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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE CLERK OF THE WEST VIRGINIA LEGISLATURE
SECRET

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October 19, 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 Street, East
Charleston, WV 25311-2599

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **To Prevent and Control Air Pollution from Emission of Sulfur Oxides, 45CSR10**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULE

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Agency: Office of Air Quality

Subject: To Prevent and Control Air Pollution from Emission of Sulfur Oxides
OFFICE OF AIR QUALITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF OHIO

CSR Cite: 45CSR10

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 establishes weight emission standards for sulfur oxides from fuel burning units and manufacturing processes. The rule is being undated to incorporate recent federal program modifications, adding definitions and making changes to reporting and record keeping requirements.

Section Summary

Section 2, definitions are added for "Continuous Emission Monitoring System," "Distillate Oil," "Indirect Heat Exchanger," "Malfunction," "Natural Gas," "Potential To Emit," and "Process Heater."

Subsection 3.4 is amended to allow operations with multiple stacks to pool the total emissions from the stacks for the purpose of determining total facility emission requirements rather than individual stacks. A permittee wishing to combine stack emissions must petition the director, who may approve pooling if the total allowable emission rate for the facility is not exceeded. Applications for pooling of stack emissions must include a maximum emission rate for each stack. The facility is to have a certified continuous emission monitoring system which must be operated consistent with federal requirements. The applicant must show that pooling will not cause a violation of National Ambient Air quality Standards for sulfur dioxide, and any approval of pooling cannot cause violation of any other air quality rule. Upon approval of emission pooling, the new permit requirements become part of 45CSR13 stationary source permit requirements.

Section 4.1.c. appears to exempt operations that emit less than 500 pounds of sulfur oxides per year from the requirements of this rule.

Section 5.4 provides that hydrogen sulfide concentration limits will be measured by three hour block averaging time.

Section 7.1 is rewritten to delete specific criteria for applications for permits and refers applicants to other rules which establish application requirements. The rule is also amended to provide that relocation of a permitted operation requires reapplication for a permit.

New Subsections 8.2. and 8.3 provide specific monitoring and record keeping requirements for permittees. Federal cites are incorporated which compliance thereof will fulfill the requirements of this rule. These include requirements for monitoring plans, and fuel sampling and analysis. Subsection 8.2.d provides that excursion outside the range of control equipment or operational parameters will not necessarily constitute a violation of this rule. Section 8.3.a requires that all records be kept on site and made available upon request to OAQ inspectors, and Section 8.3.b. provides that the permittee submit reports detailing any excursions beyond monitoring plan emission limits. Section 8.3.c requires maintaining records on site of fuel burning units or combustion sources. The reports are to contain operation schedules and quantity and quality of fuel consumed. Subsection 8.3.d allows utilizing electronic record keeping when appropriate. Subsection 8.3.e provides that the OAQ will publish an interpretative rule on record keeping and reporting requirements as specified in this rule.

Subsection 10.3 excepts fuel burning units which burn natural gas, wood or distillate oil from the testing and monitoring requirements of Section 8.

New Section 11 provides that no permittee may construct or undertake any process intended to circumvent the provisions of this rule by use of the gaseous diluents to reduce emissions of pollutant gases discharged to the atmosphere.

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.

Counsel has modifications to suggest.