriate subjects;
- (2) To identify and define problems associated with the implementation of the legislative statement of purpose and policy set forth in W. Va. Code § 22-1-1(b) (a full recitation of which is made below) and observed by DEP;
- (3) To provide and disseminate to industry and the public early identification of major federal program and regulatory changes;
- (4) To provide a forum for the resolution of conflicts between constituency groups; and
- (5) To strive for consensus, to the extent possible, on the development of overall environmental policy.

II. COUNCIL MEMBERS

Eight members comprise the Council. The Cabinet Secretary is an *ex officio* member and serves as the Chair. The remaining seven members are appointed by the Governor, typically for full terms of four years, and any member may serve successive terms upon renewal of appointment. The balance of constituencies among the Council members is fixed by statute and must be maintained: two members are associated with industries regulated by DEP; two members represent organizations advocating environmental protection; one member represents local government organizations; one member represents public service districts; and one member represents the largest coal miner’s labor organization in the State.

There were no changes among the eight appointed members during 2017:

MEMBER	APPOINTMENT	REPRESENTS	TERM EXPIRES
Lisa K. Dooley Madison, West Virginia	10/01/1999 2002, 2005, 2015	Local Governments	June 30, 2017
Charles “Larry” Harris, Ph.D. Morgantown, West Virginia	10/12/1995 1997, 2002, 2005, 2015	Environmental Organizations	June 30, 2017
Rebecca M. McPhail Huntington, West Virginia	01/22/2015	Industry	June 30, 2018
William Raney Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015	Industry	June 30, 2016
Charles “Rick” Roberts, Jr. Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015	Public Service Districts	June 30, 2016
Ted Hapney Roane County, West Virginia	10/29/2010 2015	UMWA	June 30, 2018
James VanGundy, Ph.D. Elkins, West Virginia	04/29/2015	Environmental Organizations	June 30, 2018

III. SUMMARY OF ACTIVITIES DURING 2017

The Council met three times during 2017. The first meeting was held on April 20, 2017. The newly appointed DEP Cabinet Secretary, Austin Caperton, was introduced by the agency’s General Counsel, Kristin Boggs. Secretary Caperton addressed council and answered questions. Ms. Boggs then apprised the Council of what transpired during the Legislative Session and advised them of the bills that passed affecting the agency. At the June 15, 2017 meeting, DEP presented for the Council’s review and comment the entire slate of agency rules proposed for 2018 Legislative Session. The September 21, 2017 meeting was canceled because council members did not have any items for the agenda and a quorum did not confirm attendance. The Council’s final meeting for the year, on December 14, 2017, was a briefing by Deputy Cabinet Secretary / Director of the Division of Water and Waste Management Scott Mandirola about the agency’s regulatory scheme for natural gas pipelines. These activities are summarized in the Council’s official minutes, which are attached to this Report.

IV. STATEMENT ON DEP'S PERFORMANCE

The Council is required to include within its Annual Report its findings about DEP's performance in accomplishing the purposes set forth in W. Va. Code § 22-1-1(b). These statutory purposes, upon which DEP was established, are:

- (1) To strengthen the State's commitment to restore, maintain, and protect the environment;
- (2) To consolidate environmental regulatory programs in a single State agency;
- (3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment, and use of the natural resources of the State;
- (4) To supplement and complement the efforts of the State by coordinating its programs with the efforts of other governmental entities, public and private organizations, and the general public, to improve the quality of the environment, the public health and public enjoyment of the environment, and to propagate and protect animal, aquatic, and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism, and energy-producing industries;
- (5) To endeavor, insofar as federal environmental programs require State participation, to obtain and continue State primacy in the administration of such programs, to endeavor to maximize federal funds that may be available to accomplish the purposes of the State and federal environmental programs, and to cooperate with appropriate federal agencies to meet environmental goals;
- (6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;
- (7) To promote improvement in the quality of the environment through research, evaluation, and sharing of information;
- (8) To improve the management and effectiveness of State environmental protection programs;
- (9) To increase the accountability of State environmental protection programs to the Governor, the Legislature, and the public generally; and
- (10) To promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitutions, in-process recycling, reduction of raw material use, or other source reduction opportunities.

The Council finds that DEP has engaged in good-faith, reasonable efforts to accomplish the statutory purposes with which it is charged, a fair representation of which are outlined in

DEP's Annual Report and State of the Environment publications. It is recognized that the challenges facing the agency in fulfilling its mission are not static, but instead demand constant adaptation. DEP strives to do the best possible job with all resources it may access to implement the letter and the spirit of the Legislature's charge.

V. CONCLUSION

SUBMITTED this 19th day of December, 2017.

