

NOVEMBER 14

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Wednesday, November 14, 1990, 9:00 a.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting September 25, 1990.
2. Review of Legislative Rules:
  - a. West Virginia Department of Agriculture - Animal Disease Control
  - b. State Treasurer's Office - Rules for Enforcement of The Uniform Disposition of Unclaimed Property Act
  - c. Human Rights Commission - Rules Regarding Discrimination Against the Handicapped
  - d. Attorney General - Proposed legislative rule pertaining to the regulated business exemption under the West Virginia Antitrust Act
  - e. Attorney General - Proposed legislative rule pertaining to obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance
  - f. Attorney General - Proposed legislative rule pertaining to limitation of action and recovery of investigative costs and a reasonable attorney's fee by the Attorney General in enforcement action
  - g. Attorney General - Proposed legislative rule pertaining to defining the term "federal antitrust laws" and prohibiting tying and reciprocity
  - h. Attorney General - Proposed legislative rule pertaining to confidentiality of investigative information and results
  - i. Attorney General - Proposed legislative rule pertaining to authorizing the Attorney General to require persons upon whom subpoenas are served to answer written questions under oath
  - j. Division of Natural Resources - Hazardous Waste Management Regulations
3. Other Business:

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Wednesday, November 14, 1990, 1:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Review of Legislative Rules:

- a. Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds from Bulk Gasoline Terminals
- b. Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds from the Storage of Petroleum Liquids in Fixed Roof Tanks
- c. Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds from Petroleum Refinery Sources
- d. Air Pollution Control Commission - Air Quality Management Fee Program
- e. WV Board of Barbers and Beauticians - Curriculum and Minimum Requirements Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operation in WV; Joint Barbers and Beauticians License
- f. WV Board of Barbers and Beauticians - Rules and Regulations for Licensing Schools of Barbering and Beauty Culture
- g. WV Board of Barbers and Beauticians - Minimum Curriculum for Schools of Barbering
- h. WV Board of Barbers and Beauticians - Operation of Barber and Beauty Shops and Schools of Barbering and Beauty Culture
- i. WV Board of Barbers and Beauticians - Qualifications, Training, Examination and Registration of Instructors in Barbering and Beauty Culture

- j. Division of Culture and History - Standards and Procedures for Granting Permits to Excavate Archaeological Sites and Unmarked Graves
- k. West Virginia Board of Medicine - Licensing, Certification, Disciplinary and Complaint Procedures, Physicians; Podiatrist; Physician Assistants
- l. State Fire Commission - State Building Code

2. Other Business:

**SPECIAL MEETING**

Wednesday, November 14, 1990

9:00 a.m.- 4:00 p.m. Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

Jackson, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Warner (absent)

House

Roop, Chairman  
Buchanan  
Burk  
Faircloth  
Grubb (absent)  
Starcher

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

The minutes of the meeting of September 25, 1990, were approved.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Department of Agriculture - Animal Disease Control - and stated that the Department had agreed to several minor technical modifications.

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

Ms. Graham explained the rule proposed by the State Treasurer's Office - Rules for Enforcement of The Uniform Disposition of Unclaimed Property Act. She stated that she had some proposed modifications to the rule but that she had not discussed them with the Treasurer's Office. Jerry Simpson, Assistant Treasurer for Administration, addressed the Committee regarding the proposed rule and answered questions.

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

Mr. Buchanan moved that the Committee reconsider its action whereby it approved, as modified, the rule proposed by the Department of Agriculture - Animal Disease Control. The motion was adopted.

Mr. Manchin moved that the rule proposed by the Department of Agriculture be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed his abstract on the

rule proposed by the Human Rights Commission - Rules Regarding Discrimination Against the Handicapped - and stated that the Commission had agreed to several technical modifications. Norman Landell, representing the Human Rights Commission, and Mary Kay Buchmelter, of the Attorney General's office, Civil Rights Division, answered questions from the Committee.

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

Debra Graham reviewed her abstract on the rule proposed by the Attorney General - Proposed legislative rule pertaining to the regulated business exemption under the West Virginia Antitrust Act. She told members of the Committee that she had requested some major modifications from the Attorney General's Office and they had agreed to the modifications. Robert Schulenberg, Senior Assistant Attorney General, Antitrust Division, explained the proposed modifications and answered questions from the Committee.

