WEST VIRGINIA CODE CHAPTER 22 ARTICLE 25

WV Legislature

§22-25-1. Legislative findings.

The Legislature finds that:

(1) Regulated and nonregulated entities that demonstrate a commitment to the environment by going beyond compliance with environmental laws and rules positively impact the quality of life for all citizens of the state by improving the economy and the environment by increasing consumer and public confidence, boosting management and employee morale, and operating in a safe and sensible manner that lessens impacts on the environment.

(2) While West Virginia's existing environmental laws play an important role in protecting the environment, environmental protection could be further enhanced by authorizing innovative advances in environmental regulatory methods and approaches.

(3) Enhanced public involvement allows the public and community to meaningfully participate in finding solutions for environmental issues in their community while maintaining the vitality of the local and state economy and strengthening ties between businesses, nonbusiness entities and community.

(4) Increased use of pollution prevention strategies, more cost-effective options for compliance with environmental standards, improvement of environmental performance, and reduction in occurrences of noncompliance with environmental standards can be achieved through the establishment and implementation of a voluntary environmental excellence program pursuant to this article. This voluntary program will provide entities with the opportunity to enter into an agreement with the Department of Environmental Protection through which the department shall grant recognition and other benefits to participating entities that comply with a prescribed number of program elements established by the secretary of the Department of Environmental Protection designed to reduce environmental impacts beyond those achieved by compliance with environmental laws and permits alone.

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§22-25-2. Purpose.

The purpose of this article is to authorize the Department of Environmental Protection to establish and administer an environmental excellence program to promote, reward, and encourage superior environmental performance in this state. The environmental excellence program will establish a system to encourage voluntary environmental performance that will exceed existing regulatory standards for health and the environment and result in continual improvement in the state's environment, economy, and quality of life. The program should, if practical, be compatible with other federal programs which create incentives for achieving environmental performance beyond the regulatory requirements, such as the United States environmental protection agency's national performance track program. The environmental excellence program will be established and implemented to accomplish the following:

(1) Encourage facility owners and operators to assess the environmental impact of their operations;

(2) Encourage innovation by and measure success through facility owners and operators setting measurable and verifiable goals;

(3) Increase public participation and encourage stakeholder consensus in the development of innovative environmental regulatory approaches and methods and in monitoring the environmental performance of projects under this article;

(4) Focus resources toward achieving positive environmental goals that are important to the community and the state;

(5) Report environmental performance information and ambient environmental data to the public in a manner that is accurate, timely, credible, relevant and usable to interested parties;

(6) Provide for the measurement of environmental performance in terms of accomplishing goals and objectives, and require the reporting of those results;

(7) Provide facility owners and operators with flexibility to implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities, while complying with verifiable and enforceable pollution limits;

(8) Encourage superior environmental performance and continuous improvement toward sustainable levels of resource usage and minimization of pollution discharges, emissions and releases;

(9) Promote the transfer of technological and practical environmental innovations that improve environmental performance in a more efficient, effective, and safe manner; and

(10) Strive to lower transaction costs associated with environmental performance.

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§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

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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

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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 voluntary 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.

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§22-25-4. Powers and duties of the department.

(a) Within one year after the effective date of this section, the secretary, after consultation with representatives from the regulated community, local governments, environmental advocacy groups and other interested citizens, shall develop and implement a voluntary environmental excellence program in accordance with this article. The secretary shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code necessary to establish and implement all necessary program elements for the environmental excellence program as established in this article. Such program elements shall include, but are not limited to, the following criteria:

(1) Participation and entry into the program;

(2) Public involvement;

(3) Environmental management system;

(4) Commitment to superior environmental performance;

(5) Communication of program results to the public; and

(6) Incentives.

(b) In establishing the environmental excellence business program, the secretary may establish classes, categories, or tiers of environmental performance agreements as the secretary considers appropriate, taking into consideration the diversity of businesses and industries in the state, the impact these entities may have on the environment, and the incentives sought by the qualified applicant.

(c) The secretary may negotiate with federal regulatory agencies to obtain authority to grant incentives under federal regulatory programs.

(d) Participation in the program by any participant is voluntary and is subject to review every three years.

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§22-25-5. Eligibility and application requirements.