/s/Kristin A. Boggs

Kristin A. Boggs, General Counsel

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
April 20, 2017**

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Austin Caperton, called to order the regular meeting of the Environmental Protection Advisory Council at 1:35 p.m. on April 20, 2017 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Rebecca McPhail, Bill Raney, Rick Roberts, Jr., and James Van Gundy. Lisa Dooley, Larry Harris and Ted Hapney were absent.

The meeting was also attended by the following DEP personnel: Jake Glance, Chief Communications Officer and Ed Maguire, Environmental Advocate. Also present was Lewis Baker with the West Virginia Rural Water Association.

III. OLD BUSINESS

Minutes of the December 15 Meeting. The minutes were provided to Council via email and in hard copy for their review. Ms. Boggs noted a correction to be made to the minutes to list Mr. Raney in the Roll Call section. Mr. Raney moved for approval of the minutes, with the correction, Dr. Van Gundy seconded the motion, and it was carried by acclamation of Council.

Minutes of the June 16, 2016 Meeting. The minutes were provided to Council via email and in hard copy for their review. Ms. McPhail moved for approval of the minutes, Mr. Raney seconded the motion, and it was carried by acclamation of Council.

2016 Annual Report. The report was provided to Council via email and in hard copy for their review. Mr. Raney moved for approval of the report, Ms. McPhail seconded the motion, and it was carried by acclamation of Council.

IV. CABINET SECRETARY AUSTIN CAPERTON

Secretary Caperton was introduced by Ms. Boggs and addressed council and answered questions.

IV. DEP LEGISLATIVE INITIATIVES FOR THE 2017 SESSION

Ms. Boggs summarized the 2017 Legislative Session and answered questions regarding the legislation.

INTRODUCED BY THE DEP:

- ❖ **SB 113 - DEP's Rules Bundle.** Signed by the Governor on April 8, 2017.
 - This bill effective on Passage, or March 30, 2017.
 - W. Va. Code § 64-3-1 (Amended Code)

BILLS OF INTEREST TO DEP:

- ❖ **SB 214 – Adopting Uniform Electronic Legal Material Act.** The purpose of this bill is to provides mechanisms for the agency to designate electronic documents or records as the official record of the agency; to authenticate the electronic documents or record; and to preserve their security. It also provides for uniformity of application and construction in relation to the Electronic Signatures I Global and National Commerce Act. Under this bill, DEP is considering the owner/publisher of agency decisions in contested cases, declaratory rulings, and e-permitting decisions.
 - This bill is effective 90 days from passage, or July 2, 2017.
 - W. Va. Code §§ 39-6-1 – 8, 10-11 (New Code) and 39-6-9 (Amended Code)

- ❖ **SB 321 – Reporting requirements of employee information to Consolidated Public Retirement Board.** This bill requires state agencies to report the following information about its employees to the Consolidated Public Retirement Board:
 - Name, Social Security Number, and Job Title;
 - Gross Salary or Compensation and Rate of Pay; Hours or Days Worked or Paid, Type of Pay (hourly or salary), and Employment Contract Period;
 - Permanent or Temporary, Full-Time or Part-Time; and Scheduled Hours; and
 - Benefit Eligibility
 - This bill is effective 90 days from passage, or July 4, 2017.
 - W. Va. Code § 5-10D-12 (New Code)

- ❖ **SB 400 – Regarding appointments to the Infrastructure and Jobs Development Council.** Eliminates an unnecessary and contradictory provision re: how the Governor makes appointments to this Council. Specifically, eliminates “the representatives of the governing boards from a list of three names submitted by each governing board.”
 - This bill is effective 90 days from passage, or July 2, 2017.
 - W. Va. Code § 31-15A-3 (Amended Code)

- ❖ **SB 505 – Providing 5-year reclamation period following completion of well pads for horizontal wells.** The bill provides a clear five-year reclamation period following completion of construction of well pads designed for multiple horizontal wells. This section provides that partial reclamation begins upon the completion of the construction of the well pad. Partial reclamation is already defined in the statute to mean “grading or terracing and planting or seeding the area disturbed that is not required in drilling, completing or producing any of the horizontal wells on the well pad in accordance with the erosion and sediment control plan. That definition is not changed.

The statute already states that partial reclamation satisfies the reclamation requirements of the Natural Gas Horizontal Well Control Act, but this bill removes the following language: “for a maximum of 24 months between the drilling of horizontal wells on a well pad designed to contain multiple horizontal wells.” The removal of this language clarifies that, while partial reclamation requirements remain in place, neither the operator nor OOG must continuously calculate when partial reclamation stops and full reclamation requirements kick in. The bill also provides that “for purposes of subdivision two, construction of a well pad will be deemed to be complete 12 months after construction is commenced if construction of the well pad is not actually completed prior to that date.” This proviso makes clear to the operator that it cannot simply turn over dirt and then walk away indefinitely; OOG will consider construction “complete” after 12 months regardless of whether the pad is fully constructed and/or wells are being drilled, and the operator must commence reclamation accordingly.

