

JANUARY

9

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 9, 2000
5 p.m. to 7 p.m.
Senate Finance Committee Room M-451

1. **Approval of Minutes - December 12 and 14, 1999**
2. **Review of Legislative Rules:**
 - a. **Office of Air Quality**
Air Pollutant Emissions Banking and Trading, 45CSR28
 - b. **Division of Health**
Food Establishments, 64CSR17
 - c. **Division of Health**
Public Water Systems Design Standards, 64CSR77
 - d. **Office of Waste Management**
Sewage Sludge Management Rule, 33CSR2
 - e. **Alcohol Beverage Control Administration**
Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants, 175CSR4
 - f. **Office of Air Quality**
To Prevent and Control the Discharge of Air Pollutants into the Open Air which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4
 - g. **Office of Water Resources**
Groundwater Protection Standards at Steam Generating Facilities, 47CSR57A
 - h. **Office of Waste Management**
Hazardous Waste Management Rule, 33CSR20
 - i. **Environmental Quality Board**
Requirements Governing Water Quality Standards, 46CSR1
 - j. **Child Enforcement Division**
Providing Information to Credit Reporting Agencies, 78CSR14
 - k. **Child Enforcement Division**
Guidelines for Child Support Awards, 78CSR16
3. **Other Business**

Sunday, January 9, 2000

5:00 p.m. - 7:00 p.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Hunt, Chairman
Linch, Vice Chairman
Compton
Jenkins
Faircloth
Riggs

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

The minutes of the December 12 and 14, 1999, meetings were approved.

Rita Pauley, Associate Counsel, explained the rule proposed by the *Child Enforcement Division-Guidelines for Child Support Awards, 78CSR16*.

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

Ms. Pauley reviewed her abstract on the rule proposed by the *Child Enforcement Division-Providing Information to Credit Reporting Agencies, 78CSR14*.

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

Joseph Altizer, Associate Counsel, explained that the rule proposed by the *Office of Waste Management-Sewage Sludge Management Rule*, had been laid over from the Committee's December 12, 1999, meeting. Mr. Altizer explained the Agency's proposed amendments, and copies of proposed amendments were distributed to Committee members. He and Mike Zeto, Chief Inspector for Environmental Enforcement, responded to questions. Dan Hallorhan, manager of the city of Charleston's composting facility, addressed the Committee and responded to questions.

Mr. Anderson moved to adopt the amendments proposed by the agency. After further discussion, Mr. Anderson asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Anderson moved to adopt the amendments proposed by the agency as modifications. The motion was adopted.

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

Debra Graham, Committee Counsel, explained that the rule proposed by the *Division of Health-Public Water Systems Design Standards, 64CSR77*, was laid over from the Committee's December 12, 1999, meeting. Jack Frame, President of the West Virginia Water Well Drillers Association, addressed the Committee and responded to questions.

Mr. Snyder moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

Mr. Altizer explained that the rule proposed by the *Office of Air Quality-To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4*, had been moved to the foot of the agenda at the Committee's December 14, 1999, meeting. Tom Degan, Attorney for the West Virginia Environmental Council, explained the amendment which was offered by Senator Snyder at the Committee's December 14, 1999, meeting. Rex Burford, Assistant Attorney General; Karen Watson, Counsel to the Office of Air Quality; and Karen Price, representing the West Virginia Manufacturers Association; addressed the Committee and responded to questions. Dave Miller, Deputy Commissioner of Agriculture, addressed the Committee.

Mr. Anderson moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

Ms. Graham explained that the rule proposed by the *Division of Health-Food Establishments, 64CSR17*, had been laid over from the Committee's December 12, 1999, meeting. Ron Forren, from the Public Health Sanitation Division, distributed copies of proposed modifications and responded to questions.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Water Resources-Groundwater Protection Standards at Steam Generating Facilities, 47CSR57A*.

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

Mr. Altizer explained that the rule proposed by the *Office of Air Quality-Air Pollutant Emissions Banking and Trading, 45CSR28*, had been laid over from the Committee's July 11, 1999, meeting because of conflicts between the Environmental Protection Agency's directives and the state statute. He reviewed his abstract and stated that the agency has agreed to technical modifications. Karen Price responded to questions from the Committee.