(a) The secretary shall establish by rule the minimum criteria for participation in the environmental excellence program. The minimum criteria shall include, but not be limited to, the following:

(1) An identified number of years with no serious civil noncompliance;

(2) An identified number of years without any criminal noncompliance;

(3) An identified number of years with no activities that resulted in a significant negative impact to human health or the environment;

(4) The existence and maintenance of an environmental management system;

(5) The existence and maintenance of an environmental management system audit program;

(6) The establishment of quantifiable environmental goals which are designed to achieve superior environmental performance;

(7) The existence and maintenance of verifiable, quantitative and qualitative measures or methods to document attainment of environmental goals; and

(8) The existence or establishment of a public participation plan as approved by the secretary that demonstrates that the proposal has broad support, its environmental implications are fully understood by all interested parties, and assures ongoing engagement of the public.

(b) The secretary shall establish alternative elective program elements in addition to the mandatory program elements set forth in subsection (a) of this section. Qualified applicants shall select from among the alternative elective program elements and complete those selected within a specified time period. The number of elective program elements shall be determined by the secretary and based on the activity of the participant and the nature of the proposal. All elective program elements shall be designed to result in measurable improvement and enhancement of the environmental quality of the state or shall be activities that are beneficial to the environment. Elective program elements may include, but are not limited to:

(1) Development and maintenance of programs that provide technical assistance or mentoring to one or more specified organizations to encourage technology transfers;

(2) Active participation in industry or business environmental improvement programs;

(3) Publication and public distribution of annual environmental performance summary reports;

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(4) Promotion, sponsorship and participation in community environmental and advisory programs;

(5) Development and maintenance of management programs that encourage and reward employees for meeting or exceeding requirements of environmental laws or permits and for participation in voluntary environmental activities; and

(6) Development and implementation of programs that reduce adverse environmental impact of development, manufacturing, distribution and marketing of the participant's products or services.

The secretary may establish additional alternative elective program elements so long as the elements are designed to result in the measurable improvement and enhancement of the environmental quality of this state. Any additional alternative elective program elements established by the secretary shall have a reasonable nexus to the industry or business to which it applies.

(c) The secretary shall establish application requirements and application forms for entities to submit proposals to participate in the program. The department shall review all applications submitted for the program and shall notify the eligible applicant that the application is complete or that the application is incomplete. If the application is incomplete, the department shall describe what additional information is required to complete the application. The applicant may correct the application and resubmit it at any time.

(d) Applicants accepted into an equivalent federal program at the time of submitting an application to the department may satisfy some or all of the eligibility and application requirements pursuant to this article at the secretary's discretion.

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§22-25-6. Application review and authority to enter into environmental performance agreement.

(a) The secretary shall review all completed applications within a reasonable period of time. If the secretary determines that the application meets the requirements for the program, the secretary shall notify the applicant in writing, and the application shall be incorporated into a written agreement. If the secretary determines the application does not meet the requirements of the program, the secretary shall notify the applicant in writing and shall provide an adequate opportunity for the applicant to address the outstanding items.

(b) The secretary may enter into one or more agreements with a participant as necessary to implement the provisions of this article. The agreement shall describe the requirements for continued participation and incentives to be provided to the participant.

(c) The secretary shall not enter into any environmental performance agreement that would:

(1) Violate or waive any specific statutory provision;

(2) Waive any federal regulation, unless specifically authorized by the federal government;

(3) Result in an increase in emissions, discharges, or other releases above those allowable under the otherwise applicable regulatory requirements; or

(4) Address past or ongoing violations or noncompliance by a qualified applicant.

(d) The following documents shall be made available for public review:

(1) The application, including documentation of compliance with environmental laws and permits applicable to the facility over the last three years, information regarding an appropriate environmental management system, a description of the current status of proposed performance indicators, and an outline of the measures by which the program will be evaluated;

(2) The executive's determination regarding their application; and

(3) The agreement described in subsections (a) and (b) of this section.

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§22-25-7. Judicial review of department decision on acceptance of application to participate in the environmental excellence program.

The decision of the department to refuse to accept an application for participation in the environmental excellence program is not subject to judicial review. The decision of the department to enter into an environmental performance agreement may be appealed to the environmental quality board by any person aggrieved or adversely affected by the action being appealed, pursuant to the provisions of article one, chapter twenty-two-b of this code.