- This bill is effective 90 days from passage, or July 3, 2017.
- W. Va. Code § 22-6A-14 (Amended Code)

- ❖ **SB 687 – Relating to coal mining, coal miner safety, and environmental protection.** This coal industry bill amends several sections of Code relating to mining, oil and gas, and water. The amendments to each section are detailed below:

Article 3. Surface Coal Mining and Reclamation Act

§22-3-11. Special Reclamation Fund and Special Reclamation Water Trust Fund.

The bill modifies two provisions in this section that govern use of the Special Reclamation Fund (SRF) and the Special Reclamation Water Trust Fund (Water Trust Fund) to complete reclamation at forfeited mining sites. These amendments are intended to begin the process of disentangling land reclamation under the Surface Coal Mining & Reclamation Act from water treatment under the Clean Water Act; under current law in West Virginia these two concepts are blended, though they are not under federal law or the regulations of other states.

§22-3-13a. Pre-blast survey requirements.

The bill makes four substantive modifications to this section and brings it into conformance with its federal counterpart.

§22-3-23. Bond releases.

The amendments to this section modify the provisions governing the release of bonds posted for mining operations to complete or guarantee reclamation of permitted coal mining operations. The modifications also appear to streamline and bring the provisions for state bond release into conformity with federal requirements.

Article 6. Office of Oil and Gas; Oil and Gas Wells

§22-6-24. Special Reclamation Fund and Special Reclamation Water Trust Fund.

This bill modifies two provisions of this section. The first provision clarifies that the surface plug is required to be 100 feet thick; and clarifies and provides an option on how a well will be plugged when that well has a coal protection string of casing installed and cemented to the surface.

Second, the amendments to this section allow a coal operator who owns an unplugged well that is otherwise considered abandoned and without a known responsible party to plug that well to standards different than those otherwise applied to well plugging operations.

Article 11. Water Pollution Control Act

§22-11-7b. Water quality standards; implementation of anti-degradation procedures; procedure to determine compliance with the biologic component of the narrative water quality standard..

Current law requires the Secretary to measure compliance with the biologic component of the narrative water quality standard by considering, among other things, “a balanced aquatic community that is diverse in species composition” (i.e. bugs and fish). The amendments to this section change “biologic component” to “aquatic life component”, a change intended to take bugs out of consideration as part of any compliance tool developed by the agency to measure whether a stream meets the narrative standard of water quality standards.

Further, the amendments remove the requirement that the agency, in developing the above-described compliance tool, determine that the stream “supports a balanced aquatic community that is diverse in species composition[.]” This change, too, is intended to narrow to fish alone the biota that can be used to determine compliance with the biologic (under this bill, now “aquatic life”) component of the narrative water quality standards.

- This bill is effective 90 days from passage, or April 8, 2017.
- W. Va. Code §§ 22-3-11, 13a, 23; 22-6-24; 22-11-7b; 22A-1-2, 5; 22A-2-59; 22A-6-3, 4, 6; 22A-7-2, 3, 5, 5a, 7; 22A-9-1; 22A-9-1; 22A-11-1, 2, 3, 4 (Amended Code); and §§ 22-1-2A-1001 and 22A-11-5 (New Code)

- ❖ **HB 2303 – Increasing criminal penalties for littering.** The purpose of this bill is to increase in most cases, and decrease in one case, the fines and community service that may be assessed for littering. Specifically, the changes are as follows:
 - Less than 100 pounds of litter:
 - Increases fine from \$1,000 to \$2,500
 - Increases hours of community service from 16 hours to 100 hours
 - More than 100 pounds of litter:
 - Increases fine from \$1,000 - \$2,000 to \$2,500 - \$5,000
 - Increases hours of community service from 32 hours to 200 hours
 - More than 500 pounds of litter: Decreases maximum fine from \$25,000 to \$10,000
 - Regardless of amount, increases civil penalty from \$200 - \$1,000 to \$2,000
 - This bill is effective 90 days from passage, or July 7, 2017.
 - W. Va. Code § 22-15A-4 (Amended Code)

- ❖ **HB 2001 – Relating to ethics and transparency in government.** This bill amends the ethics and purchasing laws to provide more transparency. Specifically, it prohibits a public official or employee from influencing, attempting to influence, showing favoritism to, or granting patronage in the employment or working conditions of his or her relative or co-habitant. It also prohibits the agency from entering into a contract unless the contractor discloses a list of parties interested in the contract to the Ethics Commission.
 - This bill is effective 90 days from passage, or July 7, 2017.
 - W. Va. Code §§ 6B-2-1 – 6 and 10 (Amended Code) and 6D-1-1 – 4 (New Code)