Mr. Hunt moved that Counsel draft a bill requiring state air emissions trading comply with new federal law. The motion was adopted.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Waste Management-Hazardous Waste Management, 33CSR20*, and stated that the Agency has agreed to technical modifications. Mike Dorsey, Assistant Chief of the Office of Waste Management, responded to questions from the Committee.

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

Mr. Altizer explained the rule proposed by the *Environmental Quality Board-Requirements Governing Water Quality Standards, 46CSR1*, and stated that the Board has proposed modifications. Libby Chatfield, Technical Advisor to the Board, and David Yaussy, Attorney, responded to questions from the Committee.

Ms. Minear moved to amend the proposed rule by adding a new section 7.2.d.9.1 to read "Except that the aquatic life use in the Blackwater River upstream of the town of Davis shall be Category B1", and by deleting the reference to the Blackwater River in the list of trout streams found in Appendix A of the water quality standards. The motion was rejected.

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

The meeting was adjourned.

PROPOSED AMENDMENTS TO "SEWAGE SLUDGE MANAGEMENT
RULE TO ADDRESS "EXCEPTIONAL QUALITY COMPOST"

NEW DEFINITIONS:

2.23 "Exceptional Quality Compost" means compost resulting from sewage sludge, which compost meets the Table I metal limits of this rule and which has been treated to achieve Class A pathogen reduction requirements in accordance with 40 CFR 503.32(a) and one of the vector attraction requirements in 40 CFR 503.33(b)(1) through (b)(8).

2.26 "Land Application Site" is the location where sewage sludge is sprayed or spread onto the land surface; injected below the land surface; or incorporated into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

3.2 a. 14 The prohibitions of 3.2.a., 4, 5, 6, 8, 9, 11, and 12 may be waived by the Division in any land application permit for exceptional quality compost upon a showing by the applicant that the application of exceptional quality compost will not cause significant environmental impact. The applicant shall include in writing the justification for such request in its application for a land application permit.

3.2.b

3.2.b Sewage sludge products which meet the Table I metals limits of this rule, and which have been treated to achieve Class A pathogen reduction requirements in accordance with 40 CFR 503.32(a) and one of the vector attraction reduction requirements in 40 CFR 503.33(b)1 through (b)8, and which are sold or given away in a bag or other container and exceptional quality compost which is land applied in accordance with 4.1.c.3 of this rule, are not subject to the requirements of 3.2.a.1 through

3.2.a.12 of this rule except that these sewage sludge products shall not be applied to land that meets any of the following conditions:

3.2.b.3 Land from which drainage leads to a sinkhole.

3.2.c.2 The director shall assign an individual and lifetime loading rate for each lifetime loading rate for each land application site for which a permit is required pursuant to 4.1.c. of this rule by considering background soil concentrations and maximum allowable pollutant concentrations as per Table 1 and per Table 3 of this rule. New soil analyses for those metals listed in Table 3 shall be required at each land application site whenever the site has received for land application fifty percent of the assigned lifetime loading rate.

3.2.g (New)

Exceptional quality compost may be stored at a distributor's property that is not a land application site or sewage sludge processing facility for a period of up to three months. Upon written request by the distributor and with the approval of the Division, the exceptional quality compost may be stored on the distributor's property for an additional three months. These time limitations for storage do not apply to exceptional quality compost contained in a bag or other container which is closed and are in addition to and shall not ^{effect} limit the time limitations for storage in 3.2.e. and 3.3.a.1 of this rule.

3.7 Exceptional Quality Compost – No person shall sell or give away exceptional quality compost in quantities exceeding one metric ton unless the following requirements are met.

3.7.a. Any person who composts sewage sludge shall notify the Division in writing of their intent to distribute exceptional quality compost in quantities exceeding one metric ton at least 30 days prior to the initial distribution in this state.

3.7.b. Any person who composts sewage sludge shall maintain distribution records for exceptional quality compost, including the name and address of each person receiving bulk quantities of exceptional quality compost in excess of one metric ton; the quantity of exceptional quality compost received by each person; and the results of all tests conducted as part of their monitoring program.

3.7.c. The information required under Subdivision 3.7.b. of this rule shall be reported to the Division on a monthly basis.

3.7.d. The person who composts sewage sludge shall prepare a written certification that he has complied with the requirements of 3.7.a, 3.7.b and 3.7.b.c of this rule and shall provide such certification to any person to whom he distributes exceptional quality compost in quantities exceeding one metric ton and to the Division in the monthly report required in 3.7.c.

