

2009 Legislative Session – S.B. 153

Provided is an overview of the environmental rules that were bundled and passed as part of S.B. 153:

45 CSR 16 Standards of performance for new stationary sources

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the U.S. EPA pursuant to the federal Clean Air Act as amended. The rule incorporates by reference revisions pertaining to the updated federal New Source Performance Standards

33 CSR 20 Hazardous waste management systems

Rule regulates the generation, treatment, storage and disposal of hazardous waste. The rule adopts by reference federal regulations in effect as of June 1, 2008. Additionally, the rule is amended to promote hazardous waste recycling by allowing hazardous waste recyclers to stage hazardous waste for three days prior to recycling. A hazardous waste recycling facility would be required to provide financial assurance in order to qualify for the three-day staging period.

33 CSR 22 Assessment of civil administrative penalties

The proposed rule will increase the fees and stabilize the fee collection to adequately sustain the current Hazardous Waste Management Program. No spending authority increase is being sought with this change. The rule makes changes to clarify and improve the existing rule with technical cleanup, adding consideration of ability to pay, consideration of unique factors, clarifying penalty amounts, providing examples in ratings for potential for harm and adding facility types not reflected in the existing rule.

33 CSR 24 Hazardous waste management fee

The rule sets procedures for assessing and collecting the hazardous waste management fees. The rule will increase the fees and stabilize the fee collection to adequately sustain the current Hazardous Waste Management Program. No spending authority increase is being sought with this change.

38 CSR 2 Surface mining reclamation

This rule establishes general and specific rules for permit application requirements and contents; haulageways or access roads; drainage and sediment control systems; blasting; premining and postmining land use; fish and wildlife considerations; revegetation; prime farmlands; insurance and bonding; replacement, release, and forfeiture of bonds; requirements of notice of intent to prospect; performance standards; performance standards applicable to underground mining operations; subsidence control; small operator assistance program; citizen's actions; designation of areas unsuitable for mining; inspection and enforcement; Surface Mine Board; and Coal Refuse. The rule: (1) allows the Cabinet Secretary to engage in continuing oversight of persons approved to prepare, sign, or certify mining permit applications and related materials; (2) with respect to incidental boundary revisions to existing permits, clarifies that certain types of collateral activities are part of the primary mining operations and therefore subject to the same acreage limitations, while providing more relevant and exacting criteria for the Secretary to consider in evaluating an application for revisions; and (3) deletes the bonding matrix form, as it is now included within the application packet.

45 CSR 1 Control and reduction of nitrogen oxides from nonelectric-generating units as a means of mitigating the transport of ozone precursors.

This rule contains ozone season Nox reduction requirements which apply to large fossil fuel-fired industrial boilers with heat inputs greater than 250mmBtu/hr. 45CSR1 also contains ozone season NOx reduction requirements for certain large cement kilns and internal combustion engines. This rule is being repealed pursuant to a requirement under the federal Clean Air Interstate Rule(CAIR), as the CAIR ozone season NOx reduction program under 45CSR40 will subsume the NOx SIP Call Program as of May 1, 2009. Also, ozone season NOx reduction requirements for large cement kilns and internal combustion engines identical to those in 45CSR1 will continue under 45CSR40, as of May 1, 2009

45 CSR 8 Ambient air quality standards

The rule establishes ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA. The rule is being revised and updated to reflect revised federal standards. Revisions to the rule also include deletion of references to the obsolete one-hour ozone NAAQS.

45 CSR 13 Permit for construction , modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation.

This rule sets forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source and to modify a non-major stationary source. The rule also establishes the requirements for obtaining an administrative update to an existing permit, temporary permit or a general permit, and for filing notifications and maintaining records of changes not otherwise subject to the permit requirements of this rule. The rule establishes public participation requirements as well as procedures for permission to commence construction, and the transfer, suspension and revocation of permits. As required by statute (House Bill 4438), the proposed revisions reduce the timelines for minor source air permit issuance. The revisions to the rule also allow equipment and materials to be delivered and stored on site prior to permit issuance, as well as clarify that a Rule 13 permit is also an operating permit. A new section adds a 15-day preapproval review for permission to commence construction or modification prior to receiving a permit, provided that operation does not commence until a permit is issued.

45 CSR 14 Permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration.

The Rule is part of the State Implementation Plan and sets for the criteria and procedures for major stationary sources to obtain a permit to construct, operate and /or modify a major stationary source. Revisions to the rule remove references to pollution control projects and clean unites in accordance with a 2005 United States Court of Appeals for the District of Columbia Circuit decision that vacated those provisions.

