

5 REGULATORY AND PERMIT REQUIREMENTS

Council on Environmental Quality (CEQ) regulations for the National Environmental Policy Act (NEPA) Part 1502 Section 1502.25 states that, to the fullest extent possible, agencies shall prepare draft EISs concurrently with and integrated with environmental impact analyses and related surveys and studies required by environmental review laws and Executive Orders (EOs). It also requires a draft EIS list all federal permits, licenses, and other entitlements which must be obtained in implementing the proposed project. The following table contains relevant regulatory and permit requirements for the construction and operation of the Mountaineer CCS II Project to comply with CEQ regulations. The table identifies relevant federal regulatory requirements considered within the EIS including federal regulations and EOs, state regulations and permitting requirements, and local regulations and permitting requirements.

Table 5.1. Relevant Regulatory and Permit Requirements for the Proposed Project

Statute, Regulation, Order	Description
Federal Regulations and Permitting	
Clean Air Act, Title I, IV, and V 40 Code of Federal Regulations (CFR) 50 through 95	Establishes NAAQS set by the EPA for certain air pollutants. Applicable Titles: • Title I—Air Pollution Prevention and Control. Basis for air quality and emission limitations, PSD permitting program, SIPs, NSPS, and NESHAP. • Title IV—Acid Deposition Control. Establishes limitations on SO₂ and NO_x emissions, permitting requirements, monitoring programs, reporting and record keeping requirements, and compliance plans for emission sources. This Title requires that emissions of SO₂ from utility sources be limited to the amounts of allowances held by the sources. • Title V—Permitting. Required if the plant falls within 40 CFR 70.3 designations. This Title provides the basis for the Operating Permit Program and establishes permit conditions, including monitoring and analysis, inspections, certification, and reporting. Authority for implementation of the permitting program is delegated to the state of West Virginia.
Chemical Accident Prevention Act 40 United States Code (USC) 68 and Section 112(r) of the Clean Air Act Amendments	This Act requires stationary sources having more than a threshold quantity of the specific regulated toxic and flammable chemicals to develop a Risk Management Plan for submittal to the EPA, which then makes the information publicly available, including: • Hazard assessment that details the potential effects of an accidental release, an accident history of the last 5 years, and an evaluation of the worst-case and alternative accidental releases. • Prevention program that includes safety precautions and maintenance, monitoring, and employee training. • Emergency response program that spells out emergency health care, employee training measures and procedures for informing the public and response agencies (e.g., the fire department) should an accident occur. • The plan must be updated and resubmitted to the agency every 5 years.

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Clean Water Act, Title IV 40 CFR 104 through 140	Focuses on improving the quality of water resources by providing a comprehensive framework of standards, technical tools, and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction. Applicable Sections: • Section 401—Certification. Provides states with the opportunity to review and approve, condition, or deny all federal permits or licenses that might result in a discharge to state or tribal waters, including wetlands. The major federal permit subject to Section 401 review is a Section 404 permit. Every applicant for a Section 404 permit must request state certification that the proposed activity would not violate state or federal water quality standards. • Section 402—National Pollutant Discharge Elimination System (NPDES) Permit. Requires sources to obtain permits to discharge effluents and stormwaters to surface waters. The CWA authorizes EPA to delegate permitting, administrative, and enforcement duties to state governments, while EPA retains oversight responsibilities. The state of West Virginia has been delegated NPDES authority and therefore would issue the NPDES permit. • Section 404 - o Permits for Dredged or Fill Material. Regulates the discharge of dredged or fill material in the jurisdictional wetlands and waters of the United States. The USACE has been delegated the responsibility for authorizing these actions. - o Nationwide Permit 12 Utility Line Activities. Authorizes the construction, maintenance, and repair of utility lines and the associated excavation, backfill, or bedding for the utility lines in all waters of the United States. The USACE has been delegated the responsibility for authorizing these actions.
Emergency Planning and Community Right-to- Know Act of 1986 42 USC 1101 <i>et seq.</i>	Requires that inventories of specific chemicals used or stored on site be reported on a periodic basis. The project would process or otherwise use substances subject to the Act's reporting requirements, such as anhydrous ammonia and sulfuric acid.
Endangered Species Act 16 USC 1536 <i>et seq.</i>	Enacted by Public Law 93-205, Endangered Species Act of 1973 (16 USC 1531 <i>et seq.</i>). Section 7, "Interagency Cooperation," requires any federal agency authorizing, funding, or carrying out any action to ensure that the action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species. Under Section 7 of the Act, DOE has consulted with the USFWS and the WVDNR.
Farmland Protection Policy Act 7 USC 4201 <i>et seq.</i>	Directs federal agencies to identify and quantify adverse impacts of federal programs on farmlands. The Act's purpose is to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to non-agricultural uses.
Fish and Wildlife Conservation Act 16 USC 2901 <i>et seq.</i>	Encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats.
Fish and Wildlife Coordination Act 16 USC 661 <i>et seq.</i>	Requires federal agencies undertaking projects affecting water resources to consult with the USFWS and the state agency responsible for fish and wildlife resources. These agencies are to be sent copies of this DEIS and their comments will be considered.

