

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED

JAN 22 2 07 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Bureau of Environment
Division of Environmental Protection TITLE NUMBER: 47
Office of Water Resources
CITE AUTHORITY 22-1-1(b)(10) and 22-1-6d

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Pollution Prevention and
Compliance Assistance

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.

Garrie J. Chambers

\$2.40



Executive Office
10 McJunkin Road
Nitro, West Virginia 25143-2506
Telephone 304-759-0515
Fax 304-759-0509

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

January 22, 1999

Ms. Judy Cooper
Director
Administrative Law Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 47CSR3 - "Pollution Prevention & Compliance Assistance Rule"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced agency-approved rule as notice of rule modification with your office and the Legislative Rule-Making Review Committee.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Barbara Taylor
Lyle Bennett
Carrie Chambers

FILED

JAN 22 2 01 PM '99

TITLE 47
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE

§47-3-1. General.

1.1. Scope and Purpose. -- To promote pollution prevention by encouraging the reduction or elimination of pollutants at the source through process modification, material substitution, in process recycling, reduction of raw material use or other source reduction opportunities. This rule establishes requirements governing the Division of Environmental Protection's in-house mechanisms for encouraging bonafide pollution prevention efforts by industries to assist in achieving regulatory compliance; and to further improve compliance with environmental laws by improving advisory and technical assistance features of programs within the Division.

This rule establishes a multi-media program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; and designating existing programs by the Director within the Division of Environmental Protection engaged in bonafide pollution prevention and compliance assistance activities to keep information confidential and independent from enforcement or other division personnel unless an imminent hazard to human health or the environment exists.

1.2. Authority. -- W. Va. Code §§ 22-1-1(b)(10) and 22 - 1 - 6d.

1.3. Filing Date. --

1.4. Effective Date. --

§47-3-2. Definitions.

2.1. "Agency" means the Division of Environmental Protection.

2.2. "Compliance Assistance" means services provided to the regulated community in order to assure environmental laws and rules pertaining to treatment and proper disposal are being addressed by cooperating businesses.

2.3. "Director" means the director of the Division of Environmental Protection.

2.4. "Imminent Hazard" means any conditions or practices that present an immediate threat to human health and an impending and unreasonable risk to the environment.

2.5. "Multi media" means water, air, waste, and land.

2.6. "Pollution Prevention" is the means of the reduction or elimination of pollutants at the source through process modification, material substitution, in process recycling, reduction of raw material use, or other source reduction opportunities.

2.7. "Program" Pollution Prevention Services is designated as a program of the Division of Environmental Protection within the Office of Water Resources.

2.8. "Source Reduction" means any practice which reduces the amount of any substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

§47-3-3. Powers and Limitations.

The Director has established Pollution Prevention Services, a program within the Office of Water Resources that provides pollution prevention and compliance assistance to the regulated community within the state.

3.1. The multi-media section seeks to coordinate activities within the Offices of Air, Water and Waste in matters relating to pollution prevention and compliance assistance.

3.2. Assistance does not protect participating businesses from ongoing enforcement actions or any independent action initiated after the assistance activities are underway. Assistance activities may be conducted concurrent to enforcement activities by enforcement agencies.

3.3. The agency will make specific technical assistance available to businesses which request information about pollution prevention/compliance assistance opportunities, including on site technical information, for the purpose of assisting in the development of pollution prevention plans.

3.4. The program will target assistance to businesses for whom lack of information is an impediment to pollution prevention.

3.5. The program participants will receive training in pollution prevention

techniques.

3.6. Pollution prevention activities shall be coordinated with other assistance providers, federal agencies, other states' pollution prevention/compliance assistance providers, educational establishments, and any other organization engaged in providing pollution prevention resources.

3.7. Agency personnel function as the invitees of businesses seeking assistance. Participating businesses may terminate participation in this program at any time.

§47-3-4. Confidentiality.