Mr. Buchanan moved that the proposed rule lie over until the Committee's next meeting to allow the Committee to review the proposed modifications. The motion was adopted.

Ms. Graham explain the rule proposed by the Attorney General - Proposed legislative rule pertaining to obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance. Mr. Schulenberg answered questions from the Committee.

Mr. Jackson moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Attorney General - Proposed legislative rule pertaining to limitation of action and recovery of investigative costs and a reasonable attorney's fee by the Attorney General in enforcement action - and explained that the Attorney General had agreed to several minor technical modifications. Mr. Schulenberg answered questions from the Committee.

Mr. Burk moved that the proposed rule be modified on page 2, Section 3, by striking the word "shall" and inserting in lieu thereof the word "may". The motion was adopted.

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

Ms. Graham reviewed her abstract on the rule proposed by the Attorney General - Proposed legislative rule pertaining to defining the term "federal antitrust laws" and prohibiting tying and reciprocity. She stated that the Attorney General's Office had agreed to a minor technical modification. Mr. Schulenberg answered questions from the Committee.

Mr. Faircloth moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Ms. Graham explained the rule proposed by the Attorney General - Proposed legislative rule pertaining to confidentiality of investigative information and results. Mr. Schulenberg answered questions from the Committee.

Mr. Buchanan moved that the Committee request that the proposed rule be withdrawn because it would give the Attorney General's Office an unfair advantage over persons who are under investigation by the Attorney General. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Attorney General - Proposed legislative rule pertaining to authorizing the Attorney General to require persons upon whom subpoenas are served to answer written questions under oath. Mr. Schulenberg answered questions from the Committee.

Mr. Buchanan moved that the proposed rule be approved. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Division of Natural Resources - Hazardous Waste Management Regulations - and stated that the Division had agreed to technical modifications. Michael Comer, Regulatory Analyst, Office of Environmental and Regulatory Affairs, Subash Puri, Unit Leader, Hazardous Waste Section, Max Robertson, Section Chief, Waste Management and Michael Dorsey, Assistant Chief, Compliance Monitoring and Enforcement Section, Division of Natural Resources, Robert Foster, Co-Chairman, Environmental, Safety and Health Committee, West Virginia Manufacturers Association and John Cummings, representing the West Virginia Manufacturers Association, addressed the Committee and answered questions.

Mr. Burk moved that the proposed rule lie over until the Committee's next meeting to allow the Division to prepare several modifications to the proposed rule. No action was taken on the motion.

Mr. Roop suggested that the Division work with Committee Counsel on the proposed modifications and that the Committee proceed to the next item on the agenda while the language was being developed.

Ms. Graham explained the current posture of the rule proposed by the State Fire Commission - State Building Code. James Fife, Commissioner, State Fire Commission; Dale Blackburn, representing the WV County Officials Association; Dan Fowler, representing the Building Commission, City of Charleston; Steve LaRose, representing the City of Summersville; Steve Parsons, representing the City of Barboursville, and Jim Lord, representing the City of Wierton, all addressed the Committee regarding the proposed rule and answered questions from the Committee.

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

Mr. Roop asked Mr. Dorsey if the Division of Natural Resources had come up with language to modify Section 6.3.5.a of the proposed rule. Mr. Dorsey stated that language had been agreed upon.

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

Mr. McThomas reviewed his abstract on the rule proposed by the Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds from Bulk Gasoline Terminals. John Benedict, representing the Air Pollution Control Commission, addressed the Committee regarding the proposed rule.

Ms. Starcher moved that the proposed rule be approved. The motion was adopted.

Mr. McThomas explained the rule proposed by the Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds from the Storage of Petroleum Liquids in Fixed Roof Tanks.

Ms. Starcher moved that the proposed rule be approved. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds from Petroleum Refinery Sources.

Mr. Buchanan moved that the proposed rule be approved. The motion was adopted.

Mr. McThomas explained the rule proposed by the Air Pollution Control Commission - Air Quality Management Fee Program - and stated that the Commission had agreed to minor technical modifications. Mr. Foster, representing Union Carbide and the West Virginia Manufacturers Association, Larry Kopelman, Special Assistant Attorney General representing the Air Pollution Control Commission, and Dale Farley, Director of the Commission, addressed the Committee regarding the proposed rule and answered questions from the Committee.

