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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE

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September 15, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Edward L. Kropp
Office of Air Quality
1558 Washington St., East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, 45CSR5**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.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 Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas

CSR Cite: 45CSR5

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.

OFFICE OF AIR QUALITY
SECRETARIAT OF THE STATE

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ABSTRACT

Brief Summary

This rule regulates the air pollution created by coal processing facilities. The rule is amended to include coal refuse disposal areas under the requirements of this rule. These disposal areas are currently regulated under 45CSR1. This rule is intended to replace that rule by placing those provisions in this rule. Other stylistic changes are also made to the rule.

Section Summary

Section 1.5 states that this rule by reference repeals 45CSR1.

Section 2 is amended by inserting four definitions from 45CSR1. These include "coal refuse", "coal refuse disposal area", "coal refuse pile", and "operation of a coal refuse disposal area."

The definition of "Ringleman" has been deleted.

Section 3 is amended by deleting references to the Ringelman measuring method for determining levels of emissions of particulate matter.

Section 4 provisions for emissions for thermal driers installed prior to 1974 are moved to the appendix of the rule. All driers installed after that date must meet the requirements of 45CSR16 [Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60].

New Subsection 6.3 provides that fugitive emissions from coal prep plants and handling operations are exempt from 45CSR17 [To Prevent and Control... Sources of Fugitive Particulate Matter], as long as the facility has all necessary permits.

Sections 7 & 8 are current requirements for coal refuse plants transferred from 45CSR1. Section 7 establishes standards for coal refuse disposal areas. Section 8 provides requirements for burning at coal refuse disposal areas. One new sentence has been added to the end of Section 8 which provides that if a report submitted establishes corrective measures is inadequate, then the agency may issue an order requiring additional corrective measures.

Section 9 has been amended by deleting its monitoring requirements and adopting the thermal drying requirements of 45CSR16. A new subsection 9.2 requires operators to calibrate and maintain monitoring devices consistent with the appendix of this rule.

Section 11, relating to operating permits, provides in cases where permittees operating since May 1, 1995 who did not submit an completed application by August 1, 1995 may not continue to operate, unless a permit is received within 90 days of the effective date of this rule. Subsection 11.4 requires that operators "expeditiously correct deficiencies in permit applications and respond within 20 days of receipt of a notice of deficiency. Subsection 11.6 provides that when a permittee is required to be permitted under either 45CSR30 or 45CSR13 and this rule, that the permittee shall only be required to meet the requirements of the other rules. Subsection 11.8 provides that possession of a 45CSR22 certificate to operate does not exempt a operator from the provisions of this rule.

Previous Subsection 9.10 has been deleted. This subsection allows the use of a pre-construction permit as a operating permit if the pre-construction permit was issued after 1988. Subsection

11.10 is amended to delete certain provisions for inoperative coal prep plants reapplying for operating permits. Inactive plants are required to reapply 60 days prior to reactivation.

Section 12 is amended by deleting specific visible emission limitations which are contained both in the rule and the CFR, and updating the CFR reference.

Subsection 13.2 is amended to require a final completion date of any planned corrective measures on reports of major equipment failures. The agency may disallow a variance due to a major equipment failure upon written notice to the permittee. Subsection 13.3 provides that any person affected by termination of a variance may appeal that action to the Air Quality Board.

Section 14 provides for transfer of permits. Applications for proposed transfers that have met all application requirements will be deemed approved if the agency does not notify the applicant within thirty days that the application is denied or that more information is required.

The Appendix is new and establishes the emission limitations for thermal dryers installed before October 24, 1974. These requirements have been moved from Section 4 of the rule. The appendix also provides standards for monitoring devices for these thermal dryers.

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?

In Section 1.5 of the rule repeals 45CSR1. The appropriate method for repealing 45CSR1 is to file 45CSR1 as a separate rule, and repeal its provisions separately. Otherwise, no notice is given in the public that 45CSR1 is being deleted from the CSR. The rule provisions of 45CSR1 are incorporated into this rule and will not be lost. However, the proper way to repeal any individual rule is to repeal that rules series through the rulemaking process.

VIII. OTHER.

Counsel has technical modifications to recommend.