4.1. The agency will maintain all information from site evaluations, interviews or otherwise, obtained from facility personnel confidential and shall not provide information to enforcement personnel except for conditions which would result in an imminent hazard as defined in this rule.

4.2. Any information generated subsequent to field evaluations, correspondence, etc., may be retained in a temporary file which shall be given to the participating business upon request following completion of agency involvement.

§47-3-5. Imminent Hazard.

5.1. The agency shall notify the company of obligation on part of pollution prevention personnel to report imminent hazards. If imminent hazards are noted, the agency shall inform company of hazard, and the Pollution Prevention staff will immediately notify the Office of Environmental Enforcement to conduct an inspection. The Office of Environmental Enforcement is the enforcement arm of the Office of Waste Management and the Office of Water Resources.

FILED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

JAN 09 9 53 AM '99

Agency: Department of Environmental Protection
Subject: Pollution Prevention and Compliance Assistance Rule
CSR Cite: 47CSR3
Counsel: JAA

OFFICE OF THE CLERK OF THE SENATE
STATE OF VIRGINIA

PERTINENT DATES

Filed for public comment: June 22, 1998
Public comment period ended: July 23, 1998
Filed following public comment period: July 31, 1998
Filed LRMRC: July 31, 1998
Filed as emergency: n/a

Fiscal Impact: \$133,590 in annual costs. The first year budget is expected to be funded by a federal grant, which expires after 1999.

ABSTRACT

Brief Summary

This new rule implements the provisions of HB4693, which was enacted during the 1998 Regular Session. The rule is designed to establish a program which assists business in compliance with environmental laws, rules and regulations. Under prior law, the agency was bound to report any discovered violations to the enforcement branch of the agency. This program will allow the DEP to visit a business and review their operations to make recommendations regarding how the business can better comply with environmental requirements. Unless there is a imminent hazard to the environment or human health, then the agency representatives participating in the review cannot report any discovered violation.

Section Summary

Section 1 provides that the purpose of the rule is to encourage the prevention, reduction and elimination of pollutants at the source through assisting industry through bonafide pollution prevention efforts.

Section 2 provides definitions for the rule. "Compliance Assistance" is defined as services provided to the regulated community in order to assure and promote compliance with environmental laws, rules and regulations. "Imminent Environmental Hazard" means any condition or practice that present an impending and unreasonable risk to the environment or an immediate threat to human health.

Section 3 establishes the "Pollution Prevention Services," as a program within the DEP. Subsection 3.2 provides that businesses participating in this program are not granted immunity from enforcement actions instigated independently from pollution prevention review by the agency. Section 3.3 provides that the agency shall provide this compliance review upon request of any business. Subsection 3.6 provides that the pollution prevention services shall be coordinated with other agencies offering similar services. Participating businesses may terminate assistance at any time, and the agency has no right of entry at any business as a result of this program.

Section 4 provides that all information collected for this program is confidential unless an imminent hazard to the environment or human health requires disclosure.

Section 5 requires the agency to notify the business and agency enforcement personnel if a imminent hazard is discovered.

AUTHORITY

Statutory authority: W.VA.. Code, §22-1-6 provides:

(d) The director has the authority to designate employees in established programs within the division of environmental protection to engage in bona fide pollution prevention and compliance assistance activities as designated by the director within the state. Disclosure to the enforcement or other division personnel is not

required unless an imminent hazard to human health or the environment exists. Pollution prevention and compliance assistance may not interfere with current or future enforcement actions by state or federal regulatory agencies even if such assistance may result in compliance although the director may modify agency enforcement actions in light of a facility's implementation of pollution prevention and waste minimization practices. The director shall propose for legislative promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

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 several modifications to suggest.



FILED
JAN 15 9 37 AM '99

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919

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

January 12, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lyle Bennett
Office of Water Resources
1201 Greenbrier Street
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Pollution Prevention & Compliance Assistance Rule, 47CSR3**

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.