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

Ms. Graham reviewed her memo on the rules proposed by the Board of Barbers and Beauticians. She stated that she had technical modifications to most of the rules and that the Board needs to



promulgate a separate rule relating to licensure. Judy Hall, representing the Charleston School of Beauty Culture; Nancy Smith, representing the Little French Beauty Academy; Jack Donta, representing the Huntington School of Beauty Culture and F. J. Angotti, representing the Board of Barbers and Beauticians of West Virginia, addressed the Committee regarding the proposed rules and answered questions from the Committee.

Mr. Jackson moved that the proposed rules be amended by adding a repealer section at the end of each rule giving the Board until 1992 to further revise their rules and that Committee Counsel send a letter to the Board setting forth the reasons for the amendment. The motion was adopted.

Mr. Jackson moved that the rules proposed by the Board of Barbers and Beauticians - Curriculum and Minimum Requirements Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operation in WV; Joint Barbers and Beauticians License; Rules and Regulations for Licensing Schools of Barbering and Beauty Culture; Operation of Barber and Beauty Shops and Schools of Barbering and Beauty Culture; Qualifications, Training, Examination and Registration of Instructors in Barbering and Beauty Culture, and Minimum Curriculum for Schools of Barbering be approved as modified and amended. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Division of Culture and History - Standards and Procedures for Granting Permits to Excavate Archaeological Sites and Unmarked Graves. He told the Committee that the Division had agreed to extensive modifications and that he would suggest that the Committee lay the proposed rule over until its next meeting to allow review of the modifications. Bill Farrar, Deputy State Historic Preservation Officer, answered questions from the Committee.

Mr. Faircloth moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Ms. Graham explained to the Committee that Deborah Rodecker, Counsel to the Board of Medicine, had informed her that both she and Ronald Walton, Executive Director of the Board, are in hearings and would be unavailable to answer questions from the Committee regarding the rule proposed by the Board - Licensing, Certification, Disciplinary and Complaint Procedures, Physicians; Podiatrists; Physician Assistants. She stated that Ms. Rodecker asked her to request that the Committee lay the proposed rule over until its next meeting.

Mr. Jackson moved that the proposed rule lie over until the next meeting. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

*Special Meeting*

DATE: Nov. 14, 1990

TIME: 9:00<sup>AM</sup> 12:00 NOON

NAME

Present    Absent    Yeas    Nays

Chambers, Robert "Chuck", Speaker  
 Roop, Jack, Co-Chair  
 Buchanan, Michael  
 Burk, Robert W., Jr.  
 Faircloth, Larry V.  
 Grubb, David  
 Starcher, Virginia  
  
 Burdette, Keith, President  
 Jackson, Lloyd, II, Co-Chair  
 Chafin, Truman H.  
 Manchin, Joe, III  
 Tomblin, Earl Ray  
 Warner, George  
 Wiedebusch, Larry  
 TOTAL

<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
✓			
✓			
✓			
✓			
	✓		
✓			
✓			
	✓		
	✓		
	✓		
	✓		
7	5		

RE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

Special Meeting

COMMITTEE: Leg. Rule-Making Review

DATE: Wed. Nov. 14, 1990 9:00 AM.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			IF NEEDED
✓ MICHAEL E COMER	Building 3 Rm 712 CAPITOL COMPLEX	DNR	
✓ LEW THOMAS	Capitol Bldg Chas. 25305 (Gulphing cap)	Dept. of Agriculture	Only if needed
✓ MARK E. N. ASAAD	Suite E-197, State Capitol Complex	TREASURER'S OFFICE	to answer questions
✓ JERRY SIMPSON	"	"	"
Dwight Smith	"	"	"
✓ Bob Schuberger	E-26 State Capitol Chas WV	Att'y Gen.	X
✓ Donna Quisenberry	"	"	X
✓ NORMAN LINDELL	1321 PLAZA EAST	HUMAN RIGHTS COMMISSION	
✓ Mary Kay Buckwalter	812 Summer Chas WV	Atty General - Civil Rights	X if needed for questions
✓ MAX ROBERTSON	1356 HANSFORD ST.	DNR - Waste Mgmt	If needed.
- Robert L. Foster	Bldg. 82, Room 905 P.O. Box 8004, Sa. Charleston	WVMA	X Yes
✓ John C. Cummings	600 United Center, Charleston	WVMA	If needed
✓ Subash C. Puri	1356 HANSFORD ST., CHAS.	WVDNR - waste mgmt.	If needed
DALE BLACKBURN	CHARLESTON WV	WV COA	if NEEDED
DANIEL FOWLER	"	"	