3.7.e. No person shall land apply or further distribute exceptional quality compost in quantities exceeding one metric ton unless a certification has been issued in accordance with 3.7.d. herein.

3.7.f. Exceptional quality compost sold or given away in a bag or other container shall not be subject to the requirements of this Subsection 3.7.

~~3.7.g. The requirements of 6.4 of this rule apply to exceptional quality compost distributed in quantities exceeding one metric ton.~~

4.1.c. Except as provided in 4.1.c.1, 4.1.c.2 and 4.1.c.3 of this rule, no person may land apply sewage sludge without first obtaining a land application permit. Provided, That land application permit requirements may be incorporated into a modification of a facility's WV/ NPDES permit required under W. Va. Code § 22-11-1, et seq.

4.1.c.3 Any person who land applies exceptional quality compost in bulk quantities in excess of one metric ton is not required to obtain a land application permit for sites where such compost is applied on land two acres or less in size and the quantity of exceptional quality compost applied to that site does not exceed the agronomic rate for the land or a rate of fifteen dry tons per acre whichever is less. This exception from permitting does not apply to multiple sites on the same parcel of land and does not exempt sewage sludge processing facilities from any other permitting or reporting requirements of this rule or of the Sewage Sludge Management Act, W. Va. Code § 22-15-20.

4.1.c.4 The Division may on a site-by-site basis prohibit the land application of exceptional quality compost in bulk quantities in excess of one metric ton without a permit, when such land application results in a nuisance, causes objectionable odors or otherwise may cause harm to the environment. Under such circumstances, the Division may require the person to apply for a land application permit in accordance with Subdivision 4.2.c of this Rule, and take such other actions deemed necessary to address the problems created at the land application site.



STATE OF WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

322 70th Street, SE
Charleston, West Virginia 25304-2900

CECIL H. UNDERWOOD
GOVERNOR

DONALD L. STEMPLER
COMMISSIONER

ROBIN CAPEHART
SECRETARY OF TAX & REVENUE

January 7, 2000

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Re: CSR Title 175 - Series 4
Amendment to an Existing Rule

Dear Secretary Hechler:

On August 6, 1999, this office filed a proposed Legislative Rule relating to amending CSR Title 175 - Series 4, Retail Sale Of Wine In Grocery Stores, Wine Specialty Shops, and Private Wine Restaurants.

A public comment period followed, after which the West Virginia Secretary of Tax and Revenue approved its filing in your office and with the Legislative Rule Making Review Committee for review.

Following several appearances before the Legislative Rule Making Review Committee, it has become readily apparent to me that resolution of major issues involved in the proposed Rule need additional research and evaluation by this office.

Therefore, it is my desire that the Legislative Rule Making Review Committee withhold further consideration of this proposed Legislative Rule until such time as I am convinced that we have developed a proposed Rule with more meaningful content in all of its areas.

Accordingly, it is requested that the Proposed Rule, as submitted, be temporarily withdrawn from the Legislative Rule Making Review Committee and returned to this office.

Very Truly Yours,

Donald L. Stemple
Commissioner

DLS/jar



ENVIRONMENTAL QUALITY BOARD

1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126

Telephone: (304) 558-4002
Fax: (304) 558-4116

Telephone: 1-800-480-4598
E-Mail: clerk@mail.wvnet.edu

January 7, 2000

Senator Mike Ross and
Delegate Mark Hunt, Co-Chairs
Legislative Rule-Making Review Committee
Building 1, Room M-427
1900 Kanawha Blvd, East
Charleston, West Virginia 25305-0610

RE: 46 CSR 1, Requirements Governing Water Quality Standards

Dear Senator Ross and Delegate Hunt:

Please find attached additional amendments to the Water Quality Standards proposed rule which this agency filed with your committee on August 6, 1999. We appreciate your consideration of the attached amendments during your meeting scheduled on Sunday, January 9, 2000.

As you are aware, our filing in August included proposed Antidegradation Implementation Procedures. Since our filing in August, the Board has convened a stakeholder group to review the proposed Antidegradation Implementation Procedures. That group consists of members of the regulated community, environmental community, state and federal agencies and the general public. The group has held 10 meetings since August and has made considerable progress in its review of the procedures. However, last month the group requested an extension of time to complete its review and further requested that the Board withdraw the Antidegradation Implementation Procedures from consideration in this legislative session.

