



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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December 9, 1999

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FILED

JAN 11 2 44 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
DEP
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Groundwater Protection Standards at Steam Generating Facilities,
47CSR57A**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.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

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Division of Environmental Protection; Office of Water Resources

Subject: Groundwater Protection Standards at Steam Electric Generating Facilities.

CSR Cite: 47CSR57A

Counsel: JAA

PERTINENT DATES

Filed for public comment: June 17, 1999

Public comment period ended: July 21, 1999

Filed following public comment period: August 3, 1999

Filed LRMRC: August 3, 1999

Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

The purpose of this new rule is to provide standards for coal storage areas and ash disposal ponds for nine steam electric generating facilities operated in West Virginia by Allegheny Power and American Electric Power. Subsection (1) of W.Va Code §22-12-5 provides that the Division shall develop variances for activities at facilities that cannot meet groundwater protection standards. Coal storage areas and ash disposal ponds utilized at steam generating facilities can not be operated within groundwater protection standards. The operators of these steam generator facilities have undertaken studies to establish class variances for these operations

as authorized in federal and state law. This rule establishes these variances on specifically listed locations. The variance applies only within the designated areas.

Section Summary

Section 1 provides the scope of the rule is to establish exceedences for groundwater protection standards when there is no "reasonable and prudent alternative available." A study was conducted by the Electric Power Research Insinuate and found exceedences of four metals (beryllium, cadmium, chromium and nickel) at the coal storage areas and exceedences of two metals (nickel and selenium) at ash disposal areas. This rule authorizes variances from groundwater standards for these metals at the specified locations.

Section 2 defines terms. "Variance" is defined as a legislative rule modifying groundwater quality standards or prevention action limits for a source of contamination. "Receptor" means any surface body of water or any off site migration to adjacent groundwaters. Variances can not result in water standard violations of receptor waters.

Section 3 provides specific coordinates for each site that is granted a variance. All areas receiving variances must have monuments clearly marking the area within the variance.

Section 4 specifies that the variances do not apply to other areas of the facilities. The director is authorized to enforce the conditions of the variances contained in this rule.

Section 5 provides terms and conditions for variances. Monitoring wells are required. Per Section 5.4, if exceedences go beyond 80% of the groundwater protection standards, the director may order corrective measures. Section 5.7 provides for quarterly reporting of monitoring results unless a pattern of exceedences shows the need for more frequent monitoring. Greater degrees of remedial actions may be required based on levels and frequencies of exceedences.

Section 6 requires that the agency periodically review variances to assure its compliance with any subsequent changes in state or federal requirements.

TABLES- Pages 7 through 12 provide site specific standards for each metal regulated by this rule. Each facility is designated a groundwater protection standard, preventable action limit and specified locations of monitoring stations.

Also attached to the rule is the 35 page Petition for Groundwater Quality Variance submitted by Allegheny Power and American Electric Power. The agency reviewed, commented on, and authorized the provisions of the petition.

AUTHORITY

Statutory authority: W.Va. Code, 22-12-5, which provides:

(b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the division of environmental protection, the department of agriculture, the bureau of public health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the department of agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the division of environmental protection, the department of agriculture, the bureau of public health or such other specifically designated agency pursuant to any other provision of this

code, the division of environmental protection is hereby authorized to be the groundwater regulatory agency with respect to such unassigned facilities or activities. The division of environmental protection shall cooperate with the department of agriculture and the bureau of public health, as appropriate, in the regulation of such unassigned facilities or activities.

(c) Within one year of the effective date of this article, the department of agriculture, bureau of public health and division of environmental protection shall promulgate in accordance with the provisions of chapter twenty-nine-a of this code such legislative rules as may be necessary to implement the authority granted them by this article.

and...

(1) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the director's findings to substantiate such need and the criteria by which such variances shall be granted or denied. Should any person petition or request the director to undertake such a determination, that person will give contemporaneous notice of such petition or request by Class I advertisement in a newspaper of general circulation in the area to be affected by the request.

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 technical modifications to suggest.