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General Conformity Rule 40 CFR 6, 51, and 93	Pursuant to this rule, an area that does not meet (or contributes to ambient air quality in a nearby area that does not meet) the primary or secondary National Ambient Air Quality Standards (NAAQS) for a criteria pollutant (CO, lead, NO₂, PM₁₀, PM_{2.5}, ozone, SO₂) is referred to as a nonattainment area. The CAA requires states to submit to the EPA a State Implementation Plan (SIP) for attainment of the NAAQS in nonattainment areas. The 1977 and 1990 amendments to the CAA require comprehensive SIP revisions for areas where one or more of the NAAQS have yet to be attained. The Clean Air Act Amendments required federal actions to show conformance with the SIP. Federal actions include, but are not limited to, those projects that are funded by federal agencies and the review and approval of a proposed action through a federal agency's NEPA process. Conformance with the SIP means that the federal action will not interfere with the approved SIPs purposes of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The need to demonstrate conformity is applicable only to federal actions that occur in nonattainment areas or areas that were previously nonattainment and are currently designated as maintenance areas.
Greenhouse Gas Reporting Program 40 CFR 98	The Consolidated Appropriations Act, 2008 (H.R. 2764; Public Law 110–161) directed the EPA to develop a mandatory reporting rule for greenhouse gas emissions. The rule became effective December 29, 2009 and includes requirements for 31 emission source categories, including electric generation and general combustion sources. On April 12, 2010, EPA issued four new proposed rules that amend the Greenhouse Gas Reporting Rule (GGRR). These proposals would require reporting of emissions data from additional sources including facilities that inject and store CO₂ underground for the purposes of geologic sequestration or enhanced oil and gas recovery. In addition, EPA has proposed to add three new reporting requirements to the General Provisions (Subpart A) of the GGRR. EPA plans to finalize all four of these proposed rules so that they would become effective starting in 2011. On May 27, 2010, the Administrator signed a proposed rule that includes technical corrections, clarifications, and other amendments to the GGRR, but does not affect the reporting requirement.
Migratory Bird Treaty Act 16 USC 703 <i>et seq.</i>	Protects birds that have common migration patterns between the United States and Canada, Mexico, Japan, and Russia. The Act regulates the take and harvest of migratory birds. The USFWS will review this EIS to determine whether the activities analyzed would comply with the requirements of the Migratory Bird Treaty Act.
Bald and Golden Eagle Protection Act 16 USC 668-668d	Prohibits "taking" bald or golden eagles, including their parts, nests, or eggs. The Act defines "take" as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. Prohibits the disturbance of a bald or golden eagle to a degree that causes, or is likely to cause, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.
National Environmental Policy Act 42 USC 4371 <i>et seq.</i>	This EIS is being prepared to comply with NEPA, the federal law that requires agencies of the federal government to study the possible environmental impacts of major federal actions significantly affecting the quality of the human environment.

