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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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January 07, 2001

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: **To Prevent and Control Air Pollution from Combustion of Refuse, 45CSR6**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: To Prevent and Control Air Pollution from Combustion of Refuse

CSR Cite: 45CSR6

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

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Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule regulates particulate matter air pollution which occurs from the combustion of refuse. The revisions to this rule exempt emissions which occur from certain flares and flare stacks from permitting requirements of this rule. The rule also establishes weight and visible emission standards for incinerators and incineration and is part of the State Implementation Plan, approved by the EPA to assure attainment with national ambient air quality standards for particulate matter.

Section Summary

Section 2.11 defines "open burning" and has been amended to remove "air curtain incinerators" from the definition.

Section 6.1 is amended to insert the exemption for flares and flare stacks. Flares or flare stacks used in conjunction with maintenance and repair of natural gas pipelines and temporary flares are exempt from the permit requirements of this rule and from 45CSR13 [Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants....] if they meet the following conditions: the flares are on site no more than thirty days in any given year, the emission amounts do not exceed the threshold amounts requiring a permit under 45CSR13, and are not otherwise required to be permitted by federal regulation. Records of emission and monitoring records showing compliance must be retained for three years. For non-gas pipeline flares, additional requirements include: all flares must meet federal requirements for general control devices, the flare or flare stack must be designed and operated in a manner to prevent violation of ambient air quality standards, and the Director is notified within ten days of the placement of a flare or flare stack on-site.

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.