- ❖ **HB 2427 – Requiring agencies listed in the online state phone directory to update certain employee information.** This bill requires the agency to provide to the Governor’s Office of Technology, within 30 days of any change in this information, the following, for each employee.
 - Employee name;
 - Office location and mailing address;
 - Office telephone number, including extension; and
 - E-mail address.
 - This bill is effective 90 days from passage, or July 4, 2017.
 - W. Va. Code §§ 5F-1- 5 (New Code)

- ❖ **HB 2446 – Relating to the requirement that all executive branch agencies maintain a website that contains specific information.** This bill requires the agency to maintain a website to contain the following information:
 - Office contact information (location and mailing address, telephone number, fax number, office hours, and e-mail addresses);
 - Contact information for each employee, including the information listed above;

- Organizational chart;
 - Agency officials;
 - List of governing statutes and legislative and procedural rules;
 - Meeting minutes;
 - Annual reports;
 - All agency forms; and
 - FAQ's with descriptive answers.
 - This bill is effective 90 days from passage, or December 31, 2017.
 - Vetoed by Governor after EPAC Meeting.
- ❖ **HB 2506 – Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.** This bill pertains to the implementation of water quality standards for the protection of drinking water standards, and its purpose is to require the agency to calculate NPDES permit limits using design flow of harmonic mean, rather than 7Q10, which is the current design flow. EPA's recommended criteria is harmonic mean for carcinogens and 30Q5 for non-carcinogens, but the Legislature adopted harmonic mean for both. The bill also allows the Secretary, at his or her discretion, to permit overlapping mixing zones to determine the point of compliance for a discharge, but the overlapping mixing zone cannot extend more than one-half mile above a public water intake. This, too, is only for human health criteria, not aquatic life.
- This bill is effective 90 days from passage, or June 26, 2017.
 - W. Va. Code § 22-11-7B (Amended Code)
- ❖ **HB 2797 – Codifying statutory immunity for government agencies and officials from actions of third-parties using documents of records.** This bill adds a new article and section to Chapter 5 of the Code, which allows agencies to suspend for six months investigating complaints made by a person who has been found by the agency by clear and convincing evidence to have made three or more false complaints in a two-month period. The bill also allows agencies to sue the citizen in circuit court to recover the costs associated with investigating the false complaints.
- This bill is effective 90 days from passage, or July 5, 2017.
 - W. Va. Code § 5A-8-23 (New Code)
- ❖ **HB 2811 – Relating to the definition of Aboveground Storage Tank.** This purpose of this bill is to exempt from the definition of “aboveground storage tank” – and therefore exempt from regulation as such – tanks owned/operated by the oil and natural gas industry that have a capacity of 210 barrels or less and contain oil or brine water. The bill was amended in House Energy to include in the exemption saltwater tanks owned by DOH. The bill was amended again in House Judiciary to require the industry and DOH to continue to register and label these devices, as well as add the requirement that the industry and DOH notify the nearest water utility of the location and contents thereof.
- This bill is effective 90 days from passage, or June 23, 2017.

- W. Va. Code § 22-30-3 (Amended Code)
- ❖ **HB 2839 – Updating the procedures for legislative review of departments and licensing boards.** This bill schedules DEP’s presentation to the Legislature re: DEP programs, activities, and financial situation in 2018 at the first interim meeting after Session.
 - This bill is effective 90 days from passage, or July 6, 2017.
 - W. Va. Code §§ 4-10-6 – 8, 10, and 14 (Amended Code)
- ❖ **HB 2897 – Raising the amount required for competitive bidding of construction contracts.** Despite its title, this bill does not seem to raise the amount required for competitive bidding of construction contracts, at least for those construction contracts let by DEP. What it does for DEP’s purposes is add a definition of “alternative” – “any additive options or alternative designs included in a solicitation for competitive bids that are different from and priced separately from what is included in a base bid” – and declares that any solicitation for bids shall include no more than seven alternates.

The bill also removes some “technical” reasons to disqualify an apparent low bid: failure to submit a subcontractor list; failure to submit an affidavit of drug-free and alcohol-free workplace policy; and failure to submit the contractor’s license number. Now, instead of disqualifying a bid for failure to submit any of these documents, the agency must contact, by telephone and email, the apparent low bidder and ask for the missing document(s) and give the apparent low bidder one business day to provide it/them.

- This bill is effective 90 days from passage, or July 7, 2017.
- W. Va. Code §§ 5-22-1, 8-16-5, 16-12-11, 16-13-3, 16-13A-7, 21-1D-5 and 21-11-11 (Amended Code)
- ❖ **HB 2935 – Relating to state flood protection planning.** This bill is in response to June’s catastrophic floods, this bill establishes the Resiliency and Flood Protection Planning Act and creates a joint legislative committee to study flood damage reduction and flood plain management, a State Resiliency Office within the Development Office at the Department of Commerce, and a State Resiliency Office Board, of which the Secretary of DEP is a member. The Board is charged with 15 functions, all generally related to better coordinating the State’s response to floods.
 - This bill is effective 90 days from passage, or July 7, 2017.
 - W. Va. Code §§ 4-15-1 and 29-30-1 - 4 (New Code)

V. OTHER BUSINESS

- ❖ The next meeting of the Council is scheduled for June 15, 2017 at 1:30 p.m.