45 CSR 25 Control of air pollution from hazardous waste treatment, storage and disposal facilities.

The rule establishes a program of regulation of the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes. The rule incorporates by reference revisions pertaining to the updated federal Hazardous Waste rule.

45 CSR 26 Nox budget trading program as a means of control and reduction of nitrogen oxides from electric-generating units.

This rule contains NOx reduction requirements which apply to electric generating units which have and electric generating capacity greater than 250 megawatts. This rule is being repealed pursuant to a requirement under the federal Clean Air Interstate Rule(CAIR), as the CAIR ozone season NOx reduction program under 45CSR40 will subsume the NOx SIP Call Program as of May 1, 2009.

45 CSR 34 Emission standards for hazardous air pollutants

This rule establishes and adopts national standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the U.S. EPA pursuant to the federal Clean Air Act, as amended. The rule incorporates by reference revisions pertaining to the updated federal Hazardous Air Pollutant rule. Some national emission standards affecting non-major sources of hazardous air pollutants have been excluded from incorporation by reference, because the new standards constitute unfunded State mandates for which resources are lacking.

45 CSR 37 Mercury budget trading program to reduce mercury emissions.

The rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury Budget Trading Program as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule. It applies to coal-fired electric utility steam generating units that have greater than 25 MW generating capacity. The rule is being repealed due to vacatur of the federal counterpart program by the US Court of Appeals for the District of Columbia Circuit.

47 CSR 30 WV/NPDES rules for coal mining facilities

This rule sets the requirements implementing the powers, duties, and responsibilities of the WV Code §22-11-1 with respect to all coal mines, preparation plants and all refuse and waste therefrom in the State. Revised rule will achieve consistency with the State's noncoal NPDES rule, 47CSR10. Other changes were made to allow for digital signatures and the correction of clerical errors.

47 CSR 31 State water pollution control revolving fund

Revisions to the rule reflect how the program is operation as opposed to how it was intended to operate when the program was created. Other changes include the creation of a State Environmental Review Process for all sewer projects rather than adopting wholesale the federal National Environmental Policy Act (NEPA) requirements. Other changes included updated wastewater engineering design practices, clean-up of errors, and insertion of references to the WV State Code in proper areas.

47 CSR 32 Environmental laboratories certification and standards of performance

This rule governs the certification of laboratories conducting environmental analyses of waste and wastewater as required by rules or orders issued pursuant to covered statutory programs. Revisions are being made to update laboratory procedures and requirements consistent with the advances that have been made in analytical protocol. The changes also increase the annual lab certification fees and impose a new application fee designed to recover the agency's costs of administering the program.

47 CSR 34 Dam safety

This rule establishes requirements relating to the design, placement, construction, enlargement, alteration, removal, abandonment, and repair of dams in this State that fall within the definition set forth in WV Code §22-14-2(f). The rule also establishes requirements to govern the disbursement and use of moneys held in the State Dam Safety Rehabilitation Revolving Fund. The scope does not extend to those dams that are related to coal activities. Establishes requirements to govern the disbursement and

use of moneys held in the state Dam Safety Rehabilitation Revolving Fund. The fund will be used to make loans to persons who own an interest in a deficient dam to finance its engineering, design, alteration, improvement, repair, breaching or removal as necessary to correct or remove the deficiencies and other activities as authorized by a federal grant or a legislative appropriation, to address deficient dams that are privately owned by a noncompliant dam owner, and to defray costs incurred by the Department in administering the Fund. The rule also revises civil administrative penalty amounts to implement 2008 amendments to the Dam Safety Act provisions.

47 CSR 56 Assessment of civil administrative penalties

The rule defines the process for administering Civil Administration Penalties (CAPs) under the authority of the Groundwater Protection Act. The rule makes changes to clarify and improve the existing rule with technical cleanup, adding consideration of ability to pay, consideration of unique factors, clarifying penalty amounts, providing examples in ratings for potential for harm and adding facility types not reflected in the existing rule.

60 CSR 3 Voluntary remediation and redevelopment

The rule establishes the eligibility, procedures, standards, and legal documents required for voluntary and brownfield cleanups. This rule updates and amends Table 60-3B, the De Minimis Table, deletes a sentence from Section 9.4g, and adds an inspection and reporting provision in Appendix 60-3D, the Land Use Covenant