**WEST VIRGINIA  
MANUFACTURERS ASSOCIATION**

*Hand out  
Sp. Meet 11/14/90 9:00 am*

SUITE 503  
405 CAPITOL STREET  
CHARLESTON, WV 25301  
TELEPHONE (304) 342-2123

**SUMMARY OF OBJECTIONS  
OF THE  
WVMA  
TO THE PROPOSED  
HAZARDOUS WASTE MANAGEMENT RULEMAKING  
1990**

Despite the extensiveness of the comments submitted on behalf of the West Virginia Manufacturers Association (WVMA) on August 6, 1990 regarding the State Hazardous Waste Management Regulations, the objections of the WVMA to the proposed regulations now before the Legislative Rule-Making Review Committee may be summarized in relatively few words.

- The WVMA continues to contend that differences between the State and federal hazardous waste programs make the State program unnecessarily complex. Even seemingly minor deviations from the language of the U.S. EPA's hazardous waste regulations create significant difficulties in the interpretation of the State regulations.
- The DNR's present section-by-section and line-by-line approach to the annual revision of the Hazardous Waste Management Regulations has become excessively burdensome and time-intensive, a fact readily apparent by the growth in the number of pages in the State hazardous waste regulations from 242 pages under the 1981 proposal to 383 pages under the proposed regulations now before the Committee. The WVMA's August 6, 1990 comments totalled 75 pages and included over 90 separate comments.
- In light of the unnecessary complexity and expense associated with the proposed regulations now before the Committee, the WVMA urges that an "incorporation-by-reference" approach be adopted with regard to the Hazardous Waste Management Regulations.
- The attached document addresses the WVMA's objections to these regulations in greater detail.



**WEST VIRGINIA  
MANUFACTURERS ASSOCIATION**

SUITE 503  
405 CAPITOL STREET  
CHARLESTON, WV 25301  
TELEPHONE (304) 342-2123

**MAJOR OBJECTIONS OF THE  
WVMA  
TO THE PROPOSED  
HAZARDOUS WASTE MANAGEMENT RULEMAKING  
1990**

**I. INTRODUCTION**

Due to the extensive nature of the revisions to the federal hazardous waste program which DNR was required to incorporate into the present rulemaking, the WVMA filed over 90 comments with the DNR on August 6, 1990 regarding the proposed hazardous waste management regulations now before the Legislative Rule-Making Review Committee. Upon review and reconsideration, DNR rejected or otherwise failed to adequately implement at least 36 of the WVMA's comments. A list of the comments that DNR failed to incorporate is set forth in a separate document which has been attached. Although the WVMA objects to the DNR's failure to incorporate each of these comments, we have summarized below only the major objections which the WVMA wishes to raise before the Committee.

**II. MAJOR OBJECTIONS**

**A. GROUNDWATER PROGRAM OF SECTION 8.13.1 et seq.**

Other than minor revisions to Section 8.13.1.a (adding the language "after the effective date") and Section 8.13.8.d.3.B (allowing 90 days instead of 60 to demonstrate error in sampling), DNR has taken no steps to resolve the confusion which has resulted from the numerous differences between the regulatory provisions of the State groundwater program and the corresponding federal provisions of 40 CFR §§264.90 through 264.101. In its response to the comments of the WVMA, the DNR indicated these provisions were not open to comment, despite the fact that each federal provision was either amended or added as part of HSWA Cluster I or Non-HSWA Cluster V revisions to the federal hazardous waste program.

**RECOMMENDATION:**

The WVMA requests that the State groundwater program of Section 8.13.1 et. seq. be revised to conform to the federal regulations of 40 CFR §264.90 through §264.101.



**B. NUMBER OF COPIES OF THE MANIFEST**

Prior to the June 11, 1990 proposed regulations, Section 6.2.3 was worded identically to the federal provisions of 40 CFR §262.22, which stated simply that "the manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy for their records and another copy to be returned to the generator." Under the regulations before the Committee, however, DNR has increased the number of manifests required, and has significantly added to the paperwork burden of this rule.

There is no counterpart requirement in the federal regulations to the State requirement of Section 6.2.3.c that copies of the manifest be made for the regulatory agency of the state in which the waste was generated.