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§22-25-8. Withdrawal, enforcement and termination from the program.

(a) Any participant may elect to withdraw from participation in the program at any time upon written notice to the secretary.

(b) The secretary shall terminate the participation of any participant in the program if a serious violation is discovered or occurs and the violation is not properly disclosed in accordance with the law or is not corrected or remedied in a timely manner to the satisfaction of the secretary.

(c) The secretary may continue the participation of a participant in the program if a serious violation is discovered or occurs and the violation is properly disclosed in accordance with law and is corrected or remedied in a timely manner to the satisfaction of the secretary.

(d) A participant's participation in the program shall be suspended from the time the serious violation is discovered or occurs until the time it is corrected or remedied to the satisfaction of the secretary.

(e) If the secretary determines at any time a participant is failing to perform in accordance with the environmental performance agreement, and if, after written notice to the participant, the participant does not come into conformance within a reasonable period of time, as established by the secretary, the secretary may terminate the participant's participation in the program.

(f) All incentives provided by the state pursuant to section nine of this article shall be withdrawn, effective upon termination or withdrawal of the participant's participation in the program. If a participant withdraws or is terminated from the program, any unused incentives will be forfeited.

(g) The secretary shall establish, by rule, procedures and criteria that set forth circumstances under which a participant's participation shall be suspended or terminated and criteria for a transition plan for returning to otherwise applicable environmental laws if the environmental performance agreement is terminated by the participant for any reason or by the secretary for failure to meet the agreement's stated environmental goals, despite good faith efforts.

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§22-25-9. Incentives.

The secretary shall propose rules for legislative approval, pursuant to the provisions of chapter twenty-nine-a of this code, establishing incentives to be granted to any participant that complies with all of the mandatory program elements and the prescribed number of elective program elements, as determined by the secretary. Participants may seek some or all of the incentives established pursuant to this subsection.

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§22-25-10. Environmental performance agreements; contents, and specifications.

(a) The environmental performance agreement shall clearly establish the environmental goals of the participant; public involvement requirements; incentives; reporting requirements; and all other terms to ensure that the proposal is properly implemented and enforceable.

(b) In entering into environmental performance agreements, the secretary shall require stricter monitoring, or take other appropriate steps to ensure accountability, for proposals with greater uncertainty of meeting their stated environmental goals.

(c) A final environmental performance agreement shall specify:

(1) Any otherwise applicable rules, requirements, policies, or practices, modified, waived or replaced;

(2) The specific environmental goals of the agreement and the criteria for determining whether the agreement is meeting those goals;

(3) A description of how compliance with the agreement will be monitored and enforced, including any penalties that may be imposed for failure to carry out the terms of the agreement;

(4) The duration of the agreement and terms for renewal or extension;

(5) A transition plan for returning to otherwise applicable environmental laws in the event the agreement is terminated by either the participant or the department;

(6) A plan for integrating into the agreement any relevant regulations that are promulgated during the duration of the agreement; and

(7) Criteria for determining whether agreement may be transferred in the event of a transfer of ownership of the facility subject to the terms and conditions of the agreement and when applicable, the procedures for transferring the agreement.

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§22-25-11. Recovery of costs to department in developing, negotiating and publicizing environmental performance agreement; deposition of moneys collected; creation of environmental excellence program administrative fund.

To recover the costs to the department in developing, negotiating and publicizing an environmental performance agreement, the secretary may establish by legislative rule reasonable application, renewal, and administration fees. An "Environmental Excellence Program Administrative Fund" is hereby created in the State Treasury. The funds shall be dedicated and appropriated to the department to administer the program. Expenditures are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2005, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. Any moneys not utilized by the department for the purposes set forth herein by June 30, 2009, shall revert to the state General Revenue Fund and the environmental excellence program administration fund shall be dissolved.

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§22-25-12. Public participation.

To promote a participatory process that will conform to the legislative rules adopted pursuant to section four of this article, to the extent that resources are available in the environmental excellence program administration fund and appropriated by the Legislature, the secretary is authorized to provide logistical and technical support to assure balanced and timely participation in any public process associated with this program.

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§22-25-13.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature