

**NOVEMBER** 16

Sunday, November 16, 2008

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

Richard Thompson  
ex officio nonvoting member

**Senate**

**House**

Minard, Chairman  
Fanning, Vice Chair  
Prezioso  
Unger  
Boley  
Facemyer

Absent

Brown, Chairman  
Miley, Vice Chair  
Burdiss  
Talbot  
Overington  
Sobonya

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

The minutes of the October 12<sup>th</sup> and 14<sup>th</sup>, 2008, meetings were approved.

Jay Lazell, Associate Counsel, explained his abstract on the rule proposed by the **Division of Water and Waste Management**, Assessment of Civil Administrative Penalties, **33CSR22**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Ray Franks, General Counsel with the Department of Environmental Protection, addressed the Committee.

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

Ms. Brown moved to amend the proposed rule on page 2, subsection 2.9, by striking out the words "within thirty (30) calendar days of the date of inspection or receipt of sample analyses or other information reflecting a violation"; and, on page 2, by striking out subdivision 3.2.d.

Michael Zeto with the Department of Environmental Protection responded to questions from the Committee

Don Garvin, Legislative Coordinator for the Environmental Council, responded to questions from the Committee.

Karen Watson, Associate General Counsel, responded to questions from the Committee.

The motion to amend was adopted.

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

Mr. Lazell reviewed his abstract on the rule proposed by the **Division of Water and Waste Management**, Assessment of Civil Administrative Penalties, **47CSR56**, and stated that the Division has agreed to technical modifications.

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

Ms. Brown moved to amend the proposed rule on page 2, subsection 2.8, by striking out the words "within thirty (30) calendar days of the date of inspection or receipt of sample analyses or other information reflecting a violation"; and, on page 2, by striking out subdivision 3.2.d. The motion was adopted.

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

Mr. Lazell explained his abstract on the rule proposed by the **Secretary's Office**, Voluntary Remediation and Redevelopment Rule **60CSR3**.

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

Charles Roskovensky, Associate Counsel, reviewed his abstract on the rule proposed by the **Contractor Licensing Board**, **West Virginia Contractor Licensing Act**, **28CSR2**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

David Mullins, Commissioner for the Board, responded to questions from the Committee.

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

Mr. Roskovensky explained his abstract on the rule proposed by the **WV Board of Medicine**, **Licensure, Disciplinary and Complaint Procedures**, **Continuing Education**, **Physician Assistants**, **11CSR1B**, and stated that the Board has agreed to technical modifications.

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

Mr. Roskovensky reviewed his abstract on the rule proposed by the **WV Board of Medicine, Definition of Surgery to include the use of lasers, ionizing radiation, pulsed light and radio frequency devices, 11CSR10**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

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

Mr. Roskovensky explained his abstract on the rule proposed by the **WV Board of Examiners for Registered Professional Nurses, Policies, Standards and Criteria for the Evaluation and Accreditation of Colleges, Departments or Schools of Nursing, 19CSR1**, and stated that the Department has agreed to technical modifications.

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

Mr. Roskovensky reviewed his abstract on the rule proposed by the **WV Board of Examiners for Registered Professional Nurses, Fees for Services Rendered by the Board and Supplemental Fee for the Center for Nursing, 19CSR12**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Laura Rhodes, Executive Director for the Board, responded to questions from the Committee.

Mr. Overtington moved that the proposed rule laid over. The motion was denied.

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

Mr. Lazell explained his abstract on the rule proposed by the **Office of Air Quality, Ambient Air Quality Standards, 45CSR8**, and stated that the Office has agreed to technical modifications.

Mr. Garvin addressed the Committee.

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

Mr. Lazell reviewed his abstract on the rule proposed by the **Office of Air Quality, Standards of Performance for New Stationary Sources, 45CSR16**.

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

Mr. Lazell explained his abstract on the rule proposed by the **Office of Air Quality**, Control of Air Pollution From Hazardous Waste Treatment, Storage and Disposal Facilities , **45CSR25** , and responded to questions from the Committee.

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

Mr. Lazell reviewed his abstract on the rule proposed by the **Office of Air Quality**, Emission Standards for Hazardous Air Pollutants, **45CSR34**, and responded to questions from the Committee.

Ms. Watson responded to questions from the Committee.

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

Mr. Lazell explained his abstract on the rule proposed by the **Office of Air Quality**, Mercury Budget Trading Program to Reduce Mercury Emissions, **45CSR37**, and responded to questions from the Committee.

Ms. Watson responded to questions from the Committee.

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

Ms. Brown moved to adjourn. The motion was adopted.

NOVEMBER INTERIM ATTENDANCE  
Legislative Interim Meetings  
November 16, 17 and 18, 2008

~~Sunday~~ <sup>16</sup>  
~~Tuesday~~, November 18, 2008

~~6~~  
7:00 pm - ~~8~~  
8:00 pm

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex  
officio nonvoting member \_\_\_\_\_

Thompson, ex  
officio nonvoting member \_\_\_\_\_

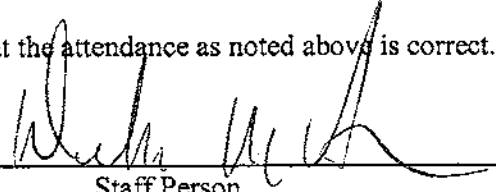
Senate

Minard, Chair ✓  
Fanning, Vice Chair ✓  
Prezioso ✓  
Unger ✓  
Boley ✓  
Facemyer \_\_\_\_\_

House

Brown, Chair ✓  
Miley, Vice Chair ✓  
Burdiss ✓  
Talbott ✓  
Overington ✓  
Sobonya ✓

