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**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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*Senator Mike Ross, Co-Chairman  
Delegate Mark Hunt, Co-Chairman  
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Teri Anderson, Administrative Assistant*

December 04, 2000

**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 Hazardous Waste Treatment, Storage or Disposal Facilities, 45CSR25**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** Office of Air Quality

**Subject:** To Prevent and Control Air Pollution from Hazardous  
Waste Treatment, Storage or Disposal Facilities

**CSR Cite:** 45CSR25

**Counsel:** JAA

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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

Summary

This rule is amended to update federal references to incorporate program amendments made by the EPA. The EPA has amended standards for waste incinerators, cement kilns and light aggregate kilns. This program is coordinated with the Office of Waste Management which has dual regulatory responsibilities under the Resource Conservation and Recovery Act. One reference is removed from the rule which moves the authority to regulate hazardous pollutants from hazardous waste combustors to 45CSR34, the OAQ rule on hazardous waste combustors. This is being done to keep the state program consistent with references in the federal program and the state Office of Waste Management. The new incorporation date is inserted in Section 1.5.c, the reference to

45CSR34 is located in Section 4.1.d., and the removal of a federal reference is done in Table 25-A.

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**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....

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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.



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## West Virginia Division of Environmental Protection

Cecil H. Underwood  
Governor

Michael C. Castle  
Director

October 5, 2000

Honorable Michael Ross, Co-Chair  
Legislative Rule-Making Review Committee  
Room MB49 - State Capitol  
Charleston, West Virginia 25305

Honorable Mark Hunt, Co-Chair  
Legislative Rule-Making Review Committee  
Room MB49 - State Capitol  
Charleston, West Virginia 25305

Re: Office of Air Quality--Agency Approved Rule--45CSR25

Dear Chairmen Ross and Hunt:

The Legislative Rule-Making Review Committee (LRMRC) currently has before it eight (8) agency approved rules which the Office of Air Quality (OAQ) filed before the statutory deadline this year. The OAQ recently discovered that one of these rules, 45CSR25, "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities", contains a technical error. We would appreciate your cooperation and assistance in permitting OAQ to correct this error by replacing the rule filed August 31, 2000 with the attached rule or by approving a technical modification at such time as the LRMRC takes up the rule.

The error is contained in subdivision 1.5.c of the rule, which incorporates by reference certain federal regulations. The version of the rule filed with the Committee on August 31, 2000, contains two Federal Register citations, one dated September 30, 1999, and one dated November 19, 1999. Both of these federal regulations relate to the "Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors," first promulgated by the U.S. Environmental Protection Agency (EPA) in 1998. In addition to these two federal regulations, OAQ intended to include a third federal regulation, 65 FR 42292 (July 10, 2000). This regulation made several purely technical corrections to the federal regulations previously adopted by EPA, correcting mistakes which were clearly inconsistent with EPA's stated intent. (See discussion at 65 FR 42296).

Although neither the proposed rule nor the agency approved rule contained the July 10, 2000 reference, the briefing document, fiscal note, and response to comments all refer to the July 10, 2000

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Federal Register, evidencing the agency's intention to include this regulation. In addition, two of OAQ's other rules filed with the LRMRC, 45CSR16 and 45CSR34, (also related to the hazardous waste combustor regulations) incorporate provisions of the same July 10, 2000 Federal Register filing.

It is important that 45CSR25 be modified to include the July 10, 2000 federal regulation since the regulation makes the following two (2) corrections in 40 C.F.R. Parts 261 and 270 of the hazardous waste combustor regulations:

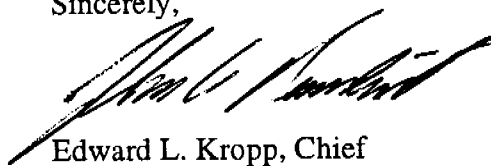
1. The June 19, 1998 final regulation (63 FR 33783) establishing the comparable fuels exclusion allows the burning of comparable fuels and syngas fuels in certain combustion sources, which were listed in the rule. EPA inadvertently omitted gas turbines from this list. (See discussion at 65 FR 42294). On July 10, 2000, EPA corrected this error by adding gas turbines to the list of approved comparable/syngas burners under §261.38(c)(ii)(2).

2. The September 30, 1999 final regulation moved the Notification of Intent to Comply (NIC) requirements from §63.1211 to §63.1210, but failed to revise the citation of §63.1211 in §270.42. The citation was corrected in the July 10, 2000 rule. (See discussion at 65 FR 42294).

Lastly, it is important to include the July 10, 2000 regulation in 45CSR25 to be consistent with OAQ's other rules relating to the same subject, 45CSR16 and 45CSR34.

Please find enclosed fifteen copies of the corrected rule and July 10, 2000, Federal Register, proposed to be incorporated by reference. If you have any questions pertaining to this matter, please contact Karen G. Watson at the above address or at (304) 926-3647.

Sincerely,



Edward L. Kropp, Chief  
Office of Air Quality

cc: Joseph A. Altizer, Counsel  
LRMRC

Judy Cooper, Director  
Administrative Law Division

Enclosures

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