VI. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:45 p.m.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
June 15, 2017**

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Austin Caperton, called to order the regular meeting of the Environmental Protection Advisory Council at 1:40 p.m. on June 15, 2017 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Rebecca McPhail, Rick Roberts, Larry Harris, and Lisa Dooley. Jason Bostic participated by proxy on behalf of Bill Raney. James Van Gundy and Ted Hapney were absent.

The meeting was also attended by the following DEP personnel: Fred Durham, Director of the Division of Air Quality (DAQ); Jake Glance, Chief Communications Officer; Laura Jennings and Laura Crowder from DAQ; Charles Sturey and Yvonne Anderson from Division of Mining & Reclamation (DMR); David Long and Casey Korbini from the Division of Land Restoration (DLR); Joe Sizemore, Julie Wandling and Ruth Porter from the Division of Water & Waste Management (DWWM).

Also present were Doug Douglass, IOGA; Evan Hansen, Downstream Strategies; and Angie Rosser, WV Rivers Coalition.

III. OLD BUSINESS

Minutes of the April 20, 2017 Meeting. The minutes were provided to Council via email and in hard copy for their review. Ms. McPhail moved for approval of the minutes, Ms. Dooley seconded the motion, and it was carried by acclamation of Council.

IV. PROPOSED 2018 LEGISLATIVE RULES

Division of Air Quality

- ❖ **45CSR08 - Ambient Air Quality Standards** – Promulgated last in the 2017 session. This rule incorporates by reference the NAAQS promulgated by the EPA under 40 CFR Part 50, and the ambient air monitoring reference methods and equivalent methods under 40 CFR Part 53. Revisions to the rule include amendments promulgated by EPA under 40 CFR Parts 50 and 53 as of June 1, 2017 including: (1) Designation of one new ambient

air monitoring reference method for measuring concentrations of sulfur dioxide and four new ambient air monitoring equivalent methods for measuring concentrations of PM_{2.5}, PM₁₀ and PM_{10-2.5} in ambient air; (2) Retaining the national ambient air quality standard for lead; (3) Designation of a new equivalent method for measuring concentrations of nitrogen dioxide in ambient air; (4) Technical correction to the national ambient air quality standard for particulate matter; and (5) Designation of a new equivalent method for monitoring ambient air quality.

- ❖ **45CSR16** - *Standards of Performance for New Stationary Sources* - New Source Performance Standards (NSPS) rule, promulgated last in the 2017 session. Revisions to the rule incorporate by reference amendments to the NSPS promulgated by EPA under 40 CFR Part 60 as of June 1, 2017, including: Oil and Natural Gas Sector; CFR Corrections; Stationary Compression Ignition Internal Combustion Engines; Procedure 6 of Appendix F; and Test Methods, Performance Specifications, and Testing Regulations. Revisions to the rule also add the NSPS and Emission Guidelines (EG) for Municipal Solid Waste Landfills (Subparts Cf & XXX) to the exemption list under subdivision 4.1.b, adopted under 45CSR23.

Oil & Natural Gas, Subparts OOOO & OOOOa - EPA amended Subpart OOOO to improve several aspects related to implementation. The implementation improvements do not change the requirements for operations or covered equipment. EPA also established new standards (Subpart OOOOa), based on its determination of the best system of emissions reduction (BSER) and established requirements for both greenhouse gases (GHGs) and volatile organic compounds (VOC). Major provisions include: standards for GHG emissions (in the form of methane emission limitations) and standards for VOC emissions. The NSPS includes both VOC and GHG emission standards for certain new, modified, and reconstructed equipment, processes, and activities across the oil and natural gas source category. *Note: EPA announced on April 4, 2017 [82FR16331] it will be reviewing the 2016 Oil and Gas NSPS and, if appropriate, will initiate reconsideration proceedings to suspend, revise, or rescind Subpart OOOOa.*

Miscellaneous 40 CFR Part 60 corrections regarding symbols.

Stationary Compression Ignition Internal Combustion Engines, Subpart IIII - EPA amended the NSPS to allow manufacturers to design engines so operators can temporarily override performance inducements related to the emission control system. The amendments apply to engines operating during emergency situations where the operation of the engine or equipment is needed to protect human life, and to require compliance with Tier 1 emission standards during such emergencies.

Petroleum Refinery Sector, Subpart Ja - EPA amended the NSPS by removing the reference to Claus units for sulfur recovery plants with an oxidation control system or a reduction control system followed by incineration when calculating the sulfur dioxide emission limit using Equation 1.