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Statute, Regulation, Order	Description
National Historic Preservation Act 16 USC 470 <i>et seq.</i>	Under Section 106, the head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation established under Title II of the Act a reasonable opportunity to comment with regard to such undertaking.
Native American Graves Protection and Repatriation Act 25 USC 3001	Directs the Secretary of the Interior to guide the repatriation of federal archaeological collections and collections that are culturally affiliated with Native American tribes and held by museums that receive federal funding. Major actions to be taken under this law include: • The establishment of a review committee with monitoring and policymaking responsibilities. • The development of regulations for repatriation, including procedures for identifying lineal descent or cultural affiliation needed for claims. • The oversight of museum programs designed to meet the inventory requirements and deadlines of this law. • The development of procedures to handle unexpected discoveries of graves or grave goods during activities on federal or tribal land.
New Source Performance Standards 40 CFR 60	The NSPS are technology-based standards applicable to new and modified stationary sources of regulated air emissions. Where the NAAQS emphasize air quality in general, the NSPS focus on particular sources of approximately 70 industrial source categories or sub-categories of sources (e.g., fossil fuel-fired generators, grain elevators, steam generating units) that are designated by size as well as type of process.
Noise Control Act 42 USC 4901 <i>et seq.</i>	Directs federal agencies to carry out programs in their jurisdictions "to the fullest extent within their authority" and in a manner that furthers a national policy of promoting an environment free from noise that jeopardizes health and welfare.
Notice to the Federal Aviation Administration 14 CFR 77	The FAA must be notified if any structures more than 200 ft. high would be constructed at the proposed site pursuant to 14 CFR 77. The FAA would then determine if the structures would or would not be an obstruction to air navigation.
Occupational Safety and Health Act 29 USC 651 <i>et seq.</i>	Compliance with the OSHA would be required according to OSHA standards. Applicable Rules: • OSHA General Industry Standards (29 CFR 1910) • OSHA Construction Industry Standards (29 CFR 1926)
Pollution Prevention Act 42 USC 13101 <i>et seq.</i>	Establishes a national policy for waste management and pollution control that focuses first on source reduction, and then on environmentally safe waste recycling, treatment, and disposal. Executive Order 13101, <i>Greening the Government through Waste Prevention, Recycling, and Federal Acquisition</i>, and Executive Order 13148, <i>Greening the Government through Leadership in Environmental Management</i>, provide guidance to agencies to implement the Pollution Prevention Act. DOE requires specific goals to reduce the generation of waste. DOE would implement a pollution prevention plan by incorporating such waste-reducing activities as ordering construction materials in correct sizes and numbers, resulting in very small amounts of waste; and implementing best management practices to reduce the volume of waste generated and reuse waste wherever possible.