In addition, the requirement of Section 6.2.3.e that a copy of every hazardous waste manifest be sent to the Chief has no counterpart in the federal rules. DNR has offered no explanation of how it intends to handle the massive load of paperwork that will descend upon the agency as a result of this provision. This discrepancy with the federal rule creates another trap for West Virginia's regulated community. Because the DNR has failed to provide some compelling reason for this change, we urge its deletion.

**RECOMMENDATION:**

Paragraphs 6.2.3.c and 6.2.3.e should be eliminated, with Section 6.2.3.d being redesignated as Section 6.2.3.c.

**C. EXEMPTION OF RECYCLABLE MATERIALS FROM SPECIFIED REQUIREMENTS APPLICABLE TO GENERATORS, TRANSPORTERS, AND STORAGE FACILITIES**

DNR has failed to incorporate the provisions of 40 CFR §261.6(a)(3)(viii) and §261.6(a)(3)(ix), which exclude from specified regulatory provisions various recyclable materials associated with the refining, production, and transportation of petroleum. The DNR has advanced no reason why these exclusions should not be added with the other HSWA Cluster I revisions of the 1990 rulemaking. Furthermore, while these exclusions deal primarily with hazardous waste fuels produced during petroleum refining and production activities, the exclusions also apply to hazardous waste fuels produced during transportation of petroleum.



**RECOMMENDATION:**

The following revisions should be made to Section 3.1.6.c of the State regulations:

- A. The exemptions found at 40 CFR §261.6(a)(3)(viii) should be incorporated at Section 3.1.6.c.8 of the State regulations;
- B. The exemption of 40 CFR §261.6(a)(3)(ix) should be incorporated at Section 3.1.6.c.9 of the State regulations; and
- C. Section 9.4.1.b.2 of the State regulations should include cross-reference to Section 3.1.6.c.5 through 3.1.6.c.9, as found in 40 CFR §266.30(b)(2).

**D. LIMITATION ON 90-DAY ACCUMULATION OF HAZARDOUS WASTE**

The proposed rule before the Committee continues to impose restrictions on the 90 day accumulation of hazardous waste which are not imposed under the federal regulations. Section 6.3.5.a states that the 90 day accumulation of hazardous waste is subject to the restriction imposed under Sections 10.1.3 through 10.1.5, 10.2.5, and 10.2.6 of the State regulations. The federal regulations of 40 CFR §262.34(a) subject the 90 day accumulation of hazardous waste only to the requirements of §262.34(d), (e) and (f), which correspond to Sections 10.1.3 through 10.1.5 of the State regulations.

Section 10.2.5 imposes a one pound (1 lb.) limitation on the 90 day accumulation of acute hazardous waste, while Section 10.2.6 discusses the accumulation of hazardous waste for generators of both acute and non-acute hazardous waste, and also cross-references the 1 lb. limitation. Thus, by subjecting the 90 day accumulation of acute hazardous wastes to the limitations of Sections 10.2.5 and 10.2.6, the proposed regulations would subject large quantity generators as well as small quantity generators to a 1 lb. limitation on the quantity of acute hazardous waste which could be accumulated for the specified 90-day period. In contrast, the federal regulations do not subject large quantity generators to a 1 lb. limitation on 90-day accumulation of acute hazardous wastes.



**RECOMMENDATION:**

Cross-references to Sections 10.2.5 and 10.2.6 of the State regulations should be deleted from Section 6.3.5.a.

**E. EDITING ERROR IN SECTION 11.3.3.a**

Section 11.3.3.a generally discusses the types of changes which maybe made at an interim status facility. As a result of an apparent mistake, DNR left out the words "the change in" when they added the word "ownership or operational control of the facility" to Section 11.3.3.a.4.

**RECOMMENDATION:**

Section 11.3.3.a.4 should be revised to state "... the change in ownership or operational control of the facility."

**F. EDITING ERROR IN SECTION 11.5.2.c.9**

Section 11.5.2.c.9 generally discusses the specific Part B Permit application requirements for facilities storing containers of hazardous wastes F020, F021, F022, F023, F026, F027 and F028. DNR apparently intended to follow the WVMA's comment, but inserted the words "waste plan".

**RECOMMENDATION:**

The term "waste management plan" should be substituted for the term "waste plan" in Section 11.5.2.c.9.





LIST OF COMMENTS  
OF THE  
WVMA  
WHICH THE DNR  
FAILED TO ADEQUATELY IMPLEMENT<sup>1</sup>

COMMENTS DNR REJECTED:

A-1	B-11
A-10	B-13
A-11	B-14
A-17	C-2
A-20	C-6
A-29	C-7
A-30	C-8
B-2	C-12
B-7	C-13
B-9	C-16
B-10	C-21

COMMENTS DNR FAILED TO ADEQUATELY IMPLEMENT:

A-3	B-3
A-25	B-6
A-33	B-16
A-34	C-3
A-40	C-5
A-44	C-14
A-47	C-18

---

<sup>1</sup>This list references the comments of the WVMA regarding DNR's Proposed Hazardous Waste Management Regulations of June 11, 1990. The WVMA's comments were filed with the DNR on August 6, 1990.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

*Special Meeting*

DATE: Nov. 14, 1990

TIME: 1:00 - 4:00 p.m.

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Roop, Jack, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Grubb, David

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
	✓		
✓			
✓			
	✓		
	✓		
	✓		
7	5		

RE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

Special Meeting

COMMITTEE: Legislative Rule-Making Review Comm DATE: Wed, November 14 1:00pm

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Beth Thomsson	700 Virginia St. W	Home Bldg Assoc	
JOHN BENEDICT	CHARLESTON	AIR POLLUTION CONTROL	
- DALE FARLEY	"	"	✓
- LARRY KOPELMAN	"	" SP. ASST ATTY GEN	
Mike Dousey	1356 Hansford St WV Park	WV DNR	Is needed
Betty Deaw	Cha	WV M League	
Doward Mullens	Huntington	City	
Ernest Fugh	Beckley - Mayor	Beckley	
Gary Satcher	Treasurer - Beckley	Beckley	
NAN STEWART	132 N. Queen St	Martinsburg	
Charles Bergdorf	City Moundsville		
Oliver Jenkins	City of Mds.	City	
James Land	Newton W.V	City	X
James Subl	Princeton WV	City of Princeton	X
BILL LOONEY	BLUEFIELD WV	" " BLUEFIELD	X
Bobby Hagen	Bluefield W.V	" " Bluefield	
Pat Hemmington	Lewisburg, WV	The City of Lewisburg	
Charles Goodrich	Barboursville, WV	" of Barboursville	

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
STEPHEN PARSONS	BARBOURSVILLE WV	CITY OF BARBOURSVILLE WV	✓
John C. De Fries	RANSON, WV.	CITY OF RANSON, WV.	
Jim Crow	CITY OF CHARLES TOWN	CITY OF CHARLES TOWN	✓
William OWENS	809 29th St. Vienna	City of Vienna	
Francis J. Amath	311 Elm St.	Bd. of Berles & Mountainville	✓
Lucy Hall	3215 Bradley Rd.	Char. Sch Bty Culture	✓
Jack Wanta	Huntington	Huntington Sch Bty Culture	
Dennis Policanso	Charleston	Charleston Bty Sch	
Nancy Smith	3230 E. Cumberland	Little French Bty Acad.	✓
Tom E. Housley	Box 179 Alderson	Town of Alderson	
Jim Todd	Box 1627 Parkersburg	CITY OF PARKERSBURG	✓
Richard Williams	P.O. Box 1627 Parkersburg	City of Parkersburg	✓
Tom Huffman	1499 Marlboro Ave.	City of Mt. Alton	
Steve LeRose	1 Rosebud Summersville	City of Summersville	✓
Richard ...	FAIRMONT	CITY OF FAIRMONT	✓
David ...	CITY OF FAIRMONT P.O. BOX 1428	"	✓
James B. Costery	FAIRMONT	CITY OF FAIRMONT	✓
Charles R. Vergent	City of Nitro 20th St + 2nd Ave	City of Nitro	







**WEST VIRGINIA  
MANUFACTURERS ASSOCIATION**

*Handout  
Sp. Meet 11/14/90 1:00 pm.*

SUITE 503  
405 CAPITOL STREET  
CHARLESTON, WV 25301  
TELEPHONE (304) 342-2123

November 13, 1990

Legislative Rule-Making Review Committee  
West Virginia Legislature  
Room M-438  
State Capitol  
Charleston, West Virginia 25305

Re: Air Permit Fee Rules.

Dear Committee Members:

Enclosed for your consideration please find the comments of the West Virginia Manufacturers Association with regard to the rules of the Air Pollution Control Commission regarding fees for permits and yearly certificates to operate. The Manufacturers' hope that you will take these comments into account and modify the rules appropriately. If there are any questions, please contact me.