The Board has agreed to extend the deadline for submission of recommendations until April, 2000. At that time, the Board will review the recommendations of the group and will consider filing proposed changes for consideration in the 2001 session.

In light of these activities, the Board is proposing the attached amendments, which would remove the proposed Antidegradation Implementation Procedures from consideration at this time.

Again, we appreciate your thoughtful consideration of this proposal. If you have further

questions on this matter, please contact Libby Chatfield in our office, for assistance.

Sincerely,



for Edward Snyder, Ph.D
Co-Chair, and



for Donald Tarter, Ph.D.
Co-Chair

attachments

Proposed amendments to 46 CSR 1
January 5, 2000

Page 2

§2.9 Delete the following underlined words: (also known as "Tier 2 waters") and
§2.11 Delete the following underlined words: (also known as "Tier 2 waters")

Page 3

§2.20 Delete entire underlined section, and renumber remaining subsections.

Page 4

§4.1.a. Delete the following underlined words: "Tier 1 Protection"

Page 5

§4.1.b. Delete the following underlined works at the end of the second sentence: "in accordance with the West Virginia Nonpoint Source Management Plan"

§4.1.b.2 through 4.1.b.2.C. Delete all of the strikethroughs and retain the existing language in these subsections.

§4.1.b.2. Delete all of the underlined language in this section.

§4.1.c. Delete the following underlined words: "Tier 2.5 Protection"

Page 6

§4.1.d. Delete the following underlined words in the first paragraph: "Tier 3 Protection" and the following underlined words in the second paragraph: "and Appendix F herein"

§4.1.f Delete all of the underlined language in this subsection.

Pages 60 - 70

Delete Appendix F.

Amendment to 45 CSR 4

To Prevent and Control the Discharge of Air Pollutants into the Open Air which Causes or
Contributes to an Objectionable Odor or Odors

§45-4-2. Definitions.

"Best Available Control Technology (BACT)" means an emission limit based on the maximum degree of reduction of an air contaminant emitted from a facility which the Director, on a case-by-case basis taking into account energy, environmental, economic impacts, and other costs, determines is achievable through application of production processes and available methods, systems, and techniques for control of such contaminants.

"Dilutions to Threshold (D/T)" means the number of dilutions of clean, odor-free air (plus the one volume of odorous air) necessary to reduce the odor to a level at which fifty percent (50%) of a particular odor panel can detect any odor.

§45-4-9. This section applies to all commercial sewage sludge composting facilities which includes all existing commercial sewage sludge composting facilities that have been temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement.

9.1. Proposed (new) commercial sewage sludge composting facilities shall:

9.1.a. Include air pollution control for all emissions from active composting operations and analyze whether other sources (general building ventilation air, mixing area, curing piles, etc.) need controls. The level of control, BACT, shall include all reasonable practices to reduce/minimize odors and add-on controls as determined by a BACT analysis;

9.1.b. Demonstrate through air dispersion modeling approved by the Director that any odors emitted will not result in a predicted off-site nuisance odor condition. All composting odors, all odors from non-composting operations at the site (i.e. wastewater treatment unit processes) that are generated at sufficient levels to cause off-site nuisance conditions and all residual odors remaining after control treatment should be included as inputs to the model; and

9.1.c. Prepare and submit to the Director for review and approval an odor management plan that incorporates Best Management Practices (BMPs). The odor management plan shall include at a minimum the following:

9.1.c.i. A plan that details specific operational procedures that shall be used to minimize odor generation;

and 9.1.c.ii. A contingency plan for facility upset and/or nuisance conditions;

9.1.c.iii. A complaint response program and a proposal for a community outreach/involvement program for odor management.

9.2. All existing commercial sewage sludge composting facilities that have been temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement shall:

9.2.a. Identify and quantify all sources of odor at the site, including odors from non-composting activities;

9.2.b. Prepare and submit to the Director, within the time frame determined by the Director, a compliance plan to remedy the existing odor problems that includes a schedule for initiation of control measures, including, but not limited to:

9.2.b.i. Optimization of operating and maintenance procedures to reduce the generation of odors;

9.2.b.ii. An air pollution control/treatment system for, at a minimum, all emissions from active composting operations;

9.2.b.iii. An evaluation of the need for an odor treatment/control system for all other areas such as mixing, curing, and storage areas;

9.2.b.iv. An evaluation of all other odor control options and their effectiveness/applicability to the source; and

9.2.b.v. A demonstration of the compliance plan effectiveness through the Director approved air dispersion modeling referred to in section 9.1.b. of this rule.

