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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

*State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919*

email: tanders@mail.wvnet.edu

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

August 15, 1999

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

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Karen Watson
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers, 45CSR2**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Office of Air Quality

Subject: To Prevent and Control Particulate Air Pollution From
Combustion of Fuel in Indirect Heat Exchangers

CSR Cite: 45CSR2

Counsel: JAA

PERTINENT DATES

Filed for public comment: June 16, 1999
Public comment period ended: July 28, 1999
Filed following public comment period: August 6, 1999
Filed LRMRC: August 6, 1999
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule regulates smoke and particulate matter emissions from fuel burning units. The Office of Air Quality has undertaken an update of its rules to make the rules uniform and streamlined. Several definitions are added, and others rewritten. The formula for determining allowable emission rates is modified, as are provisions regarding testing, monitoring record keeping and reporting, and criteria for exceptions to the rule.

Section Summary

Section 2 has had several new definitions, these include "distillate oil," "indirect heat exchanger," "natural gas," "opacity," "residual oil," "shipment," "wet scrubber system" and "wood."

Section 3.1 has been amended by changing the measuring method for emissions of smoke and/or particulate matter from a fuel burning unit by providing that the current (10) percent opacity standard be based on a six minute block average. Section 3.3 is amended to modify opacity measurement method for fuel burning units which emit soot, incorporating federal regulations for these admission standards.

Section 4.3 which establishes the allowable emission rate for new fuel burning units has been rewritten.

Section 7.1 is amended to delete old language and reference to permit requirements contained in statute, and require that a permit must be reissued when a facility is relocated.

Section 8 is amended by adding testing, monitoring, record keeping and reporting requirements for operators of fuel burning units. Section 8.1 requires that the owner demonstrate compliance by either a certified continuous opacity monitoring system, or periodic testing by an approved method contained in the appendix of this rule, and in accordance with federal testing requirements. Section 8.2 establishes monitoring requirements, providing that a approved monitoring plan must be used. Monitoring plans must be submitted within six months of the effective date of this rule. Subsection 8.2.a.3. provides that it is not necessarily a violation of this rule for "excursions" to occur outside the range of control equipment or operational parameters of permit monitoring plan. Section 8.3 provides new record keeping requirements. On site record keeping and periodic reports to the DEP are required. Section 8.4 provides a mechanism to petition the DEP to be excepted from testing, monitoring and reporting requirements under certain conditions. These conditions include: infrequent use of the fuel burning unit, the operator can demonstrate that testing or design standards are not appropriate, the unit has more than one emission point, or the unit burns natural gas.

Section 8.5 allows testing and monitoring instructions to be established by interpretative rule.

Section 9.3 is rewritten, which establishes immediate notification to the DEP of excess emissions. The time period for sending a follow-up certified written report regarding these violations has been expanded from ten to thirty days.

The Appendix is amended [on page 16] allows the DEP to approve a pre-notification exception for test burns of a unit from the current mandatory 15 days prior notice requirement.

AUTHORITY

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

(a) The director is authorized:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(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.