Very truly yours,

Robert L. Foster  
Co-Chairman  
Environmental, Safety &  
Health Committee

RLF:dls  
Enclosures  
cc: Patrick M. Gallagher, President



**WEST VIRGINIA  
MANUFACTURERS ASSOCIATION**

**BEFORE THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**COMMENTS OF THE WEST VIRGINIA  
MANUFACTURERS ASSOCIATION REGARDING  
AIR QUALITY MANAGEMENT FEES**

**Charleston, November 14, 1990**

These comments are submitted on behalf of the West Virginia Manufacturers Association, an organization composed of over 250 businesses that are deeply concerned about environmental regulation in West Virginia. The Association has two concerns about the Air Quality Management Fees that will be collected under the rule the committee is considering today - the size of the fees and the restrictions on transfer of operating certificates.

The WVMA has not opposed the limited imposition of reasonable fees by regulatory agencies such as the Air Pollution Control Commission to help defray the expenses of permit application review and issuance. However, the WVMA does object to paying a greatly disproportionate share of the Commission's overall budget, and we are concerned that in the future the regulated community will be forced to pay for most or all of the Commission's operations through these direct fees. It must be kept in mind that the businesses being asked to pay these additional fees, which are in reality taxes, are already being asked to support the APCC through their substantial general revenue tax payments. The WVMA objects to asking businesses to in effect pay twice for the operation of this or any other agency.



We know that it will be tempting, as pressures mount on the Legislature to find easy methods of raising funds, to force the Commission to increase these fees by cutting its appropriated budget. Already the fees for permits to construct, modify or relocate sources have been increased five-fold from the original proposed draft to the rule you are now considering. The WVMA is sorely disappointed with this increase and the pattern it represents, and will strongly oppose any further attempts to generally tax industry through these fees in the future.

We also object to the restrictions on transfers of operating certificates found in Subsection 4.2. These operating certificates are not permits; rather, they are acknowledgments or receipts showing that an annual tax has been paid. The operating certificates do not confer any rights upon a certificate holder that the APCC would want or need to control. Consequently, transfer of a yearly certificate, which has no more legal significance than the transfer of a tax receipt, should not require the Director's approval, certification of compliance and another \$200.00 fee. Accordingly, we urge the Committee to disapprove Subsection 4.2.

This committee has a golden opportunity to cut the sort of needless over-regulation that is so inimical to good government. If certificates of operation are freely transferrable, the APCC loses none of its authority to control air emission sources and it will give the regulated community one less meaningless hoop to jump through when selling a plant or business. The rule should provide that certificates to operate may be transferred upon giving notice

to the Director of the transfer. This can be done by substituting the following language for the current provisions of Subsection 4.2: Any person holding a valid certificate to operate may transfer the certificate to another person by giving written notice of the transfer to the Director.

On behalf of the West Virginia Manufacturers Association, we thank you for your attention to these concerns. We hope you will give them your careful consideration and support.

