



FILED

DEC 5 3 42 PM '00

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

State Capitol - Room MB-49  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610  
(304) 347-4840  
(304) 347-4919 FAX

email: tanders@mail.wvnet.edu

Senator Mike Ross, Co-Chairman  
Delegate Mark Hunt, Co-Chairman  
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Teri Anderson, Administrative Assistant

December 04, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers  
DEP-Air Quality, Office of  
10 McJunkin Road  
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61, 45CSR15

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** Office of Air Quality

**Subject:** Emission Standards for Hazardous Air Pollutants  
Pursuant to 40 CFR Part 61

**CSR Cite:** 45CSR15

**Counsel:** JAA

OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

MAY 27 2 52 PM '00

FILED

---

PERTINENT DATES

Filed for public comment: July 12, 2000  
Public comment period ended: August 14, 2000  
Filed following public comment period: September 1, 2000  
Filed LRMRC: August 29, 2000  
Filed as emergency: n/a

**Fiscal Impact:** None.

ABSTRACT

Summary

This rule regulates emission standards for stationary sources that emit or have the potential to emit one or more of the eight substances listed under 40 CFR Part 61: Asbestos, benzene, beryllium, coke oven emissions, inorganic arsenic, mercury, radionuclides and vinyl chloride.

Section 1.5 inserts the new federal sites in the rule.

Section 3, inserts three new definitions for the rule. "Administrator" is the Administrator of the EPA, "Director" is the

Director of the DEP, and "Hazardous air Pollutant" refers to 40 CFR part 61 listed pollutants.

Section 4 is rewritten to strike the prior incorporation dates for adoption of emission standards, performance specifications and other test methods for the purposes of implementing the state program for hazardous air pollutants.

Section 5 is amended to specify that the EPA Administrator retains authority to enforce the program where required by federal regulation and where federal requirements relating to alternate means are specified for the following: emission limitations, control technologies, innovative technology waivers, test methods, monitoring methods waivers adjustments to recordkeeping and reporting, or emissions averaging.

---

#### AUTHORITY

Statutory authority: W.Va. Code, §22-5-4 provides:

(a) The director is authorized...

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such

departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof....

---

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.