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**  
Sunday, November 16, 2008  
6:00 p.m. to 8:00 p.m.  
Senate Judiciary Committee Room

1. **Approval of Minutes** - Meetings of October 12 & 14, 2008.
2. **Review of Legislative Rules:**
  - a. **Division of Water and Waste Management, DEP**  
Assessment of Civil Administrative Penalties  
33CSR2
    - Laid Over
    - Approve as Modified
  - b. **Division of Water and Waste Management, DEP**  
Assessment of Civil Administrative Penalties  
47CSR56
    - Laid Over
    - Approve as Modified
  - c. **Secretary's Office, DEP**  
Voluntary Remediation and Redevelopment Rule  
60CSR3
    - Approve ~~as Modified~~
  - d. **Contractor Licensing Board, WV**  
*West Virginia Contractor Licensing Act*  
28CSR2
    - Approve as Modified
  - e. **Medicine, WV Board of**  
*Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants*  
11CSR1B
    - Approve as Modified
  - f. **Medicine, WV Board of**  
*Definition of Surgery to include the use of lasers, ionizing radiation, pulsed light and radio frequency devices*  
11CSR10
    - Approve as Modified

- g. **Registered Professional Nurses, WV Board of Examiners for Policies, Standards and Criteria for the Evaluation and Accreditation of Colleges, Departments or Schools of Nursing**  
19CSR1
  - Approve as Modified
- h. **Registered Professional Nurses, WV Board of Examiners for Fees for Services Rendered by the Board and Supplemental Fee for the Center for Nursing**  
19CSR12
  - Approve as Modified
- i. **Office of Air Quality, DEP**  
Ambient Air Quality Standards  
45CSR8
  - Approve as Modified
- j. **Office of Air Quality, DEP**  
Standards of Performance for New Stationary Sources  
45CSR16
  - Approve
- k. **Office of Air Quality, DEP**  
Control of Air Pollution From Hazardous Waste Treatment, Storage and Disposal Facilities  
45CSR25
  - Approve
- l. **Office of Air Quality, DEP**  
Emission Standards for Hazardous Air Pollutants  
45CSR34
  - Approve
- m. **Office of Air Quality, DEP**  
Mercury Budget Trading Program to Reduce Mercury Emissions  
45CSR37
  - Approve

3. **Other Business**



**NOVEMBER INTERIM ATTENDANCE**  
**Legislative Interim Meetings**  
**November 16, 17 & 18, 2008**

**Sunday, November 16, 2008**

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

**Legislative Rule-Making Review Committee**

Earl Ray Tomblin, ex  
 officio nonvoting member

Richard Thompson, ex  
 officio nonvoting member

**Senate**

**House**

Minard, Chair	✓
Fanning, Vice Chair	✓
Prezioso	✓
Unger	✓
Boley	✓
Facemyer	—

Brown, Chair	✓
Miley, Vice Chair	✓
Burdiss	✓
Talbott	✓
Overington	✓
Sobonya	✓

- Minard called meeting to order
- Minard <sup>Brown</sup> moved minutes - approved
- Water and Waste 33CSR22  
 Jay explained and responded to ?'s  
 Ray Franks, General Counsel addressed the Committee  
 Brown moved rule as modified  
 Brown moved to amend on page 2, subsection  
 2.9, by striking out the words "w/in 30 calendar  
 days of the date of inspection or receipt of sample  
 analysis or other information reflecting a violation"  
 and on page 2, by striking out subdivision 3.2.d.  
 Michael Zeto w/DEP responded to ?'s from the Committee  
 Don Garvin w/ <sup>Legislative Coordinator</sup> Environmental Council, responded to ?'s from the Committee

Associate

Karen Watson, General Counsel, responded to 7<sup>A</sup>

from the Committee

Amendment adopted

Approved as modified and Amended

Water and Waste YTCSE 54

Jay explained

Brown moved as modified

Brown moved to amend on page 2, Subsection 2.8, by striking out the words "within 30 calendar day of the date of inspection or receipt of sample analysis or other information reflecting a violation" and on page 2, by striking out Subdivision 3.2.d.

Amendment adopted

Approved as modified and Amended

Secretary office LCSE 3

Jay explained

Brown moved rule

Motion adopted

Contractor 18CSR2

Charlie explained and responded to 7<sup>B</sup> from the Committee

David Mullins, Commissioner for the Bd, responded to 7<sup>A</sup> from the Committee

Policy moved to lay over

Motion adopted

- Medicine 11CSR1B

Charlie explained

Brown moved rule as modified

Motion adopted

- Medicine 11CSR10

Charlie explained and responded to ?'s

Brown moved rule as modified

Motion adopted

- Reg Pro Nurses 19CSR1

Charlie explained

Brown moved rule as modified

Motion adopted

- Reg Pro Nurses 19CSR12

Charlie explained & responded to ?'s

~~Overington moved to lay over - Motion denied~~

Laurea Rhodes, Ex Director for the Bd, responded to ?'s from the Committee

Brown moved rule as modified

Overington moved to lay over - Motion denied

Motion adopted

- Air 45CSR 8  
Jay explained  
Don Garvin, Legislative Coordinator for the Environment  
Council addressed the Committee  
Brown moved rule as modified  
Motion adopted

- Air 45CSR 16  
Jay explained  
Brown moved rule  
Motion adopted

- Air 45CSR 25  
Jay explained and responded to ?'s  
Brown moved rule  
Motion adopted

- Air 45CSR 34  
Jay explained and responded to ?'s  
Karen Watson, Associate General Counsel w/DEP,  
responded to ?'s from the Committee  
Brown moved rule  
Motion adopted

