

JANUARY 12

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

MONDAY, JANUARY 12, 1987

9:00 a.m.

HOUSE MINORITY CAUCUS ROOM, M-260

1. Approval of Minutes
2. REVIEW OF LEGISLATIVE RULES:
 - a. Dept. of Natural Resources - Commercial Whitewater Outfitters, Series I
 - b. Dept. of Natural Resources - WV/NPDES program for Coal Mines and Preparation Plants, and the Refuse and Waste Therefrom.
 - b. Dept. of Energy - Safety Training Program for Prospective Underground Coal Miners in West Virginia
3. OTHER BUSINESS

Monday, January 12, 1987

Legislative Rule-Making Review Committee
(Code '29A-3-10)

9:00 a.m.

Dan Tonkovich, Joseph P. Albright,
ex officio nonvoting member ex officio nonvoting member

Senate

House

Williams, R., Chairman
Boettner(Absent)
Tucker
Tomblin
Harman
Shaw

Casey, Chairman
Knight
Schifano (absent)
Wiedebusch
Shaffer (absent)
Springston (absent)

The meeting was called to order by Mr. Williams, Co-Chairman.

The minutes of the December 9, 1986, meeting were approved.

Mr. Knight asked unanimous consent to address the Committee. There being no objection, Mr. Knight was given leave to address the Committee. He expressed displeasure that the Committee, at its last meeting, did not honor his request to lay over the rule proposed by the Commissioner of Banking - General Rules Implementing the West Virginia Community Reinvestment Act, Series 4. He stated that had he been present he would have voted No regarding approval of the proposed rule.

Debra Graham, Associate Counsel, reviewed the rule proposed by the Department of Natural Resources-Commercial Whitewater Outfitters, Series I. She stated that she had suggested several minor modifications to which the Department had agreed. Mr. Williams asked Bob Parsons, Deputy Director of the Department of Natural Resources, to explain the proposed revisions which were submitted to the Committee just prior to its meeting. He explained the revisions which had been suggested by the Whitewater Outfitters and stated that the Department was in agreement with the modifications. Mr. Parsons answered questions from the Committee.

Mr. Tucker asked that Paul Brewer, representing the whitewater industry be permitted to speak. Mr. Brewer explained that the Outfitters were in agreement on the revisions.

Mr. Tucker moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Natural Resources - WV/NPDES Program for Coal Mines and Preparation Plants, and the Refuse and Waste Therefrom. Ron

Shipley, Director of Regulatory Division, explained the situation regarding the repealed section of the Code.

Mr. Casey moved to amend Subsection 1.9.1.a, defining "significant portion of income", by adding throughout the subsection the words "five thousand dollars or" after the word "means" and by adding the words "whichever is less" after the word "year". The motion was adopted.

Mr. Knight moved to amend Subsection 1.9.1.c by adding a new definition of income. He asked that staff define the term more broadly either in the manner similar used by the Internal Revenue Service or the definition used in the Child Support bill. Motion was adopted.

Mr. Casey moved that the proposed rule be approved as amended. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Energy - Safety Training Program for Prospective Underground Coal Miners in West Virginia. She stated that she had only one modification to suggest and that concerned the statutory authority. Terry Farley, of the Department of Energy, answered questions from the Committee.

Mr. Tomlin moved that the proposed rule be approved as modified. The motion was adopted. Mr. Knight voted "No".

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN 12, 1987

TIME: 9:00 AM

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.	✓			
Knight, Thomas A.	✓			
Schifano, Larry E.				
Wiedebusch, Larry	✓			
Shaffer, Charles R.				
Springston, Benjamin				
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"				
Tucker, Larry	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.	✓			
Shaw, Michael	✓			
TOTAL				

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: January 12, 1987

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Valli Heffman	Char. WV	LPNHWVA	
BOB PARSONS	DEPUTY DNR, CHARLESTON WV	DNR	AS NECESSARY
Ron Shipton	WV DNR	DNR	" "
Maggie Beller	Chas WV	Wom's Emply/Coal C.R.	if necessary
Terry Farley	Cross Lanes	Dept. of Energy	
Elizabeth Colby	Cross Lanes	LTD	
FRANK LUKACS	Mico, WV	N. Amer. River Runners	
Paul W. Conner	" "	Mtn. River Tourists	if necessary
Ann Bradley	Chas WV	WVMA	—
G. DELAURA	" "	WVHA	

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Agency: Department of Natural Resources

Rule: WV/NPDES Program for Coal Mines and Preparation Plants,
and the Refuse and Waste Therefrom

Committee Amendment:

1.9.1.c "Income" means any of the following:

- a. Commissions, earnings, salaries, wages, and other income due or to be due in the future to a person;
- b. Any payment due or to be due in the future to a person from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, and worker's compensation;
- c. Any amount of money which is owing to the person as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the person.

