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West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room HB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Adm. Assistant

November 20, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Dale Farley
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Standards of Performance for New Stationary Sources

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

ANALYSIS OF PROPOSED LEGISLATIVE RULE JAA

**Agency:** Division of Environmental Protection- Office of Air Quality

**Subject:** Standards of performance for New Stationary Sources Pursuant to 40 CFR Part 60. 45CSR16

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PERTINENT DATES

Filed for public comment: July 10, 1996  
Public comment period ended: August 13, 1996  
Filed following public comment period: August 29, 1996  
Filed LRMRC: August 29, 1996  
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule updates the state rule by incorporating changes to the Code of Federal Regulations. The rule also specifically excludes portions of the CFR which relate to the air emissions of municipal solid waste landfills. As a result, the EPA will retain responsibility for enforcement and monitoring of these facilities. The Office of Air Quality states that it has not adopted these requirements because of insufficient EPA guidance on required enforcement procedures. The rule also adopts new requirements contained in the CFR relating to new stationary pollution sources.

Summary by Section

Section 3

The new federal rule date is inserted. Section 3.1.b excludes federal requirements relating to municipal solid waste landfills.

Section 4

Several new federal regulation cites are added which relate to stationary sources. Changes adopted by reference include:

calculations for nitrogen oxides and sulfur dioxide emissions, new record-keeping requirements for facilities, and new testing waivers associated with municipal waste facilities.

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**AUTHORITY**

Statutory authority: W.Va. Code, §22-5-4(a)(4) provides:

The director is authorized...[t]o 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....

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**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.