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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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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-Mining & Reclamation, Office of
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Rules for Quarrying and Reclamation, 38CSR3

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

[Faint circular stamp]

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: DEP, Office of Mining and Reclamation

Subject: Rules for Quarrying and Reclamation

CSR Cite: 38CSR3

Counsel: JAA

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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PERTINENT DATES

Filed for public comment: July 20, 2000
Public comment period ended: August 21, 2000
Filed following public comment period: August 29, 2000
Filed LRMRC: August 29, 2000
Filed as emergency: Yes.

Fiscal Impact: HB4055 (2000 RS) increased permit fees for quarry permitting activities. Application and permit fees are \$1000.00, permit transfers are \$500.00, minor modifications are \$200.00 and major modifications are \$500.00. The fees are to be used by the Division of Environmental Protection [DEP] for quarry inspections, enforcing the provisions of this rule. The DEP foresees that the additional revenues from permit fee increases will offset the additional costs associated with new enforcement responsibilities.

ABSTRACT

Brief Summary

HB4055 enacted during the 2000 regular session establishes a regulatory program for the mining of all non-coal minerals. This rule establishes permit requirements for all quarrying activities in West Virginia. This rule provides public review and comment on proposed quarry permits, bonding, pre-quarrying water analysis, assessment of permit fees and other regulatory requirements for quarry operations. All quarry operations must have a permit issued by the DEP.

Summary

Section 1. General

This section provides that the scope of this rule is the regulation of quarry and reclamation operations in this state.

Section 2. Definitions.

This section incorporates statutory definitions and defines additional terms for this rule.

Section 3. Permit Application Requirements and Contents.

This section establishes notice and advertisement requirements for permit applications and the following permit application requirements: assessment of fish and wildlife resources, endangered species, and effect on historic places and archaeological sites; pre-quarrying water quality descriptions and assessment; maps and plans showing pre and post quarrying topography; and proposed special land uses during and after quarrying.

Section 4. Bond and Bond Pooling Fund.

Operators with less than five years regulation under WV mining laws are required to post bond, in an amount to cover the costs of reclaiming the site, but in no case less than \$10,000.00. All quarry operators after five years of successful operation are eligible to participate in the bond pooling fund, upon payment of \$50.00 per acre disturbed the first year and \$12.50 per acre each subsequent year, until a bond of \$1,000.00 has been paid for each disturbed acre.

Section 5. Haulageways and Transportation Facilities.

Each permittee shall develop a plan and construct haulageways according to the provisions of this section. Location markings, grading specifications, ditch and culvert designs drains and stream crossing requirements are set out. All haulageways must be maintained and reclaimed properly. All haulageways must be certified by the DEP prior to use.

Section 6. Blasting.

Each permittee shall comply with all state and federal blasting laws and utilize an approved quarry blasting plan. All adjacent property owners must be notified of blasting operations. A blasting log containing required information must be maintained for each blast. Blasting procedures and safety precautions are provided. Preblast surveys as required in HB4055 must be completed prior to any blasting.

Section 7. Drainage System.

Each permittee must establish a drainage system plan. The plan must accommodate natural drainways and meet this section's requirements design requirements. Proper handling of sediment, runoff, and water quality control is required. All permit water discharges must meet NPDES requirements. Water quality tests of all natural drainways must be done prior to quarrying.

Section 8. Method of Operation.

This section provides operating procedures for the permittee. Standards are provided for the management of top soil, waste materials, fills and spoil. Permits may be placed on inactive status. Standards for water impoundments are provided. The DEP must pre-approve the construction of an impoundment.

Section 9. Excess Spoil Disposal, Temporary Spoil Storage Areas.

This section provides for disposal of excess spoil, location of disposal sites, and certification of fills. Certified engineers must certify the fill has been constructed as designed and approved. Construction standards and the certification process for fills are also specified. Pages 25 through 35 of the rule set out engineering requirements for management of the earth of the permitted area.

Section 10. Revegetation and Standards for Evaluating Vegetative Cover.

Revegetation of all regraded areas is required. Seeding and planting is to be directed by the post mining land use. A planting plan is to be developed, providing for types of planting materials and planting times designed to meet soil and area conditions. Standards for evaluating vegetative plans are provided.

(c) To propose any necessary legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article; and

(d) To make investigations and inspections necessary to ensure compliance with the provisions of this article.

(e) Nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes.

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.

Counsel has technical modifications to suggest.