Approved 1-12-87

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Agency: Department of Natural Resources

Rule: WV/NPDES Program for Coal Mines and Preparation Plants,
and the Refuse and Waste Therefrom

Committee Amendment:

1.9.1.a "Significant portion of income" means five thousand dollars or ten (10) percent or more of gross personal income for a calendar year, whichever is less, except that it means fifty (50) percent or more gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving that portion under retirement, pension, or similar arrangement.

Approved 1-12-87

JANUARY 29

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

THURSDAY, JANUARY 29, 1987

9:00 a.m.

RULE-MAKING REVIEW COMMITTEE ROOM, M-438

1. Approval of Minutes
2. REVIEW OF LEGISLATIVE RULES:
 - a. Dept. of Energy - State National Pollution Discharge Elimination System (NPDES) for Mines and Minerals
 - b. Dept. of Natural Resources - Hazardous Waste Management Regulations, Series 35
3. OTHER BUSINESS:

Thursday, January 29, 1987

Legislative Rule-Making Review Committee
(Code §29A-3-10)

4:00 p.m.

Dan Tonkovich,
ex officio nonvoting member

Robert "Chuck" Chambers ,
ex officio nonvoting member

Senate

House

Tucker, Chairman
Boettner
Holmes
Tomblin (absent)
Harman
Hylton (absent)

Knight, Chairman
Murphy
Burk
Givens
Stiles
Pritt

The meeting was called to order by Mr. Knight, Co-Chairman.

The minutes of the January 12, 1987, meeting were approved.

Mr. Tucker moved that six members of the Committee, from either house, constitute a quorum for doing business. The motion was adopted.

Mr. Knight explained the manner in which the Committee conducts business and considers proposed legislative rules. He asked Mike Mowery, Committee Counsel, to explain the procedures relating to the approval of emergency rules.

Mr. Mowery reviewed his abstract on the rule proposed by the Department of Energy, State National Pollution Discharge Elimination System (NPDES) for Mines and Minerals. He stated that the rules were similar to those proposed by the Department's Division of Oil and Gas. Mr. Mowery explained to the Committee that he had raised several questions in the abstract concerning references to sections of federal law set forth in the Code of Federal Regulations. After meeting with personnel from the Department of Energy, the department agreed that the references in question were erroneous and had agreed to make corrections and refile a modified rule. He then answered questions from the Committee.

Mr. Knight told members of the Committee that several persons were present who wish to speak on the proposed rule. He asked John Purbaugh, representing the WV Highlands Conservancy, to present his comments to the Committee.

Mr. Purbaugh reviewed several problems concerning the proposed rule and answered questions from the Committee. He stated that his major concern relates to the delegation of permit power as it relates to the conflict of interest provision. In

answer to questions from the Committee, Mr. Mowery stated that this problem is a statutory conflict and that the Committee would have to decide how the two statutes should be interpreted before determining what action should be taken on the proposed rule.

Becky Cain, President of the League of Women Voters, was the next person to address the Committee regarding the proposed rule. She questioned the need to promulgate the rule at this time, considering that the authority for the program will not be transferred to the Department of Energy from the Department of Natural Resources until next January. She also expressed concern regarding the question arising as to the permitting authority, i.e., as to whether or not a person can transfer legal power to another person when they lack that power themselves.

Roger Hall of the Department of Energy, responded to the concerns expressed by Mr. Purbaugh and Ms. Cain. He then answered questions from the Committee. Mr. Hall stated that he had met with EPA's Region III director who indicated that he is not comfortable with an emergency rule or a proposed rule. Mr. Hall stated that the Department would like everything in place and the transfer package put together as soon as possible.

Mr. Tucker moved that the proposed rule currently under discussion and the rule proposed by the Department of Natural Resources, Hazardous Waste Management, Series 35 be laid over so that the Committee can obtain more information on the rules. He stated that there is a need for a public hearing on the rules proposed by the Department of Natural Resources and asked that staff be directed to schedule the hearing.

