



FILED

FEB 13 10 57 AM '01

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Building 1, 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, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel

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

February 11, 2001

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

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
DEP-Waste Management, Office of
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Hazardous Waste Management Rule, 33CSR20**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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

FILED

Dec 28 3 29 PM '00

Agency: Office of Waste Management

Subject: Hazardous Waste Management Rule

CSR Cite: 33CSR20

Counsel: JAA

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: July 14, 2000
Public comment period ended: August 15, 2000
Filed following public comment period: August 23, 2000
Filed LRMRC: August 23, 2000
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule is being amended to adopt by federal reference changes made in 1999 to 40 CFR Parts 260 through 279. These amendments relate to federal provisions relating to Hazardous Waste Management System: Modification of the Hazardous Waste Management System, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These changes are less stringent than current regulations, are intended to assist the regulated community and encourage recycling and waste reduction.

Section Summary

Section 1.6 adopts the 1999 incorporation dates for federal statutes and regulations.

Section 2.1 adopts the new federal provisions for Hazardous Waste Lamps, and provides a definition of "lamps." These lamps contain mercury and are redesignated as universal wastes rather than hazardous wastes to encourage recycling. References to incorporation of hazardous waste remediation management requirements and post closure permit requirements have been deleted.

Sections 3.3 and 10.4 has been amended to exempt two wastes (k140 and 408) from incorporation pursuant to a U.S. Court of Appeals decision exempting these wastes from the provisions of this rule.

Sections 3.4, 4.1.c.1, 8.7 and 13.1 are amended to incorporate the new requirements for hazardous waste lamps.

Section 5.5 is amended by adopting the new federal references for "180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry; Final Rule." The new federal requirements provide savings for industry by making changes in requirements for accumulation of certain wastes prior to off-site shipment.

Sections 7.1 and 8.8 are amended to incorporate a federal register documents for "Project XL" providing for site specific rule-making for Osi Specialties Inc., located in Sistersville, WV.

Section 7.10 and 8.9 specifically excludes the reference to the "Project XL" federal register document for Merck & Co., Stonewall Plant, at Elkton Va.

Section 11.20 deletes the existing reference to the federal requirements for "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post closure Permit Requirements; Closure Process."

Section 13.3. deletes old requirements for mercury lamps.

Section 14.1 restates that all incorporation references dates in this rule are July 1, 1999 unless otherwise expressly stated.

AUTHORITY

Statutory authority: W.Va. Code, §22-18-6 provides:

(a) The director has overall responsibility for the promulgation of rules under this article. The director shall promulgate the following rules, in consultation with the department of health and human resources, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the division of highways, the department of agriculture, and the environmental quality board. In promulgating and revising such rules, the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

(1) Rules establishing a plan for the safe and effective management of hazardous wastes within the state....

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.