Procedure 6 of Appendix F to Part 60 - EPA withdrew the portion of the direct final rule that revised the quality assurance requirements for HCl CEMS in sections 4.1.5, 4.1.5.1, 4.1.5.3, and 5.2.4.2 of Procedure 6. The referenced direct final rule was published at 81 FR 31515, on May 19, 2016.

Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources, 40 CFR Part 60 - Technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

Municipal Solid Waste Landfills (MSWL), Subpart XXX - EPA published a new subpart (XXX) that updates the Standards of Performance for MSWL rather than amending subpart WWW. The revised standards reflect changes to the population of landfills and an analysis of the timing and methods for reducing emissions. This action will achieve additional reductions in emissions of landfill gas and its components, including methane, by lowering the emissions threshold at which a landfill must install controls. This action also incorporates new data and information received in response to the proposed rulemaking and addresses other regulatory issues including surface emissions monitoring, wellhead monitoring, and the definition of landfill gas treatment system.

Municipal Solid Waste Landfills Emission Guidelines (EGs), Subpart Cf - EPA published a new subpart (Cf) that updated the EGs and compliance times rather than amend subpart Cc. EPA reviewed the landfills EGs based on changes in the landfill industry since the EGs were promulgated in 1996. EPA revised the EGs to reflect changes to the population of landfills and the results of an analysis of the timing and methods for reducing emissions. This action will achieve additional reductions in emissions of landfill gas and its components, including methane, by lowering the emissions threshold at which a landfill must install controls. This action also incorporates new data and information received in response to an advanced notice of proposed rulemaking and a proposed rulemaking and addresses other regulatory issues including surface emissions monitoring, wellhead monitoring, and the definition of landfill gas treatment system. This will reduce emissions of landfill gas and will improve air quality and reduce the potential for public health and welfare effects associated with exposure to landfill gas emissions.

- ❖ **45CSR18** - *Control of Air Pollution from Combustion of Solid Waste* - CAA §111(d)/129 combustion source rule, promulgated last in the 2016 session. This revision is needed to comport with the final rules and final action on reconsideration that were published on June 23, 2016 in the Federal Register [81 Fed. Reg. 40956] for new and existing Commercial and Industrial Solid Waste Units (CISWI), Subparts CCCC and DDDD.

EPA finalized action on four topics: (1) definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” (2) particulate matter (PM) limit for waste-burning kiln subcategory; (3) fuel variability factor (FVF) for coal-burning energy recover units (ERUs); and (4) definition of “kiln”.

Revisions to Rule 18 include: (1) delete the former rules subsection 1.8; (2) adopt the latest revision of NSPS, Subpart CCCC in Section 3; (3) miscellaneous wordsmithing in section 7; (4) updates to the applicability in Section 8 to comport with the latest revisions to NSPS, Subpart CCCC (5) updates to Section 9 to comport with the revised Emission Guidelines (EGs) under Subpart DDDD; (6) Table 18-8C is being revised for the PM limit under the kiln subcategory; and (7) miscellaneous wordsmithing and correction of typographical errors.

- ❖ **45CSR23** - *Control of Air Pollution from Municipal Solid Waste Landfills* - This municipal solid waste landfill rule was last promulgated in the 2001 session. This revision is needed to comport with the final rules that were published in the Federal Register [81 Fed. Reg. 59332 and 59276, August 29, 2016] for new and existing Municipal Solid Waste Landfills (MSWL). The EPA is required to review, and if appropriate, revise standards of performance at least every 8 years. Their review identified a number of advances in technology and operating practices for reducing emissions of landfill gas (LFG). EPA also reviewed the Emission Guidelines (EGs) based on changes in the landfill industry and changes in operation of landfills, including the size, trends in gas collection and control systems installations, and age of landfills since the EGs were promulgated in 1996. The resulting changes are expected to achieve additional reduction in emissions of LFG and its components.

The major provisions for new sources (Subpart XXX) regulated under CAA §111(b) include: Thresholds for Installing Controls; Emission Threshold Determination; Low LFG Producing Areas; Landfill Gas Treatment; Wellhead Operational Standards; Surface Monitoring; Startup, Shutdown, and Malfunction; and Other Clarifications. The major provisions for existing sources (Subpart Cf) regulated under CAA §111(d) include: Thresholds for Installing Controls; Emission Threshold Determination; Closed Landfill Subcategory; Low LFG Producing Areas; Landfill Gas Treatment; Wellhead Operational Standards; Surface Monitoring; Startup, Shutdown, and Malfunction; and Other Clarifications. Rule 23 was revised to comport with the NSPS, Subpart XXX and with the EGs, Subpart Cf.