Mr. Boettner moved to amend Mr. Tucker's motion by including a direction to committee counsel that he analyze the question regarding the delegation of permitting authority in relation to the conflict of interest problem.

Mr. Tucker accepted Mr. Boettner's amendment without objection. The motion, as amended, was adopted.

Catherine Smith, representing the Independent Claimant's Attorneys Association, addressed the Committee regarding procedural rules promulgated by the Workers Compensation Commissioner which had been filed in the Secretary of State's Office on the preceding day. She stated that the attorneys which she represents feel that several sections of the rule are not merely procedural but are substantive in nature and that she would like the Committee to review the rules prior to their going into effect in April. Mr. Mowery stated that the correct procedure would be for Ms. Smith to direct a letter to the Co-Chairmen of the Committee requesting that the rule in question be reviewed by the Committee. Should the Committee decide to review the rule, it could then do so upon its own motion.

Ms. Pritt moved that the rule proposed by the Department of Banking, General rules implementing the West Virginia Community Reinvestment Act, Series 4, be withdrawn. Motion was adopted.

Debra Graham, Associate Counsel, asked that the motion be clarified for the purposes of the minutes. She questioned whether or not the motion to withdraw was the intended motion and, if so, whether or not it was proper. The Committee discussed what the appropriate motion should have been. Mr. Knight pointed out that the Committee no longer had a quorum and that further action could not be taken until the next committee meeting.

The meeting was adjourned.

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE:

Rule-Making Review Com.

DATE:

1-29-87

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
<i>John Burbaugh</i>	<i>2502 Dudden Fork Kenra WV 25318</i>	<i>WV Highlands Conservancy</i>	<i>X DOE</i>
<i>Bessie Cain</i>	<i>St. Albans, WV</i>	<i>League of Women Voters</i>	<i>X</i>
<i>Joyce Mandy</i>	<i>"</i>	<i>"</i>	
<i>Catherine Smith</i>	<i>2535 Kay Lane Char. Fork 25302</i>	<i>Assoc. Independent CI's attorney's</i>	<i>X</i>
<i>Ron Griffin</i>	<i>P.O. Box 1500 Elbg, W. Va.</i>	<i>Equitable Gas Co.</i>	
<i>Gray Marion</i>	<i>Charleston WV</i>	<i>Charles Ryan Assoc</i>	<i>if necessary!</i>
<i>RON Shipley</i>	<i>426-DH</i>	<i>DNR</i>	
<i>Ken Politan</i>	<i>5212 Berkeley Dr. Cross Lanes</i>	<i>DOE</i>	
<i>Roger Nord</i>	<i>1516 W. Va. St. E. Parkersburg</i>	<i>DOE</i>	

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-29-87

TIME: 4pm

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.	✓			
Burk, Robert W., Jr.	✓			
Givens, Roy E.	✓			
Pritt, Charlotte	✓			
Stiles, Floyd R.	✓			
Murphy, Patrick H.	✓			
Tonkovich, Dan, President				
Tucker, Larry A.	✓			
Boettner, John "Si"	✓			
Harman, C. N.	✓			
Holmes, Darrell E.	✓			
Hylton, Tracy W.				
Tomblin, Earl Ray				
TOTAL				

RE: _____



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA, INC.

2313 South Walnut Drive
St. Albans, West Virginia 25177
(304) 727-6547

STATEMENT TO THE WEST VIRGINIA DEPARTMENT OF ENERGY

RE: Proposed NPDES Regulations for Mines and Minerals

DATE: January 10, 1987

We appreciate the opportunity to comment on the proposed NPDES rules and regulations. As we have stated in the past, the League believes we can maintain the delicate balance necessary to extract our natural resources but at the same time protect the environmental quality of our state.

The proposed NPDES regulations have raised some concerns and questions. One concern that is general in nature is the need, validity, and appropriateness of issuing rules and regulations for a program over which the Department of Energy has not been given federal approval to operate. In fact, it is our understanding that the Department hasn't even submitted an application for such approval.

More specific concerns and questions include:

1.) Section 1.5 - By incorporating by reference much of the federal rules and regulations and then stating that these rules supersede previous rules established to cover the NPDES program for mines and minerals, we hope the Department of Energy is not disregarding those rules, regulations, and standards that are more stringent or different than the federal rules.

West Virginia is unique in its terrain, resources, and environment. To disregard our specific needs for environmental protection does a grave disservice to our state and its citizens.