- Air 45CSR 37  
Jay explained and responded to ?'s  
Brown moved rule  
Karen Watson responded to ?'s → Motion adopted

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
Sunday, November 16, 2008  
6:00 p.m. to 8:00 p.m.  
Senate Judiciary Committee Room

1. Approval of Minutes - Meetings of October 12 & 14, 2008.
2. Review of Legislative Rules:

*Approved  
as modified  
&  
amended*

**Division of Water and Waste Management, DEP**  
Assessment of Civil Administrative Penalties  
33CSR22

- Laid Over
- Approve as Modified

*Approved  
as modified  
and amended*

**Division of Water and Waste Management, DEP**  
Assessment of Civil Administrative Penalties  
47CSR56

- Laid Over
- Approve as Modified

*Approved*

**Secretary's Office, DEP**  
Voluntary Remediation and Redevelopment Rule  
60CSR3

- Approve as ~~Modified~~

*Laid over*

**Contractor Licensing Board, WV**  
West Virginia Contractor Licensing Act  
28CSR2

- Approve as Modified

*Approved  
as modified*

**Medicine, WV Board of**  
Licensure, Disciplinary and Complaint Procedures, Continuing  
Education, Physician Assistants  
11CSR1B

- Approve as Modified

*Approved  
as modified*

**Medicine, WV Board of**  
Definition of Surgery to include the use of lasers, ionizing  
radiation, pulsed light and radio frequency devices  
11CSR10

- Approve as Modified

*Approved as modified*

**Registered Professional Nurses, WV Board of Examiners for Policies, Standards and Criteria for the Evaluation and Accreditation of Colleges, Departments or Schools of Nursing**  
19CSR1

- Approve as Modified

*Hand over Approved as modified*

**Registered Professional Nurses, WV Board of Examiners for Fees for Services Rendered by the Board and Supplemental Fee for the Center for Nursing**  
19CSR12

- Approve as Modified

*Approved as modified*

**Office of Air Quality, DEP  
Ambient Air Quality Standards**  
45CSR8

- Approve as Modified

*Approved*

**Office of Air Quality, DEP  
Standards of Performance for New Stationary Sources**  
45CSR16

- Approve

*Approved*

**Office of Air Quality, DEP  
Control of Air Pollution From Hazardous Waste Treatment, Storage and Disposal Facilities**  
45CSR25

- Approve

*Approved*

**Office of Air Quality, DEP  
Emission Standards for Hazardous Air Pollutants**  
45CSR34

- Approve

*Approved*

**Office of Air Quality, DEP  
Mercury Budget Trading Program to Reduce Mercury Emissions**  
45CSR37

- Approve

**3. Other Business**

**NOVEMBER INTERIM ATTENDANCE**

Legislative Interim Meetings

November 16, 17 & 18, 2008

**Sunday, November 16, 2008**

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

**Legislative Rule-Making Review Committee**

Earl Ray Tomblin, ex  
officio nonvoting member \_\_\_\_\_

Richard Thompson, ex  
officio nonvoting member \_\_\_\_\_

**Senate**

**House**

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

Brown, Chair	✓
Miley, Vice Chair	✓
Burdiss	✓
Talbott	✓
Overington	_____
Sobonya	✓

*Brown moved minutes.*

W & W Mtg

*Jay explained it was laid over at previous meeting  
Explained conflict w/statute.*

*Jay responded to q's*

*Dude from DEP spoke & responded to q's.*

Brown

*Approve as mod*

*adopted*

*Amend to remove conflicting language*

*Mike Zeta, Chief Insp*

*Don Carvin leg Coord WV Environmental Council*

Brown

*modified and Amended*

*Karm Watson responded to q's*

47 CSR 56 Same amends

Secretaries of Health - Vol. Remed

Jay explained

Brown  
adopted

Approve

Contractors Licensing

Charlie explained & responded to q's

David Mullins responded to q's

Boley  
adopted

Lay over

Medicine - Licensure

Charlie explained

Brown

Approve as mod

Medicine - Dep of Surgery

Charlie explained & responded to questions

Brown  
adopted

Approve as mod

RIOs - Policies

Charlie explained

Brown

Approve as mod

adopted

RWs - Fees

Charlie explained



Laura Rhodes responded to q's  
Brown moved cube.

Oversight  
defeated.

Went over — wants more modest proposal  
Approved as mod

REGISTRATION OF PUBLIC  
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: 11-16-08

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Don Harwin	Rt. 6, Box 627 Buckhannon, WV 26201	WV Environmental Council	45CSR 8	Yes X

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*Rule Governing Assessment of Civil Administrative Penalties under the Solid Waste Management Act and Hazardous Waste Management Act, 33CSR22.*

**AMENDMENT**

On page 2, subsection 2.9, by striking out the words "within thirty (30) calendar days of the date of inspection or receipt of sample analyses or other information reflecting a violation";

And,

On page 2, by striking out subdivision 3.2.d.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*Rule Governing Assessment of Civil Administrative Penalties  
under the Groundwater Protection Act, 47CSR56.*

**AMENDMENT**

On page 2, subsection 2.8, by striking out the words  
"within thirty (30) calendar days of the date of inspection or  
receipt of sample analyses or other information reflecting a  
violation";

And,

On page 2, by striking out subdivision 3.2.d.



# WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311  
Telephone: (304) 342-2123  
FAX: (304) 342-4552  
wvma@wvma.com

October 14, 2008

The Honorable Joe Minard  
WV Senate  
510 Haymond Highway  
Clarksburg, WV 26301

The Honorable Bonnie Brown  
WV House of Delegates  
2328 Woodland Avenue  
South Charleston, WV 25303

Re: *Comments of the WVMA Concerning West Virginia DEP's Agency-Approved Proposed Rules Concerning the Assessment of Civil Administrative Penalties for Solid and Hazardous Waste (33 CSR 22) and the Hazardous Waste Management Fee (33 CSR 24).*

Dear Senator Minard and Delegate Brown:

The West Virginia Manufacturers Association ("WVMA") represents numerous manufacturers throughout West Virginia subject to the above-referenced agency-approved proposed rules. 33 CSR 22 (Assessment of Civil Administrative Penalties for Solid and Hazardous Waste) was proposed on July 7, 2008. 33 CSR 24 (Hazardous Waste Management Fee) was proposed on July 8, 2008. The WVMA submitted written comments on each of these proposed rules on August 14, 2008 and August 12, 2008 respectively. See attached Exhibit A. In its response to comments on both rules filed with the Secretary of State on August 26, 2008 and August 28, 2008, respectively. The DEP failed to adequately address the concerns raised by the WVMA comments. Therefore, by copy of this letter, the WVMA wishes to respectfully advise the Legislative Rule-making Review Committee of its continuing concerns regarding these two rules.

Please contact me if you have additional questions.

Sincerely,

Karen S. Price  
President

c: Jay Lazelle, Esquire

### Board of Directors

Alliant Technology Systems, Inc.  
Allied Processing Services, Inc.  
Alpharma Inc.  
Armstrong World Industries  
Bayer CropScience  
Bayer MaterialScience, LLC

Cemtura Corporation  
Criterion Catalysts Technologies, LP  
Dow Chemical Company  
DuPont  
Eagle Manufacturing Company  
Es-sroc

Georgia-Pacific Corporation  
Haltown Paperboard  
Kangwha Manufacturing Co.  
Kingford Manufacturing Co.  
Marathon Domestic LLC  
Marble King, Inc.

NGK Spark Plugs (U.S.A.), Inc.  
Phillips Machine Service, Inc.  
Pilgrim's Pride Corporation  
Pioneer Pipe  
PPB Industries, Inc.

Putnam County Development Authority  
REIC Laboratory  
Toyota Motor Manufacturing, WV, Inc.  
U.S. Silica Company  
Wheeling-Nishin, Inc.



ROBERT E. LANNAN  
ATTORNEY AT LAW

P.O. BOX 1791  
CHARLESTON, WV 25326

DIRECT DIAL: (304) 347-8346  
E-MAIL: [rel@ramlaw.com](mailto:rel@ramlaw.com)

August 12, 2008

VIA HAND DELIVERY

Ms. Kathy Cosco  
Communications Director  
Department of Environmental Protection  
601.57<sup>th</sup> Street SE  
Charleston, WV 25304

**RECEIVED**

AUG 12 2008

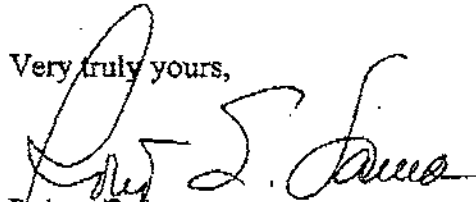
DEPARTMENT OF ENVIRONMENTAL PROTECTION

08-12-08P02:33 RCVD

Dear Ms. Cosco:

Please find enclosed for filing the original Comments of the West Virginia Manufacturers Association on the West Virginia Department of Environmental Protection, Division of Water and Waste Management's 2008 Proposed Rule Regarding the Hazardous Waste Management Fee (33 CSR 24).

Very truly yours,

  
Robert E. Lannan

REL:dlm  
Enclosure

403 FIFTH THIRD CENTER • 700 VIRGINIA STREET, EAST • CHARLESTON, WV 25301 • (304) 344-5800  
140 WEST MAIN STREET • SUITE 300 • CLARKSBURG, WV 26302 • (304) 622-5022  
[www.ramlaw.com](http://www.ramlaw.com)

ROBINSON & McELWEE PLLC IS A MEMBER OF ALFA INTERNATIONAL

{R0332185.1}

**COMMENTS OF THE WEST VIRGINIA MANUFACTURERS  
ASSOCIATION ON THE WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, DIVISION OF  
WATER AND WASTE MANAGEMENT'S 2008 PROPOSED RULE  
REGARDING THE HAZARDOUS WASTE MANAGEMENT FEE (33 CSR 24)**

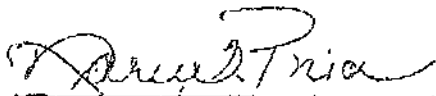
The West Virginia Manufacturers Association ("WVMA") represents numerous manufacturing entities throughout the State which are subject to the regulations of the West Virginia Department of Environmental Protection, Division of Water and Waste Management. The WVMA submits the following comments on DEP's proposed revisions to the hazardous waste management fee rule, 33 CSR 24. The so-called "certification fee" was originally enacted into the State hazardous waste management program in 2002. (W.Va. Code § 22-18-22(b) *et seq.*; 33 CSR 24). The WVMA was one of several trade organizations cooperatively working with DEP representatives to address a short-term funding need of the State in order to, as the WVMA and others were informed at that time by DEP, maintain delegation of the State RCRA program and meet the matching requirements for certain federal EPA grants in the hazardous waste management area. Subsequently, rules were negotiated through a cooperative process between a number of affected trade associations and DEP representatives, which created a regulatory framework for calculating and billing the fee. These rules went into effect in April 2003. During this time period, it was always the understanding of the WVMA and its members that the certification fee was to be imposed for a limited time and a specific purpose.