- ❖ **45CSR25** - *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities* - Resource Conservation and Recovery Act rule, promulgated last in the 2017 session. Revisions to the rule include annual incorporation by reference updates with 33CSR20. This revised rule incorporates by reference the provisions of 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 promulgated as of June 1, 2017, including: amending existing regulations regarding the export and import of hazardous wastes from and into the United States and revising RCRA hazardous waste generator regulatory program. Minor wordsmithing and clarifications were also made.

EPA made these changes to: Provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import- export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); enable electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit. The AES resides in the U.S. Customs and Border Protection's Automated Commercial Environment (ACE).

EPA finalized revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.

- ❖ **45CSR34** - *Emission Standards for Hazardous Air Pollutants* - National Emission Standards for Hazardous Air Pollutants rule, promulgated last in the 2017 session. Revisions to the rule incorporate by reference amendments to the NESHAPs promulgated by EPA under 40 CFR Part 63 as of June 1, 2017, including: Aerospace Manufacturing and Rework Facilities, Area Space Boilers Rule; Method 303; Ferroalloys Production; Mercury and Air Toxics Standards (MATS); Petroleum Refinery Sector; Portland Cement Manufacturing; Radon Emissions from Operating Mill Tailings; Test Methods, Performance Specifications, and Testing Regulations; and Secondary Aluminum Production.

Aerospace Manufacturing and Rework Facilities, Subpart GG - Clarified the compliance date for the handling and storage of waste.

Area Source Boilers Rule, Subpart JJJJJ - EPA retained the subcategory and separate requirements for limited-use boilers. EPA amended three reconsidered provisions regarding: (1) The alternative particulate matter (PM) standard for new oil-fired boilers; (2) performance testing for PM for certain boilers based on their initial compliance test; and (3) fuel sampling for mercury (Hg) for certain coal-fired boilers based on their initial compliance demonstration. EPA made minor changes to the definitions of startup and shutdown. Also addressed a limited number of technical corrections and clarifications, including removal of the affirmative defense for malfunction in light of a court decision on the issue.

Method 303 of Appendix A to 40 CFR Part 63 - EPA finalized revisions to better define the requirements associated with conducting Method 303 training courses. Method 303

is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. EPA added language that clarifies the criteria used to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. These revisions will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

Ferroalloys Production, Subpart XXX - EPA amended the rule to allow existing facilities with positive pressure baghouses to perform visible emissions monitoring twice daily as an alternative to installing and operating bag leak detection systems (BLDS) to ensure the baghouses are operating properly. EPA maintained the requirement that facilities must use a digital camera opacity technique (DCOT) method to demonstrate compliance with opacity limits. EPA revised the rule to reference the recently updated version of the DCOT method.

MATS, Subpart UUUUU - EPA amended the electronic reporting requirements to allow for the temporary submission, through June 30, 2018, of certain reports using the portable document file (PDF) format and to correct inadvertent errors. Owners or operators of Electric Utility Steam Generating Units (EGUs) will be able to continue to use temporarily a single electronic reporting system for MATS data submissions, to rely on correct language for mercury (Hg) relative accuracy test audit (RATA) requirements, and to rely on the correct acceptance criterion for ongoing quality assurance test requirements for Hg RATAs. This extension will allow EPA the time to develop, implement, and test the code necessary so that all MATS reports required to be submitted electronically can be submitted using the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool.

Petroleum Refineries, Subparts CC & UUU - EPA amended the NESHAP in three respects: (1) Adjusted the compliance date for regulatory requirements that apply at maintenance vents during periods of startup, shutdown, maintenance or inspection for sources constructed or reconstructed on or before June 30, 2014; (2) Amended the compliance dates for the regulatory requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCU) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014; (3) Technical corrections and clarifications. EPA finalized these amendments in response to new information submitted after these regulatory requirements were promulgated as part of the residual risk and technology review (RTR) rulemaking. This action will have an insignificant effect on emissions reductions and costs.

Portland Cement Manufacturing, Subpart LLL - EPA amended the NESHAP to provide an additional compliance alternative for a period of one year for sources that would otherwise be required to use an HCl CEMS to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of a calibration gas used for quality assurance purposes. This amendment restores regulatory text requiring the reporting of clinker production and kiln feed rates that was deleted inadvertently.

Radon Emissions from Operating Mill Tailings, Subpart W - EPA revised certain portions of the NESHAP as to what constitutes generally available control technology or management practices (GACT) for this area source category. EPA added new definitions, revised existing definitions and clarified that the NESHAP also applies to uranium recovery facilities that extract uranium through the in-situ leach method and the heap leach method.

Test Methods, Performance Specifications, and Testing Regulations, 40 CFR Parts 61 and 63; - Technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

Secondary Aluminum, Subpart RRR - EPA amended the NESHAP by correcting inadvertent errors, clarifying rule requirements for initial performance tests and submittal of malfunction reports, providing an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarifying what constitutes a change in furnace operating mode. The web site addresses for the EPA's Electronic Reporting Tool (ERT) and the Compliance and Emissions Data Reporting Interface (CEDRI) were also updated. These amendments will help to improve compliance and implementation of the rule.