2.) Section 2. Definitions - The term "Commissioner" is defined as the Commissioner of the Department of Energy or his authorized delegatee. It has been our understanding that the West Virginia Code specifically gives authority for permitting, enforcement, etc. "solely" to the Commissioner. Can the regulations allow the Commissioner to delegate this authority?

Here again we must express our concern for such permitting authority to be held by a political appointee. The League feels very strongly that such authority should be vested in technical, professional personnel with civil service coverage. To do otherwise is to subject the system to undue, unnecessary, and unwarranted political pressures and manipulation.

3.) Section 2.5 - This section makes reference to the "Stream flow". What does this mean? Average flow? Low flow? What if

no determination has been made as to the flow of say a small stream?

4.) Section 3.4.1 - We are delighted to see the inclusion of a conflict of interest provision. However, we do not feel this is a proper substitute for the lack of such a provision in the West Virginia Code.

5.) 4.1.a - We question only requiring the topographic map to extend 1,000 feet beyond the property boundaries of the source because of the obvious possible impact on residents and other water sources.

6.) Section 5. 1 - It appears that this section deletes some references to penalty assessments and we see no other references made to new or different ones. Is it the intention to eliminate these penalties entirely?

7.) Sections 6.2.1.1, 6.2.1.2 and 6.2.1.3 - The words likely and likelihood appear in these sections. It is unclear to us what is meant by their use. We would suggest a more clear statement of inclusion of a definition of the words. Such vagueness may cause problems in interpretation and enforcement of the provisions.

8.) Section 6.2.1.7 - It would seem more appropriate to require action if a specific pollutant is identified as causing toxic effects. We recommend changing the "May be modified" to "Shall be modified".

9.) Section 6.6.1 - What is meant by the phrase "amount greater than the variability recognized in applicable sampling and analytical procedures"? Again, it would appear that such vagueness would cause problems in interpretation and enforcement.

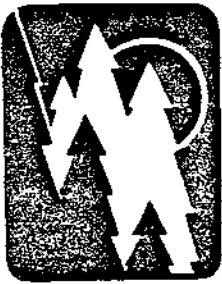
10.) Section 8.3 - Why not require the forwarding of the fact sheet? It is a part of the permit draft and is a useful tool for public information.

11.) Section 8.10 - It would appear that this section exempts the opportunity for public comment. The League feels very strongly that allowing for public involvement is a valid and necessary step in the permitting process.

12.) Section 8.21 - This section appears to merely allow the Commissioner to take action in the case of an emergency. We believe action in such cases as mentioned, those determined to be a clear present and immediate danger to public health or public water supplies, should be required not discretionary.

Thank you again for the opportunity to comment on the proposed Legislative regulations.

Becky Cain
Becky Cain
President



west
virginia
highlands
conservancy

ADMINISTRATIVE OFFICES • Suite 201 • 1206 Virginia Street, East • Charleston, West Virginia 25301 • (304)344-8833

Publishers of the Highlands Voice

TO: Delegate Tom Knight, Co-Chairman Legislative Rulemaking Review Committee

FROM: John Purbaugh (342-6814)

DATE: January 29, 1987

RE: DOE NPDES Rules for Mines and Minerals

I. Conflict of Interest/Delegation of Authority

A. §2 defines "commissioner" to include his "authorized delegatee". §3.4 provides that "the designated permit issuing authority" . . . shall not be a person who has received during the previous 2 years 10% or more of his income from a permit holder (e.g. a coal company).

B. Faerber completed sales of conflicting interests approximately January 10, 1986; therefore, he can not issue NPDES permits until January of 1988 at the earliest. These provisions allow him to designate his will and pleasure appointee to issue these permits, in an attempt to accomplish transfer of the program to DOE before the expiration of the two year period.

C. Code §22A-3-40 provides that "the Commissioner [of DOE] shall have sole authority" to issue these permits . . .". These regulations (§2 and §3.4) allow him to give that sole power to a subordinate, as an end run around the continuing conflict problem.

D. Recommended action-amend §2 and §3.4.1 of these regulations to make the conflict of interest provision fully applicable to the Commissioner, as well as any other persons issuing all or any part of permits.

JCP:jm

Si -

~~Sorry~~ sorry
to you about

this, Here's
my outline.

Ash Meko
Memory if this
analysis is right,
(He'll say yes),

John S.