

FILED

2014 APR -1 P 4: 27

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

HB 4346



ENROLLED

House Bill No. 4346

(By Delegates Phillips, R., Caputo, Andes, Craig,
Sumner, Pethel, Marcum, Lynch, Tomblin,
Eldridge and Barker)



Passed March 8, 2014

In effect ninety days from passage.

FILED

2014 APR -1 P 4: 27

**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

E N R O L L E D

H. B. 4346

**(BY DELEGATES PHILLIPS, R., CAPUTO, ANDES, CRAIG,
SUMNER, PETHEL, MARCUM, LYNCH, TOMBLIN,
ELDRIDGE AND BARKER)**

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-5-20, relating to the development of a state plan to reduce carbon pollution and greenhouse gas production under section 111 of the Clean Air Act; establishing separate standards of performance for carbon dioxide emissions from existing coal-fired electric generating units; establishing separate standards of performance for natural gas-fired electric generating units; and factors and considerations to be reflected in the developed state plan.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §22-5-20, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-20. Regulating carbon dioxide emissions from existing fossil fuel-fired electric generating units.

1 (a) The Department of Environmental Protection, in
2 consultation with the Department of Environmental Protection
3 Advisory Council, shall establish separate standards of
4 performance for carbon dioxide emissions from existing coal-
5 fired electric generating units in accordance with subsection (b)
6 and from existing natural gas-fired electric generating units in
7 accordance with subsection (c). The standards of performance
8 developed and proposed under any state plan to comply with
9 Section 111 of the Clean Air Act should allow for greater
10 flexibility and take into consideration the additional factors set
11 forth in subsection (d) as a part of any state plan to achieve
12 targeted reductions in greenhouse gas emissions which are
13 equivalent or comparable to the goals and marks established by
14 federal guidelines.

15 (b) *Standards of performance for existing coal-fired electric*
16 *generating units.* — Except as provided under subsection (d), the
17 standard of performance established for existing coal-fired
18 electric generating units under subsection (a) shall be based
19 upon:

20 (1) The best system of emission reduction which, taking into
21 account the cost of achieving the reduction and any non-air
22 quality health and environmental impact and energy
23 requirements, has been adequately demonstrated for coal-fired
24 electric generating units that are subject to the standard of
25 performance;

26 (2) Reductions in emissions of carbon dioxide that can
27 reasonably be achieved through measures undertaken at each
28 coal-fired electric generating unit; and

29 (3) Efficiency and other measures that can be undertaken at
30 each coal-fired electric generating unit to reduce carbon dioxide

31 emissions from the unit without switching from coal to other
32 fuels or limiting the economic utilization of the unit; and

33 (4) Additional regulatory mechanisms that provide flexibility
34 in complying with the standards, including: (A) Emissions
35 trading with credited reduction for any unit that was in operation
36 January 1, 2011, or thereafter, and fleet wide averaging; (B)
37 other alternative implementation measures that are determined
38 to further the interests of West Virginia and its citizens including
39 state programs such as clean energy programs that mandate
40 reduced energy consumption resulting in avoided emissions,
41 emission reductions, or a reduction in the state's carbon dioxide
42 intensity whereby the state shall credit equally based on the
43 output to the generators located in the state that are subject to
44 carbon dioxide performance standard rules under Section 111(d)
45 of the Clean Air Act.

46 (c) *Standards of performance for existing natural gas-fired*
47 *electric generating units.* — Except as provided in subsection
48 (d), the standard of performance established for existing gas-
49 fired electric generating units under subsection (a) shall be based
50 upon:

51 (1) The best system of emission reduction which, taking into
52 account the cost of achieving the reduction and any non-air
53 quality health and environmental impact and energy
54 requirements, has been adequately demonstrated for natural gas-
55 fired electric generating units that are subject to the standard of
56 performance;

57 (2) Reductions in emissions of carbon dioxide that can
58 reasonably be achieved through measures at each natural gas-
59 fired electric generating unit; and

60 (3) Efficiency and other measures that can be undertaken at
61 the unit to reduce carbon dioxide emissions from the unit
62 without switching from natural gas to other lower-carbon fuels
63 or limiting the economic utilization of the unit.

64 **(d) *Flexibility in establishing standards of performance.* —**
65 **In developing a flexible state plan to achieve targeted reductions**
66 **in greenhouse gas emissions, the Department of Environmental**
67 **Protection shall endeavor to establish an achievable standard of**
68 **performance for any existing fossil fuel-fired electric generating**
69 **unit, and examine whether less stringent performance standards**
70 **or longer compliance schedules may be implemented or adopted**
71 **for existing fossil fuel-fired electric generating units in**
72 **comparison to the performance standards established for new,**
73 **modified or reconstructed generating units, based on the**
74 **following:**

75 **(1) Consumer impacts, including any disproportionate**
76 **impacts of energy price increases on lower income populations;**

77 **(2) Non-air quality health and environmental impacts;**

78 **(3) Projected energy requirements;**

79 **(4) Market-based considerations in achieving performance**
80 **standards;**

81 **(5) The costs of achieving emission reductions due to factors**
82 **such as plant age, location or basic process design;**

83 **(6) Physical difficulties with or any apparent inability to**
84 **feasibly implement certain emission reduction measures;**

85 **(7) The absolute cost of applying the performance standard**
86 **to the unit;**

87 **(8) The expected remaining useful life of the unit;**

88 **(9) The impacts of closing the unit, including economic**
89 **consequences such as expected job losses, if the unit is unable to**
90 **comply with the performance standard;**

91 **(10) Impacts on the reliability of the system; and**

92 (11) Any other factors specific to the unit that make
93 application of a modified or less stringent standard or a longer
94 compliance schedule more reasonable.

95 (e) *State plan requirement.* — The Department of
96 Environmental Protection shall propose or submit to the U. S.
97 Environmental Protection Agency a state plan which includes
98 achievable performance standards for existing sources, and a
99 combination of additional measures designed to meet the U. S.
100 Environmental Protection Agency's guidelines, consistent with
101 the considerations, goals and parameters set forth in this section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Janny Wells
Chairman, House Committee

[Signature]
Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregory H. Sawyer
Clerk of the House of Delegates

Joseph W. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

The within *is approved* this the *1st*
day of *April*, 2014.

Carl Roy Smith
Governor

PRESENTED TO THE GOVERNOR

11.2.20.20

Time 10:45 hr