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Resource Conservation and Recovery Act 40 CFR 239 through 299	Regulates the treatment, storage, and disposal of hazardous wastes. Project participants would be required to identify any residues that require management as hazardous waste under RCRA (40 CFR 261). For some waste streams, this includes testing waste samples using the toxic characteristic leaching procedure or other procedures that measure hazardous waste characteristics. Applicable Title: Title II—Solid Waste Disposal (known as the Solid Waste Disposal Act), regulates the disposal of solid wastes. Title II, Subtitle C—Hazardous Waste Management, provides for a regulatory system to ensure the environmentally sound management of hazardous wastes from the point of origin to the point of final disposal. Title II, Subtitle D—State or Regional Solid Waste Plans.
Safe Drinking Water Act 42 USC 300 <i>et seq.</i>	Gives EPA the responsibility and authority to regulate public drinking water supplies by establishing drinking water standards, delegating authority for enforcement of drinking water standards to the states, and protecting aquifers from hazards such as injection of wastes and other materials into wells. The West Virginia Department of Health and Human Resources is the state agency responsible for enforcement. EPA regulations for this program are codified at 40 CFR 141.
Underground Injection Control Permit 40 CFR 144 through 146	A CO₂ injection well for geologic storage would require the issuance of an underground injection control (UIC) permit in accordance with 40 CFR 144 through 146 of the Safe Drinking Water Act. The State of West Virginia has been granted authority to issue and administer Class I-V wells permits. On December 10, 2010, EPA published a final rule, "Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells" (Federal Register Vol. 75, No. 237). Under this rule, EPA created a new category of injection wells (Class VI wells) with new federal requirements to allow for injection of CO₂ for geologic sequestration to ensure the protection of underground sources of drinking water. West Virginia will have 270 days after the final rule publication to apply for state primacy of the Class VI wells. If West Virginia does not submit an application for primacy within the 270-day deadline, then permits would be issued from the federal UIC Class VI program. Until the West Virginia Class VI UIC program is approved, West Virginia would issue a permit under one of the existing classes, with the understanding that the permit would be re-issued as Class VI once primacy is achieved.
Executive Orders	
Executive Order 11514 <i>Protection and Enhancement of Environmental Quality</i>	This EO directs federal agencies to continuously monitor and control activities to protect and enhance the quality of the environment. The Order also requires agencies to develop procedures to ensure the fullest practical provision of timely public information and the understanding of federal plans and programs with potential environmental impacts, and to obtain the views of interested parties. DOE promulgated regulations (10 CFR 1027) and issued DOE Order 451.1b, <i>National Environmental Policy Act Compliance Program</i> to ensure compliance with this EO. Because the Proposed Action is a Federal Action that requires NEPA analysis, DOE must comply with Order 451.1b.

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Executive Order 11988 <i>Floodplain Management;</i> Executive Order 11990 <i>Protection of Wetlands</i>	Executive Order 11988, Floodplain Management, directs federal agencies to establish procedures to ensure that they consider potential effects of flood hazards and floodplain management for any action undertaken. Agencies are to avoid impacts to floodplains to the extent practical. Executive Order 11990, Protection of Wetlands, requires federal agencies to avoid short- and long-term impacts to wetlands if a practical alternative exists. DOE regulation 10 CFR 1022 establishes procedures for compliance with these Executive Orders. Where no practical alternatives exist to development in floodplain and wetlands, DOE is required to prepare a floodplain and wetlands assessment discussing the effects on the floodplain and wetlands, and consideration of alternatives. In addition, these regulations require DOE to design or modify its actions to minimize potential damage in floodplains or harm to wetlands. DOE is also required to provide opportunity for public review of any plans or proposals for actions in floodplains and new construction in wetlands. A statement of findings from the assessment will be incorporated into the Final EIS.
Executive Order 12856 <i>Right-to-Know Laws and Pollution Prevention Requirements</i>	Directs federal agencies to reduce and report toxic chemicals entering any waste stream, improve emergency planning, response, and accident notification, and encourage the use of clean technologies and testing of innovative prevention technologies. In addition, this Order states that federal agencies are persons for purposes of the Emergency Planning and Community Right-to-Know Act, which requires agencies to meet the requirements of the Act.
Executive Order 12898 <i>Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations</i>	Requires federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.
Executive Order 13007 <i>Indian Sacred Sites</i>	Directs federal agencies, to the extent permitted by law and not inconsistent with agency missions, to avoid adverse effects to sacred sites and to provide access to those sites to Native Americans for religious practices. This Order directs agencies to plan projects to provide protection of and access to sacred sites to the extent compatible with the project.
Executive Order 13101 <i>Greening the Government through Waste Prevention, Recycling, and Federal Acquisition</i>	Directs federal agencies to incorporate waste prevention and recycling in each agency's daily operations and work to increase and expand markets for recovered materials through preference and demand for environmentally preferable products and services.
Executive Order 13112 <i>Invasive Species</i>	Directs federal agencies to prevent the introduction of or to monitor and control invasive (non-native) species, to provide for restoration of native species, to conduct research, to promote educational activities, and to exercise care in taking actions that could promote the introduction or spread of invasive species.
Executive Order 13148 <i>Greening the Government through Leadership in Environmental Management</i>	Makes the head of each federal agency responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning across all agency missions, activities, and functions.

