



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 23, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: John A. Benedict
DEP-Air Quality, Office of
7012 MacCorkle Ave. SE
Charleston, WV 25304

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units, 45CSR26**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: WV DEP - Division of Air Quality

Subject: NOx Budget Trading Program as a Means of Control and
Reduction of Nitrogen Oxides from Electric Generating
Units

CSR Cite: 45CSR26

Counsel: JAA

PERTINENT DATES

Filed for public comment: June 12, 2002

Public comment period ended: July 15, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Summary

This rule is being amended to reflect changes to the rule as recommended by the EPA. The modifications are minor and generally technical in nature. Several stylistic changes and cite reference updates are made. A new definition is inserted for "account certificate of representation" which provides criteria for a certificate for designated representatives authorized to trade NOx emission credits for a permittee. A new definition for "compliance certification" states that certification is to be submitted to the agency providing the unit's compliance status and is to be signed by the authorized account representative. A new definition for "heat input" provides a specific calculation formula for

determining every facility's input. Definitions for "electric generating unit" and "state Nox budget trading program" have been deleted.

Section 41.5 is amended to provide that if the DEP fails to submit new annual NOx allocations, the preceding annual allocations will apply.

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.