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Nov 16 6 50 AM '00

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX

email: tanders@mail.wvnet.edu

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

November 13, 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: **Requirements for Operating Permits, 45CSR30**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: Office of Air Quality
Subject: Requirements for Operating Permits
CSR Cite: 45CSR30
Counsel: JAA

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

Fiscal Impact: None.

ABSTRACT

Brief Summary

The proposed amendments are intended to correct deficiencies that the EPA have identified in the state program so the state can receive full approval of the it's operating permits program. Other changes are made to update federal references and to make minor corrections in the rule.

Section Summary

Section 2.18, the definition of "emission unit" is amended to include any unit that has the potential to emit any air pollutant listed under Section 112(b) of the Clean Air Act.

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Section 3.2 is amended to alter the method of determining whether a emission unit is deemed "insignificant." Currently, these units are required to be identified in the permit application. The rule amendment will require that the owner or operator, upon request by the OAQ, to provide information to the OAQ for the purpose of verification that emission units are appropriately designated "insignificant" at the time of the permit application.

Section 4.1 is amended to clarify that any source that becomes subject to this rule after its effective date is required to apply for a permit.

Section 4.3 provides that for insignificant emissions operations, the applicant can now be required to provide emission tests to the OAQ to verify a unit is appropriately designated as insignificant.

Section 5.1.j.4. is amended to remove the ability of the Director to allow substitution of VOCs that can be substituted in the production process.

Section 5.3 is amended to provide that the frequency of submissions of compliance certifications will not be less than annually unless otherwise specified by the director.

Section 5.5 provides that the owner or operator of a temporary source shall notify the Director at least ten days in advance of each change in location.

Section 6.5 relating to minor permit modifications, removes the construction of certain types of emission units from the list of units that are eligible for minor permit modifications.

Section 12.2 is being deleted. This section currently allows the Director to determine on a case by case basis, the maximum available control standards for modifications to major sources of hazardous air pollutants. The standards applied will now be those established by the U.S. EPA.

Table A, which is the list of hazardous air pollutants is amended by deleting Capropactam from the list.

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.



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