Passed March 8, 2014

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide
emissions from the unit without switching from coal to other fuels or limiting the economic utilization of the unit; and

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

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

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

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

(3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.
(d) **Flexibility in establishing standards of performance.** —
In developing a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the Department of Environmental Protection shall endeavor to establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards or longer compliance schedules may be implemented or adopted for existing fossil fuel-fired electric generating units in comparison to the performance standards established for new, modified or reconstructed generating units, based on the following:

1. Consumer impacts, including any disproportionate impacts of energy price increases on lower income populations;
2. Non-air quality health and environmental impacts;
3. Projected energy requirements;
4. Market-based considerations in achieving performance standards;
5. The costs of achieving emission reductions due to factors such as plant age, location or basic process design;
6. Physical difficulties with or any apparent inability to feasibly implement certain emission reduction measures;
7. The absolute cost of applying the performance standard to the unit;
8. The expected remaining useful life of the unit;
9. The impacts of closing the unit, including economic consequences such as expected job losses, if the unit is unable to comply with the performance standard;
10. Impacts on the reliability of the system; and
(11) Any other factors specific to the unit that make application of a modified or less stringent standard or a longer compliance schedule more reasonable.

(e) State plan requirement. — The Department of Environmental Protection shall propose or submit to the U. S. Environmental Protection Agency a state plan which includes achievable performance standards for existing sources, and a combination of additional measures designed to meet the U. S. Environmental Protection Agency’s guidelines, consistent with the considerations, goals and parameters set forth in this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 10th day of April, 2014.

Governor
PRESENTED TO THE GOVERNOR

Mar 23 2007

Time 10:45 AM