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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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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: **NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides, 45CSRI**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: Nox Budget Trading Program as a Means of Control and
Reduction of Nitrogen Oxides

CSR Cite: 45CSR1

Counsel: JAA

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: September 1, 2000
Filed as emergency: n/a

Fiscal Impact: \$13,550.

ABSTRACT

Summary

This is a new rule, and it establishes the emission budgets for large emitters of Nitrogen Oxides (NOx), and regulates all large stationary sources except Electric Generating Units which are regulated by 45CSR26. The rule incorporates much of a model state rule on the emission budgets and trading program and is designed to meet the federal requirements for the state program. The OAQ has been a party in litigation against the EPA, objecting to federal requirements for states which have been designated as contributing to downwind states Nox emission limits, requiring these states to implement Nox emission reductions and establish a credit trading program beginning in 2004.

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Section 12 provides the method of changing account representatives or source ownership. New owners and representatives are bound to all prior permit terms and conditions.

Section 13 provides a certification method for submitting verification that a person has been designated an account representative for a permittee.

Section 14 allows state and federal representatives to rely on a properly issued certification of an Account Representative to manage a permittee's emission credit program.

Section 20 provides general permit trading program requirements, while Section 21 provides requirements for permit applications for the program. Section 22 states what information is required in permit applications, while Section 23 provides additional content of permit applications.

Section 24 provides for permit revisions and Section 30 provides "Compliance Certification Report" requirements. A annual report must be submitted by November 30th of each year. This section provides the content of these annual reports.

Per Section 31, the agency upon review of the annual report, shall tabulate the number of credits that the source has utilized.

Section 40 provides that the EPA annually allocates credits to the state to be distributed to permittees for the upcoming year. Section 41 sets up the procedure for establishing statewide allocation amounts. These proposals shall be published in the state register for a 30 day public comment period.

Section 42 provides the mechanism for determining how the state's allocation of credits is to be determined. The allowance allocation is based on prior year emissions applied to formulas provided in the rule. The procedure for establishing the total available credits and the distribution of these credits between permittees is provided.

Per Section 43, permittees who instigate reductions in Nox during the two years before the 2004 emission date reduction period are provided methods to gain credits for their "early" reductions.

Section 100 provides requirements for emissions of NOx from cement manufacturing kilns. This section provides exemptions for certain cement manufacturing kilns from the requirements and eligibility of this rule. Kiln operators must submit NOx measurement tests and keep records of these tests and of unscheduled maintenance, performance testing, and cement production for the kiln.

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....