EMERGENCY RULES IN EFFECT ON NOVEMBER 15, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
148	Administration	6	Parking (New Rule)	August 17, 1990
61	Agriculture	1	Animal Disease Control (Amendments)	July 10, 1990
45	Air Pollution Control Comm.	22	Air Quality Management Fee Program (Amendments)	August 13, 1990
175	Alcohol Bev. Control Comm.	1	Retail License Operations (Amendments)	June 25, 1990 Amendments July 3, 1990 August 1, 1990
175	Alcohol Bev. Control Comm.	2	Private Club License (Amendments)	June 26, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	3	Farm Wineries (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Speciality Shops & Private Wine Restaurants (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	5	Licensing of Retail Liquor Stores (New Rule)	June 25, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	6	Bailment Policies & Procedures (New Rule)	June 26, 1990 Amendments August 1, 1990
2	Architects	1	Rules of the WV Board of Architects (Amendments)	May 23, 1990
176	Beer Comm.	1	Nonintoxicating Beer Licensing & Operations Procedures (Amendments)	July 3, 1990 Amendments Sept. 10, 1990
187	Cable TV	1	Franchising (New Rule)	August 17, 1990 Amendments October 3, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
187	Cable TV	2	Implementing Regs (New Rule)	August 17, 1990
160	Court of Claims	1	Practice & Procedure of Crime Victims Compensation Fund (New Rule)	August 9, 1990
5	Dental Examiners	1	Rules & Regs of WV Bd. of Dental Examiners (Amendments)	July 27, 1990
87	Fire Comm.	4	State Building Code (Amendments)	June 29, 1990
64	Health	3	Public Water Systems Bottled Water & Lab Certification (Amendments)	April 27, 1990 Amendments Sept. 28, 1990
64	Health	11	Licensure of Behavioral Health Centers (Amendments)	April 27, 1990
64	Health	30	Fees for Permits (Amendments)	July 23, 1990 Amendments Sept. 5, 1990
64	Health	32	Vital Statistics (Amendments)	November 5, 1990
64	Health	51	Fees for Services (New Rule)	July 10, 1990
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	16	Exemption for Shared Services (New Rule)	June 11, 1990 Amendments July 30, 1990
65	Health Care Cost Review Authority	17	Health Services Offered by Health Professionals (New Rule)	June 19, 1990
65	Health Care Cost Review Authority	18	Conversion of Acute Care Beds to 100 Skilled Nursing Care Beds (New Rule)	July 16, 1990
157	Highways	5	Traffic & Safety Rules (Amendments)	April 25, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
116	Hospital Finance Authority	1	Establishment of Fee Schedule & Cost Allocations Applicable to the Issuance of Bonds by the WV Hospital Finance Authority (Amendments)	May 11, 1990
77	Human Rights	1	Discrimination Against the Handicapped (Repeal & Replace)	February 26, 1990
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
26	Insurance	26	Accident & Sickness Rate Filing (New Rule)	August 14, 1989
26	Insurance	29	Health Insurance Benefits for Temporomandibular & Cranio-mandibular Disorders (New Rule)	August 1, 1990
94	Jail & Correctional Facility Authority, Reg.	4	Regs Relating to Public Hearings & Site Selection for Private Prison (New Rule)	July 18, 1990
42	Labor	19	WV Manufactured Housing Construction & Safety Board (New Rule)	April 20, 1990
23	Land Surveyors	1	Rules & Regs for the Practice of Land Surveying in WV (Amendments)	November 6, 1989
11	Medicine	4	Fees for Services Rendered by Bd. of Medicine (New Rule)	July 9, 1990
48	Mines Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
47	Natural Resources	4	Assessment of Civil Penalties (New Rule)	March 29, 1990
47	Natural Resources	26	Water Pollution Control Permit Fee Schedules (Repeal & Replace)	June 1, 1990
47	Natural Resources	36	Underground Storage Tank Tegn (Amendments)	July 10, 1990
47	Natural Resources	37A	Underground Storage Tank Insurance Trust Fund (New Rule)	March 28, 1990
143	Personnel	1	Adm. Rules & Regs of WV Civil Service System (Amendments)	November 15, 1989 August 6, 1990
81	Public Safety	1	Career Progression System (Repeal & Replace)	May 30, 1990 August 9, 1990
81	Public Safety	4	Modified Vehicle Inspection (New Rule)	Sept. 11, 1990
148	Purchasing Div	1	Purchasing (Amendments)	August 7, 1990
148	Purchasing Div.	5	Availability of State Surplus Buildings & Equipment to Charity Food Banks (New Rule)	June 26, 1990
178	Racing Commission	1	Thoroughbred Rules (Amendments)	May 16, 1990 Amendments June 25, 1990 Sept. 25, 1990
178	Racing Commission	2	Greyhound Rules (Amendments)	December 8, 1989 Amendments Sept. 25, 1990
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
54	Solid Waste Management Board	1	Disbursement of Loans, Grants to Governmental Agencies for Acquisition or Construction of Solid Waste Disposal Projects (New Rule)	August 8, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
54	Solid Waste Management Board	2	Estimated Fee Schedule, Cost Allocations Applicable to Issuance of Bonds (New Rule)	August 8, 1990
54	Solid Waste Management Board	3	Development of Comprehensive Litter & Solid Waste Control Plans (New Rule)	October 23, 1990
54	Solid Waste Management Board	4	Development of Commercial Solid Waste Facility Siting Plans (New Rule)	October 23, 1990
110	Tax	13C	Business Investment & Jobs Expansion, Corporation Headquarters Relocation and Small Business Tax Credits (New Rule)	Sept. 6, 1990
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
46	Water Resources	46	Water Quality Standards (Amendments)	June 13, 1990 Amendments November 7, 1990