Subsequent actions of DEP in later years have indicated its intention otherwise, however. In 2006 and again in 2008, DEP has twice sought to legislatively continue the fund beyond its sunset provision and now it proposes to increase the fees charged to

entities regulated under the hazardous waste management program. While the WVMA supports having a federally delegated RCRA program in the State of West Virginia, we oppose the fee increases proposed in the rule and we will continue to oppose without further justification from DEP any extension to the certification fee program by either statute or regulation. The certification fee is nothing more than a tax and its impact falls disproportionately on our members. The benefits of the State hazardous waste management program inure to all the citizens of West Virginia and DEP must start looking now at different ways of obtaining funding and other streams of revenue, such as the general revenue fund, to maintain a viable hazardous waste management program which now appears to be primarily, if not totally, funded by the regulated community.

We additionally oppose DEP's proposed removal of the provision which prohibits DEP from collecting the certification fee from facilities which have made a payment for that year into the Hazardous Waste Emergency Response Fund created by Chapter 22, Article 19 of the Code. See Proposed §4.3.b. No justification has been given by DEP for the removal of this provision which was agreed to by all parties at the time the original rule was negotiated in 2002. The WVMA appreciates the opportunity to provide comments on the proposed rule and hopes that the DEP seriously consider the suggestions and comments made herein.

Respectfully submitted,



---

Karen S. Price  
President  
West Virginia Manufacturers Association  
2001 Quarrier Street  
Charleston, West Virginia 25311





ROBERT E. LANNAN  
ATTORNEY AT LAW

P.O. BOX 1791  
CHARLESTON, WV 25326

DIRECT DIAL: (304) 347-8346  
E-MAIL: [rel@ramlaw.com](mailto:rel@ramlaw.com)

August 14, 2008

VIA HAND DELIVERY

Ms. Kathy Cosco  
Communications Director  
Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

**RECEIVED**

AUG 14 2008

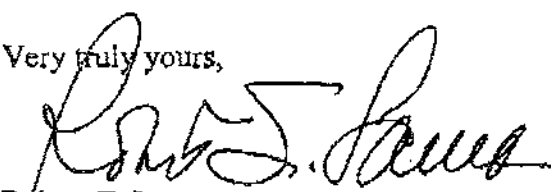
DEPARTMENT OF ENVIRONMENTAL PROTECTION

08-14-08P02:13 RCVD

Dear Ms. Cosco:

Please find enclosed for filing the original Comments of the West Virginia Manufacturers Association on the West Virginia Department of Environmental Protection, Division of Water and Waste Management's Proposed Rule on Assessment of Civil Administrative Penalties for Solid and Hazardous Waste (33 CSR 22).

Very truly yours,



Robert E. Lannan

REL:dln  
Enclosure

400 FIFTH THIRD CENTER • 700 VIRGINIA STREET, EAST • CHARLESTON, WV 25301 • (304) 344-5800  
140 WEST MAIN STREET • SUITE 300 • CLARKSBURG, WV 26302 • (304) 622-5022  
[www.ramlaw.com](http://www.ramlaw.com)

ROBINSON & McELWEE PLLC IS A MEMBER OF ALFA INTERNATIONAL

{R0392535.1}

**COMMENTS OF  
THE WEST VIRGINIA MANUFACTURERS ASSOCIATION  
ON THE WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, DIVISION OF  
WATER AND WASTE MANAGEMENT'S PROPOSED  
RULE ON ASSESSMENT OF CIVIL ADMINISTRATIVE  
PENALTIES FOR SOLID AND HAZARDOUS WASTE (33 CSR 22)**

The West Virginia Manufacturers Association ("WVMA") represents numerous manufacturers throughout the State of West Virginia subject to potential regulation by the West Virginia Department of Environmental Protection, Division of Water and Waste Management ("DWWM") in the assessment of civil administrative penalties for violations of the Hazardous Waste Management Act, W.Va. Code §22-18-1 et seq; 33 CSR 22. On this basis, the WVMA submits the following comments on DWWM's proposed revisions to these regulations.

**I. Proposed Section 5.3.D. Ability to Pay.**

Proposed Section 5.3.D. provides as follows:

During the course of the informal hearing, a violator may make a request to have its ability to pay a civil administrative penalty evaluated. Such a request will only be evaluated if the violator provides all required information and it is received by the Assessment Officer within ten (10) calendar days of the informal hearing date. Incomplete information or information received more than ten (10) days after the informal hearing date will not be evaluated. Should completed information be received in a timely fashion, it will be evaluated in accordance with the United States Environmental Protection Agency (US EPA) Guidance.

The WVMA objects to the attempt by DEP to formally codify an "ability to pay" factor in the proposed regulations. Historically, DEP has handled such issues on a case-by-case basis using guidance found in the federal EPA's RCRA Civil Penalty Policy (June 2003). Under that policy, the violator can raise its inability to pay after the penalty has been assessed. The WVMA

is concerned that formal codification of an ability to pay "defense" sends the wrong message to members of the regulated community who are not financially viable because, in the end analysis, DEP will treat them in a more favorable fashion than members of the regulated community which have the ability to comply (and pay for) violations of the State hazardous waste management program. Those who may have such a defense in fact may very well have a disincentive to comply with the regulatory program if they know they will be treated favorably because of financial considerations. The net effect is to shift more of the economic penalty costs to financially viable manufacturers simply because they can pay. We would therefore urge the DEP to not adopt the proposed language.

