

# WEST VIRGINIA CODE: §22-25-3

## §22-25-3. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Cross-media transfer" means a pollutant transfer from one environmental media to another, such as air to water.

(b) "Department" means the Department of Environmental Protection.

(c) "Environmental goals" means the environmental performance objectives proposed by a qualified applicant that demonstrates superior environmental performance and which may support variances from environmental laws.

(d) "Environmental laws" means the following articles of chapter twenty-two of the Code of West Virginia, two thousand two, as amended: Four, five, eleven, twelve, fifteen, sixteen, seventeen and eighteen and legislative rules adopted under one of those articles, or a policy, rule, permit, license, other approval or order issued by the department under one of those articles. "Environmental laws" do not include any provision of the Code of West Virginia or of any municipal ordinance or enactment that regulates the selection of a location for a new facility.

(e) "Environmental management system" means a formal set of voluntary procedures and policies used to evaluate environmental performance and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in operations, based on a commitment to superior environmental performance. An environmental management system is the part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining an environmental policy. An environmental management system includes the following elements:

(1) Adoption of an environmental policy that includes a commitment to maintain or exceed compliance with environmental and other requirements, pollution prevention, and continual improvement;

(2) An analysis of the environmental aspects and impacts of the organization's activities;

(3) Significance ranking of environmental aspects and procedures;

(4) Plans and procedures to achieve, maintain and exceed requirements set forth by environmental laws;

(5) Identification of all legal requirements applicable to the organization's environmental

performance;

(6) Setting environmental objectives and developing appropriate environmental management programs to meet the objectives;

(7) Establishment of a structure for operational control and responsibility for environmental performance;

(8) An employee training program to develop awareness of and competence to manage environmental issues;

(9) A plan for taking preventive, corrective and emergency action to address environmental problems;

(10) A communication plan to collaborate with employees, the public and department on the design of the projects and activities to achieve superior environmental performance;

(11) Document control and record keeping of environmental performance;

(12) Third party audits of the environmental management system;

(13) Third party audits of environmental compliance;

(14) Senior management review;

(15) Monitoring and measurement of environmental performance; and

(16) Other criteria as established by the secretary.

(f) "Environmental management system audit" means a systematic and documented third party verification process of evaluating whether an organization's environmental management system conforms to the criteria set forth by the department.

(g) "Environmental performance agreement" means an agreement entered into between the department and a participant of the program that specifies the participant's commitment to superior environmental performance, enhanced public involvement, and the incentives to be provided to the participant.

(h) "Environmental performance baseline" means the actual emissions, discharges, and impact to the environment by a facility at the time the application to participate in the environmental excellence program is filed with the department.

(i) "Hazardous substance" or "toxic substance" means those chemicals defined as hazardous substances under section 313 of the federal Superfund Amendments and Reauthorization Act of 1986 (SARA Title III), including any subsequent amendments, and sections 101(14) and 102 of the federal Comprehensive Environmental Response, Compensation and Liability Act

(CERCLA), as amended.

(j) "Participant" means a qualified applicant that has been admitted into the environmental excellence program through the execution of an environmental performance agreement with the department. Participant is limited to the site or facility where the environmental goals will be achieved and does not include the entire company where the company operates multiple sites or facilities.

(k) "Pollution prevention" means any practice that reduces the use of any hazardous substance or amount of a pollutant or contaminant prior to reuse, recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the use and release of hazardous substances, pollutants or contaminants. Pollution prevention does not include cross-media pollution transfers that do not result in a net decrease of discharge, emission or impact to the environment.

(l) "Program" means the environmental excellence program created pursuant to this article.

(m) "Qualified applicant" means any regulated or nonregulated facility of a government entity, corporation, partnership, sole proprietorship, municipality, county, city and county, or special district located and doing business in this state that meets the requirements for participation in the program set forth by this article.

(n) "Regulated entity" means an entity that requires a permit issued under one of the environmental laws to legally operate in this state or is otherwise subject to enforcement of environmental laws.

(o) "Nonregulated entity" means an entity that does not require a permit issued pursuant to environmental laws to legally operate in this state.

(p) "Secretary" means the secretary of the Department of Environmental Protection.

(q) "Significant impact to the environment" means a release of a substance into the environment which has caused or may cause an adverse affect to natural resources, organisms, flora, fauna or the ecosystem.

(r) "Significant impact to human health" means a release of a substance into the environment which has caused or may cause an acute or chronic affect to human health.

(s) "Source reduction" means any practice which reduces the amount of any pollutant, contaminant, or hazardous substance entering any waste stream or otherwise being released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal and reduces the hazards to public health and the environment associated with the release of these pollutants, contaminants, or hazardous substances. "Source reduction" includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. "Source reduction" does not include any practice

which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(t) "Superior environmental performance" means environmental performance that results in measurable or discernable improvement in the quality of the air, water, land or natural resources or in the protection of the ecosystem beyond that which is actually being achieved by the qualified applicant under compliance with current environmental laws. "Superior environmental performance" does not include pollutant reductions resulting from cross-media pollutant transfers unless it can be demonstrated that such transfer results in an overall improvement to the quality of the air, water, land and natural resources. "Superior environmental performance" may include, but is not limited to, any of the following:

(1) An entity limits the discharges or emissions of pollutants from, or in some other way minimizes the negative effects on air, water, land, natural resources, or human health of, a facility that is owned or operated by the entity or an activity that is performed by the entity to an extent that is greater than is required by applicable environmental laws.

(2) An entity minimizes the negative impact on air, water, land, natural resources, or human health of the raw materials used by the entity or the products or services produced or provided by the entity to an extent that is greater than is required by applicable environmental laws.

(3) An entity voluntarily engages in restoring, reclaiming, enhancing, or preserving natural resources.

(4) An entity organizes segmented or uncoordinated entities that are producing environmental harm into a program that achieves positive environmental results.

(5) An entity reduces waste, hazardous substances, or toxic substances in the design, production, delivery, use or reuse of goods and services.

(6) An entity reduces or conserves energy, nonrenewable or renewable natural resources through more efficient and sustainable methods.

(u) "Toxic use reduction" means changes in production processes, products, or raw materials that reduce, avoid or eliminate the use of toxic or hazardous substances and the generation of hazardous byproducts per unit of production, so as to reduce the overall risks to the health of workers, consumers or the environment without creating new risks of concern.