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Statute, Regulation, Order	Description
Executive Order 13175 <i>Consultation and Coordination with Indian Tribal Governments</i>	Directs federal agencies to establish regular and meaningful consultation and collaboration with tribal governments in the development of federal policies that have tribal implications, to strengthen United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on tribal governments.
Executive Order 13186 <i>Responsibilities of Federal Agencies to Protect Migratory Birds</i>	Requires federal agencies to avoid or minimize the negative impacts of their actions on migratory birds, and to take active steps to protect birds and their habitats. • Directs each federal agency taking actions having or likely to have a negative impact on migratory bird populations to work with the USFWS to develop an agreement to conserve those birds. • Directs agencies to avoid or minimize impacts to migratory bird populations, take reasonable steps that include restoring and enhancing habitat, prevent or abate pollution affecting birds, and incorporate migratory bird conservation into agency planning processes whenever possible. • Requires environmental analyses of federal actions to evaluate effects of those actions on migratory birds, to control the spread and establishment in the wild of exotic animals and plants that could harm migratory birds and their habitats, and either to provide advance notice of actions that could result in the take of migratory birds or to report annually to the USFWS on the numbers of each species taken during the conduct of agency actions.
<i>West Virginia State Regulations and Permitting</i>	
Aboveground Storage Tank Registration 47 Code of State Rules (CSR) 58	The Groundwater Protection Rule requires a permit for any facility using an above ground storage tank that stores fluids potentially harmful to groundwater. A facility map should be submitted labeling the locations of the processes or activities that may influence groundwater.
Access Permit 157 CSR 6 §17-16-6	A permit is required when occupying a Division of Highway's right-of-way.
Air Emissions Permit 45 CSR 13	Construction, modification or relocation permits required for stationary sources of air pollutants.
Cultural Resources Review 82 CSR 1	State review required under National Historic Preservation Act.
Public Lands Permit	A state-wide Right of Entry Permit provides legal real-estate entry to a streambed for any construction activity. It is required for any stream bed disturbance on a stream that flows at least six months per year, is named on a USGS Topographic map, is named on a Division of Highways county road map, or has been locally recognized and named.