#### II. Section 7.4. "Unique Factors."

Proposed Section 7.4 adds a new dynamic to the DEP civil administrative penalty calculation procedures heretofore utilized for hazardous waste violations. It specifically provides that:

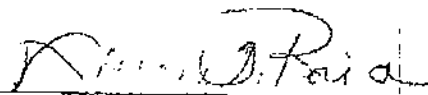
Should the violation in question involve an actual release to the environment or harm to human health or involve a chemical that is persistent or bioaccumulative, the associated civil administrative penalty may be multiplied by a factor of up to 2.0. (emphasis added).

The proposed addition to specifically address PBT chemicals must be viewed in light of the long established methodology set forth in the federal RCRA civil administrative penalty policy which DEP has previously attempted to follow. The federal RCRA civil administrative penalty calculation procedures involve taking into consideration two components in arriving at the seriousness of the penalty assessed. These two components include the potential for harm

and extent of deviation from a statutory or regulatory requirement. The DEP's proposal is attempting to "double dip," by adding into the equation, as another entirely separate component, a "Unique Factors" penalty, when, in fact, the harmful nature of a released waste may already be taken into account through the "Potential for Harm" component of the federal policy on which the State rules are currently based. Nowhere in the federal RCRA Civil Penalty Policy is there any mention of adding an additional penalty factor for certain constituents, including persistent and bioaccumulative chemicals. Legislative policy codified in the State Hazardous Waste Management Act clearly provides that the State program should be "consistent with" and "equivalent to" the federal program. W.Va. Code §22-3-23. Obviously, this is not the case where the State appears to be deviating from the federal program in proposing to draw an unwarranted distinction with regard to different classes of chemicals. We would therefore urge the DEP not to adopt Section 7.4 as proposed.

The WVMA does not favor the above two proposed DEP additions to the State civil administrative penalty regulations for hazardous waste. We would request that these two proposals not be adopted by the DEP. The WVMA appreciates the opportunity to provide comments on the proposed rule and trusts that DEP will seriously consider the suggestions and comments contained herein.

Respectfully submitted,

  
\_\_\_\_\_  
Karen S. Price  
President  
West Virginia Manufacturers Association  
2001 Quarrier Street  
Charleston, West Virginia 25311

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-16. Time for commencing proceedings.

Notwithstanding any provision of this code to the contrary, no action, suit or proceeding for the administrative, civil or criminal enforcement of any provision of this chapter may be entertained unless commenced within three years from the date the right to bring the action, suit or proceeding has accrued. The limitation of this section applies, but is not limited to, actions, suits or proceedings for the recovery of any fine, penalty or forfeiture, pecuniary or otherwise. This section does not apply to the enforcement of any provision when the violation is part of a continuing violation and the last act of the continuing violation occurred within three years from the date of the commencement of the enforcement action.

**ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

**§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.**

(a) If the secretary, upon inspection or investigation by duly authorized representatives or through other means observes, discovers or learns of a violation of this article, its rules, article eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who violates this article, or permits issued pursuant to this article or rules or orders issued by the secretary

or board is subject to administrative, civil and criminal sanctions as follows:

(1) Any person who fails or refuses to discharge any duty imposed upon him or her by this article or by any rule of the secretary promulgated pursuant to the provisions and intent of this article or by an order of the secretary or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of the permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned.

(2) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the secretary thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned in a county or regional jail not more than six months, or both fined and imprisoned.

(3) Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any

provision of this article or any rule of the secretary or any order of the secretary or board is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation, or imprisoned in a county or regional jail not more than one year, or both fined and imprisoned.

(4) Any person convicted of a second offense or subsequent willful violation of subdivision (2) or (3) of this subsection or knowingly and willfully violating any provision of any permit, rule or order issued under or subject to the provisions of this article or knowingly and willfully violating any provision of this article, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than fifty thousand dollars for each day of violation, or both fined and imprisoned.

(5) Any person convicted of accumulating or disposing of one thousand or more tires in violation of this article is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years and shall be required to clean up and properly dispose of the waste tires or reimburse the state agency or agencies for costs incurred in cleaning up the waste tires. In addition, any person so convicted may be fined not more than fifty thousand dollars for each day of the continued violation.



(6) A person may be prosecuted and convicted under the provisions of this section, notwithstanding that the administrative remedies provided in this article have not been pursued or invoked against the person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against the person.

(7) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, that person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

(c) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than five thousand dollars for each day of the violation, not to exceed a maximum of twenty thousand dollars:

(1) In assessing a penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the secretary by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. **No assessment shall be levied pursuant to this subsection until after the alleged violator has been**

notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the secretary shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the secretary's decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of section sixteen of this article. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this

article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: *Provided, That* no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars for each day of a violation: *Provided, however, That* any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section five of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article;

(2) No assessment levied pursuant to subdivision (1) of this subsection becomes due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of the violation, which penalty shall be recovered in a civil action either in the circuit court wherein the

violation occurs or in the circuit court of Kanawha County.

(e) The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom relief is sought.

(f) Upon request of the secretary, the attorney general or the prosecuting attorney of the county in which the violation occurs shall assist the secretary in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails may be awarded costs and reasonable attorney's fees.

(h) In addition to all other grounds for revocation, the secretary shall revoke a permit for any of the following reasons:

(1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;

(2) Offering, conferring or agreeing to confer any benefit to

induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage or disposal of solid waste, or of any rule adopted pursuant thereto;

(3) Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or

(4) Preventing, without authorization of the secretary, any permittee from disposing of solid waste at a licensed treatment, storage or disposal facility.

**ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.**

**§22-18-17. Civil penalties and injunctive relief.**

(a) (1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than seventy-five hundred dollars for each day of such violation, not to exceed a maximum of twenty-two thousand five hundred dollars. In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested,

the director shall inform the alleged violator of the time and place of the hearing. The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director's decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of article one, chapter twenty-two-b of this code. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars per day of each such violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a)

of section six of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the hazardous waste emergency response fund established pursuant to section three, article nineteen of this chapter.

(2) No assessment levied pursuant to subdivision (1), subsection (a) above becomes due and payable until the procedures for review of such assessment as set out in said subsection have been completed.

(b) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(c) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been



exhausted or invoked against the person or persons against whom such relief is sought.

(d) Upon request of the director, the attorney general, or the prosecuting attorney of the county in which the violation occurs, shall assist the director in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

**NOVEMBER** 17

Monday, November 17, 2008

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

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

Earl Ray Tomblin  
ex officio nonvoting member

Richard Thompson  
ex officio nonvoting member

**Senate**

**House**

Minard, Chairman

Fanning, Vice Chair      Absent

Prezioso

Unger      Absent

Boley      Absent

Facemyer

Brown, Chairman

Miley, Vice Chair      Absent

Burdiss

Talbott      Absent

Overington

Sobonya

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

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **Division of Human Services, Day Care Centers Licensing, 78CSR1**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Beth Hall, Program Manager with the Division, responded to questions from the Committee.

John Law, Assistant Secretary with the Department of Health and Human Resources, questions from the Committee.

Mr. Burdiss 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 Labor, Standards for Weights and Measures Inspectors Adoption of NBS Handbook 130, 1987 Edition, 42CSR16**, and stated that the Division has agreed to technical modifications.

Ms. Brown 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 Labor, Amusement Rides and Attractions Safety Act, 42CSR17**, and stated that the Division has agreed to technical modifications.

Ms. Brown 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 Labor, West Virginia Manufactured Housing Construction and Safety Standards Board, 42CSR19.**

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

Ms. Graham reviewed her abstract on the rule proposed by the **Division of Labor, Elevator Safety Act, 42CSR21,** stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Jennifer Burgess with the Division responded to questions from the Committee.

Ms. Brown 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 Labor, Weights and Measures Calibration Fees, 42CSR26,** and stated that the Division has agreed to technical modifications.

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

Brian Skinner, Associate Counsel, reviewed his abstract on the rule proposed by the **Ethics Commission, Purchase, Sale or Lease of Personal Property, 158CSR3,** stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

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

Mr. Skinner explained his abstract on the rule proposed by the **Ethics Commission, Interest in Public Contracts, 158CSR8,** and stated that the Commission has agreed to technical modifications.

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

Mr. Skinner reviewed his abstract on the rule proposed by the **Ethics Commission, Employment Exemptions, 158CSR11,** stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

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

Mr. Skinner explained his abstract on the rule proposed by the **Ethics Commission, Filing of Verified Time Records, 158CSR14**, and responded to questions from the Committee.

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

Mr. Skinner reviewed his abstract on the rule proposed by the **Department of Administration - Purchasing Division, Purchasing, 148CSR1**, and responded to questions from the Committee.

Karen Byrd with the Department responded to questions from the Committee.

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

Mr. Skinner explained his abstract on the rule proposed by the **Department of Administration - Purchasing Division, Parking, 148CSR6**, and stated that the Department has agreed to technical modifications.

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

Mr. Burdiss moved that 186CSR1, 186CSR3 and 186CSR4 be laid over. The motion was adopted.

Ms. Brown moved to adjourn. The motion was adopted.

NOVEMBER INTERIM ATTENDANCE  
Legislative Interim Meetings  
November 16, 17 and 18, 2008

Monday, November 17, 2008

12:00 pm - 2:00 pm

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex  
officio nonvoting member

Thompson, ex  
officio nonvoting member

Senate

Minard, Chair  
Fanning, Vice Chair  
Prezioso  
Unger  
Boley  
Facemyer

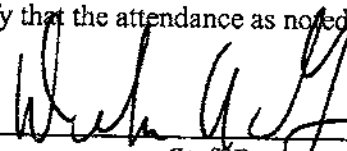
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House

Brown, Chair  
Miley, Vice Chair  
Burdiss  
Talbot  
Overington  
Sobonya

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\_\_\_\_\_  
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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**  
**Monday, November 17, 2008**  
**12:00 p.m. to 2:00 p.m.**  
**Senate Finance Committee Room**

**1. Review of Legislative Rules:**

- a. **Human Services, Division of**  
*Day Care Centers Licensing*  
78CSR1
- b. **Labor, Division of**  
*Standards for Weights and Measures Inspectors Adoption of NBS Handbook 130, 1987 Edition*  
42CSR16
- c. **Labor, Division of**  
*Amusement Rides and Attractions Safety Act*  
42CSR17
- d. **Labor, Division of**  
*West Virginia Manufactured Housing Construction and Safety Standards Board*  
42CSR19
- e. **Labor, Division of**  
*Elevator Safety Act*  
42CSR21
- f. **Labor, Division of**  
*Weights and Measures Calibration Fees*  
42CSR26
- g. **Ethics Commission, WV**  
*Purchase, Sale or Lease of Personal Property*  
158CSR3
- h. **Ethics Commission, WV**  
*Interest in Public Contracts*  
158CSR8
- i. **Ethics Commission, WV**  
*Employment Exemptions*  
158CSR11

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**Monday, November 17, 2008**  
**12:00 p.m. to 2:00 p.m.**  
**Senate Finance Committee Room**