Division of Land Restoration

- ❖ **33CSR20** – *Hazardous Waste Management System* – This rule is being promulgated to amend the Rule Title, Hazardous Waste Management System by adopting two recent federally promulgated rules that embody significant changes to the federal regulations governing hazardous waste. In response to the 2015 Definition of Solid Waste rule revisions which amends the 2008 definition of solid waste, the goal of the provisions are to establish clear, uniform, legitimate and environmentally responsible recycling standards for all hazardous secondary material being recycled, and by doing so in a manner that promotes protection for human health, public safety, and the environment.

The Hazardous Waste Generator Improvements rule provisions are being incorporated also. The goals of these provisions are to streamline the generator requirements to ease application; facilitate better compliance; and provide greater flexibility in the management of hazardous waste. This rule consolidates the generator requirements into 40 CFR Part 262 to reduce cross references to 40 CFR Parts 261 and 265. Two new provisions that provide additional flexibility to a hazardous waste generator is the allowance for the generator of episodic waste to avoid higher generator status requirements provided the episodic waste continues to be properly managed, and allowing a very small quantity generators (VSQG) to send its hazardous waste to a large

quantity generator if under the control of the same person. In addition to these provision, an emergency management communication requirement was added to enhance the safety of the facilities for employees and the public.

- ❖ **33CSR30** – *Underground Storage Tanks* – This rule update serves to incorporate by reference 40 CFR 280 (federal UST regulations), remove sections of the State Rule associated with the Energy Policy Act of 2005 as these are now included in the current federal regulations, and update certain aspects of the Underground Storage Tank Worker Certification Program.
- ❖ **60CSR3** – *Voluntary Remediation and Redevelopment Rule* – The proposed revisions update procedures for the Brownfields Revolving Fund (BRF) Program. Primary changes include consolidation of all information covering the BRF into one section of the Rule; greater flexibility in establishing loan interest rates and procedures to better accommodate a variety of recipients and projects in various market conditions; and broader purposes for which funds can be used to meet requirements of the U.S. Environmental Protection Agency’s Revolving Loan Fund Grant Program, as well as any other stipulations of other possible funding sources (Legislative allocations, grants from entities other than U.S. EPA, etc.).

Other minor changes include updating the definitions section to remove terms already defined in W. Va. Code §22-22 Voluntary Remediation and Redevelopment Act, or where the term is not actually used in the rule, and removing the requirement to submit hardcopy documents/reports in appropriate instances.

VI. OTHER BUSINESS

- ❖ The next meeting of the Council is September 21, 2017 at 1:30 p.m.

VII. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:25 p.m.

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
December 14, 2017

I. CALL TO ORDER

Thomas L. Clarke, Ex Officio Chair designated by Cabinet Secretary Austin Caperton, called to order the regular meeting of the Environmental Protection Advisory Council at 1:35 p.m. on December 14, 2017 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Rick Roberts, James Van Gundy, Lisa Dooley, and Rebecca McPhail; Ted Hapney and Bill Raney participated by phone; Larry Harris was absent. There was a quorum at the meeting.

The meeting was also attended by Deputy Cabinet Secretary and Division of Water and Waste Management Director Scott Mandirola; Ken Ward, Jr. (Charleston Gazette Mail); and Angie Rosser (West Virginia Rivers Coalition).

III. OLD BUSINESS

Minutes of the June 15, 2017 Meeting. The minutes were provided to Council via email and in hard copy for their review. Ms. McPhail moved for approval of the minutes, Ms. Dooley seconded the motion, and it was carried by acclamation of Council.

IV. BRIEFING BY THE DIVISION OF WATER & WASTE MANAGEMENT

Deputy Cabinet Secretary Mandirola discussed the agency's regulatory scheme for natural gas pipelines and answered questions of Council regarding current issues facing the agency with regard to natural gas pipelines. Mr. Mandirola also answered questions regarding the Atlantic Coast Pipeline and the Mountain Valley Pipeline.

V. OTHER BUSINESS

2017 Annual Report. The report was provided to Council via email and in hard copy for their review. Dr. VanGundy stated that he cannot fully support the report due to its last sentence, but advised that he did not want to keep the report from being approved. Mr. Roberts moved for approval of the report, Mr. Raney seconded the motion, and it was carried by acclamation of Council, except for Dr. VanGundy.

2018 Meeting Dates. Council scheduled dates for 2018 as follows: April 19, June 14, September 20, and December 20, all meetings to commence at 1:30 p.m. at DEP's headquarters in Kanawha City.

VI. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:20 p.m.