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Statute, Regulation, Order	Description
West Virginia Building Code 87 CSR 4 4.1.a 4.1.b 4.1.c 4.1.k 87 CSR 1 (fire)	International Building Code — Covers the construction of all buildings except detached one- and two-family dwellings and multiple single-family dwellings not more than three stories high (townhouses). Regulations include weather-resistance, ventilation, sanitation, fire-safety, structural integrity, user safeguards, etc. West Virginia's nonresidential code is published by the International Code Council (ICC). International Plumbing Code—Governs the installation of plumbing systems in new buildings, additions to buildings, and buildings undergoing alterations. Regulated subjects include water supply piping, waste and vent piping, roof drain piping, backflow protection, plumbing fixtures, etc. International Mechanical Code—Governs the installation and maintenance of heating, ventilating, cool, and refrigeration systems. Regulated subjects include furnaces, ductwork, hot water heat, commercial kitchen ventilation, gas piping, exhaust ventilation, etc. 2008 National Electric Code—Adopts a national standard for the installation of electrical wiring, apparatus, and equipment for electric light, heat, power, technology circuits and systems, and alarm and communication systems, as published by the National Fire Protection Association. West Virginia State Fire Code—Addresses conditions hazardous to life and property from fire, explosion, hazardous material storage, handling, or use and use of and occupancy of buildings and structures.
NPDES General Construction Stormwater Permit 47 CSR 10	The WV DEP developed and issued a General WV/NPDES Water Pollution Control Permit to regulate sediment laden stormwater flowing into the waters of the State from discharges associated with construction activities. Any person proposing a construction activity, three (3) acres or greater of land disturbance in size, shall submit a Site Registration Application Form 45 days prior to commencing the operation. When the construction activity is owned by one person but operated by another, it is the responsibility of the owner (developer) to obtain the permit. When the construction activity is completed and all disturbed areas are stabilized, the responsible party must submit a Notice of Termination (NOT) in order to end coverage under the General Permit.
NPDES Non-stormwater Hydrostatic Testing General Permit 47 CSR 13	The Hydrostatic Testing General Permit is required for any establishment with discharges composed entirely of waters from hydrostatic testing of new pipeline and agreeing to be regulated under the terms of the General Permit.
Underground Injection Permit 47 CSR 13	Underground Injection Class V experimental well permit is needed to operate the CO₂ injection wells.
Well Works Permit 35 CSR 4	Well works permits are required in West Virginia for drilling deep wells that are used for geologic characterization or other non-producing deep wells.
West Virginia Air Pollution Control Act (APCA)	West Virginia Air Pollution Control Act (APCA) charges the West Virginia DEP with regulating air quality in the state. The DEP adopts and enforces air quality standards, emission control requirements, and other air regulations. The West Virginia clean air program follows the requirements of the federal Clean Air Act (CAA). The EPA and DEP work cooperatively to enforce these requirements.
Rules & Regulations for the Government of Electric Utilities 150 CSR 3	These rules govern the operation and service of electric utilities subject to the jurisdiction of the Public Service Commission (PSC) of West Virginia.

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Statute, Regulation, Order	Description
Air Quality Permit for Coal Plants 45 CSR 5	Air quality permit for coal preparation plants and coal handling operations required to prevent and control air pollution caused by the construction, modification, relocation or operation of coal preparation plants and/or coal handling operations.
Public Land Corporation's Stream Activity Application	An application must be submitted to the West Virginia Department of Natural Resource's Real Estate Management division for any type of proposed activity within the state's streams. Application must provide details on the type of equipment to be used in the stream, amount of material to be dredged (if any), plan for disposing of dredged materials, length of stream/bank to be worked or type of size of structure to be placed in the stream.
West Virginia Water Pollution Control Act (WPCA)	The principal water quality law in the state of West Virginia is the WPCA. The WPCA designates the West Virginia Office of Water Resources (OWR), within the Division of Environmental Protection (DEP) as the water pollution control agency for the state. The OWR is charged with preserving the integrity of the state's water resources. These water resources include streams, lakes, rivers, wetlands, and groundwater. Under this act, a State 401 certification is required to ensure that any proposed dredge or fill material into waters of the State will comply with state water quality standards.
Water Resources Protection Act	In 2004, the West Virginia legislature passed this Act to gather information regarding the quantity and use of surface and groundwater resources in the State. The WVDEP has been charged with implementing the requirements of the Act. One of the main components of the Act is a survey of large quantity water users (i.e. greater than 750,000 gallons of water during any given month within a calendar year) in the State. Completion of the survey is mandatory for any company or business that meets the above definition.
West Virginia Water Quality Standards	The West Virginia Environmental Quality Board (EQB) sets water quality standards, reclassifies designated water uses, and sets site specific numeric criteria. The West Virginia administrative code sets out the water quality standards for the various water use categories.
Yard Waste Composting Rule 33 CSR 3	This legislative rule establishes requirements for the proper handling and composting of yard waste including siting, bonding, design, construction, modification, operation, closure and permitting procedures pertaining to any facility or activity that generates, processes, composts or otherwise reuses or recycles yard waste by whatever means and sets forth requirements for operator training and certification. Registration is required for non-residential composting activities that are not considered Commercial Yard Waste Composting Facilities.

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