**1. Review of Legislative Rules:**

- a. **Human Services, Division of**  
*Day Care Centers Licensing*  
78CSR1
  - Approve as Modified
- b. **Labor, Division of**  
*Standards for Weights and Measures Inspectors Adoption of NBS Handbook 130, 1987 Edition*  
42CSR16
  - Approve as Modified
- c. **Labor, Division of**  
*Amusement Rides and Attractions Safety Act*  
42CSR17
  - Approve as Modified
- d. **Labor, Division of**  
*West Virginia Manufactured Housing Construction and Safety Standards Board*  
42CSR19
  - Approve
- e. **Labor, Division of**  
*Elevator Safety Act*  
42CSR21
  - Approve as Modified
- f. **Labor, Division of**  
*Weights and Measures Calibration Fees*  
42CSR26
  - Approve
- g. **Ethics Commission, WV**  
*Purchase, Sale or Lease of Personal Property*  
158CSR3
  - Approve as Modified



**NOVEMBER INTERIM ATTENDANCE**  
**Legislative Interim Meetings**  
**November 16, 17 & 18, 2008**

**Monday, November 17, 2008**

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

**Legislative Rule-Making Review Committee**

Earl Ray Tomblin, ex  
 officio nonvoting member

Richard Thompson, ex  
 officio nonvoting member

**Senate**

**House**

Minard, Chair	<input checked="" type="checkbox"/>
Fanning, Vice Chair	<input type="checkbox"/>
Prezioso	<input checked="" type="checkbox"/>
Unger	<input type="checkbox"/>
Boley	<input type="checkbox"/>
Facemyer	<input checked="" type="checkbox"/>

Brown, Chair	<input checked="" type="checkbox"/>
Miley, Vice Chair	<input type="checkbox"/>
Burdiss	<input checked="" type="checkbox"/>
Talbott	<input type="checkbox"/>
Overington	<input checked="" type="checkbox"/>
Sobonya	<input checked="" type="checkbox"/>

Minard called meeting to order

- Human Services 78CSR1

Debra explained and responded to ?'s  
 Beth Hall, program manager, responded to  
 ?'s from the Committee

John Law, Assistant Secretary w/DHHR, responded  
 to ?'s from the Committee

Burdiss moved rule as modified  
 motion adopted

- Labor 42CSR16

Debra explained  
 Brown moved rule as modified  
 motion adopted

- Labor 42CSR17  
Debra explained  
Brown moved rule as modified  
Motion adopted

- Labor 42CSR19  
Debra explained  
Brown moved rule  
Motion adopted

- Labor 42CSR 21  
Debra explained and responded to ?'s  
Jennifer Burgess w/ Labor responded to ?'s  
from the Committee  
Brown moved rule as modified  
Motion adopted

- Labor 42CSR24  
Debra explained  
Brown moved rule  
Motion adopted

- Ethics 158CSR3  
Brian explained and responded to ?'s  
Brown moved rule as modified  
Motion adopted

• - Ethics 158CSR8

Brian explained

Brown moved rule as modified

Motion adopted

• - Ethics 158CSR11

Brian explained & responded to ?'s

~~Brian~~ Brown moved rule as modified

Motion adopted

• - Ethics 158CSR14

Brian explained

Brown moved rule

Motion adopted

• - Administration 148CSR1

Brian explained

Karen Byrd w/ Administration responded

to ?'s from the Committee

Brown moved rule

Motion adopted

• - Administration 148CSR6

Brian explained

Brown moved rule as modified

Motion adopted

Burdiss moved to lay over

186 CSR 1

186 CSR 3

186 CSR 4

Motion adopted

Meeting adjourned

approved ✓  
as modified

Ethics Commission, WV  
Interest in Public Contracts  
158CSR8

- Approve as Modified

approved ✓  
as modified

Ethics Commission, WV  
Employment Exemptions  
158CSR11

- Approve as modified ?

approved ✓

Ethics Commission, WV  
Filing of Verified Time Records  
158CSR14

- Approve

k. Administration, Department of - Purchasing Division  
Purchasing  
148CSR1

- Approve

l. Administration, Department of  
Parking  
148CSR6

- Approve as Modified

m. Administration, WV Department of  
Committee for the Purchase of Commodities and Services from  
the Handicapped  
Rules and Regulations for Fair Market Price Determination  
186CSR1

- Approve as Modified

n. Administration, WV Department of  
Committee for the Purchase of Commodities and Services from  
the Handicapped  
Rules and Regulations Statewide Contracts  
186CSR3

- Approve as Modified

o. Administration, WV Department of  
Committee for the Purchase of Commodities and Services from  
the Handicapped  
Rules for Qualifications for Participation  
186CSR4

- Approve as Modified

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**Monday, November 17, 2008**  
**12:00 p.m. to 2:00 p.m.**  
**Senate Finance Committee Room**

1. Review of Legislative Rules:

*approved as modified*

Human Services, Division of  
Day Care Centers Licensing  
78CSR1

- Approve as Modified

*approved as modified*

Labor, Division of  
Standards for Weights and Measures Inspectors Adoption of NBS  
Handbook 130, 1987 Edition  
42CSR16

- Approve as Modified

*approved as modified*

Labor, Division of  
Amusement Rides and Attractions Safety Act  
42CSR17

- Approve as Modified

*approved*

Labor, Division of  
West Virginia Manufactured Housing Construction and Safety  
Standards Board  
42CSR19

- Approve

*approved as modified*

Labor, Division of  
Elevator Safety Act  
42CSR21

- Approve as Modified

*approved*

Labor, Division of  
Weights and Measures Calibration Fees  
42CSR26

- Approve

*approved as modified*

Ethics Commission, WV  
Purchase, Sale or Lease of Personal Property  
158CSR3

- Approve as Modified