9.2.c. Upon approval by the Director of the compliance plan, implement all steps of the plan.

9.3. A BACT analysis (determining BACT) shall be conducted in a "top-down" manner. All odor control methods and devices possible must be considered; elimination of specific strategies must be documented on technical, economic or other considerations. Odor Control methods currently and successfully in long-term use at other similar facilities will automatically be considered technically feasible unless substantial documentation to the contrary is provided.

9.3.a. The minimum level of air pollution control that will be considered BACT is that level which will not result in a condition of nuisance odors off-site. This criterion must be met regardless of the cost such control would entail.

9.4. Exemptions.

9.4.a. The Director will consider, on a case by case basis, exemptions from the add-on control requirement for new facilities in section 9.1.a., but not for existing facilities with odor problems, if the proponent can demonstrate a condition of odor will not occur due to the size and location of the facility.

9.4.b. Such exemptions will not be considered for facilities in urban areas or very close to residential areas in rural areas.

9.4.c. A detailed dispersion modeling analysis and other supporting documentation must be submitted to the Director as part of any such exemption request.

9.4.d. Facilities that receive such an exemption must submit to the Director, for review and approval, a detailed contingency plan. The contingency plan shall include, but not be limited to:

9.4.d.i. A written agreement adequate to ensure that an available alternative disposal, handling, or composting facility exists should odorous conditions necessitate the routing of the compostable material to an alternate facility; and

9.4.d.ii. Detailed operation and maintenance steps that will be taken to minimize odors at the facility applying for the exemption should nuisance conditions occur.

9.4.e. The Division encourages innovative technology and will, on a case-by-case basis, consider applications for pilot or demonstration projects. Such applications shall be subject to the terms of subsections (a) through (d) above.

9.5. Criteria for approval.

9.5.a. The design of proposed sources, as well as proposed modifications to a source, should be evaluated for an impact of five (5) Dilutions to Threshold (D/T) or less, as predicted by the Director approved air dispersion modeling.

9.5.a.i. Impacts should be evaluated at the property boundary or at the point of maximum impact beyond the property boundary, whichever results in a higher predicted impact, unless otherwise approved in writing by the Director.

9.5.a.ii. On a case by case basis, the Director may agree to allow use of the most sensitive receptor as the design point, even though this may result in a less stringent requirement than use of the property boundary, if requested by the applicant and if adequate justification is submitted to indicate that both the existing and future land use in between the receptor and facility property line supports such a request.

9.5.b. The Director may require that an applicant demonstrate compliance with a design standard (as predicted at the property boundary or at the point of maximum impact beyond the property boundary, whichever results in a higher predicted impact) of less than five (5) Dilutions to Threshold (D/T) at sites which the Director determines are appropriate due to local meteorology and topography, previous history of chronic odors, or intensity/density of local development.

9.5.c. Use of five (5) Dilutions to Threshold (D/T) as a minimum design standard in no case exempts a facility from having to operate in such a way as to prevent nuisance conditions from occurring off-site. The facility operator is responsible for ensuring that nuisance conditions do not occur off-site regardless of the D/T level designed for and regardless of the results of compliance testing.

9.5.d. For existing sources, as well as proposed and modified sources after they are in operation, a condition of odor will be determined by the Director during actual site visits and other pertinent information (such as complaints) as well as by compliance testing results. Modeling results which represent conditions at a particular point in time are not in and of themselves sufficient to prove that an odor does not exist at an operating facility.

9.6. Air modeling procedures.

9.6.a. The acceptable limit, for purposes of design and compliance testing, is a modeled impact not greater than five (5) Dilutions to Threshold at the more stringent of either (a) the property boundary, or (b) the maximum ground-level impact off-site, under stability class E, as established by generally accepted professional engineering practices, for ground level sources or the most conservative stability class for discharges from stacks, unless otherwise approved in writing by the Director.

9.6.b. Modeling protocols must be submitted to the Department for approval. The protocol shall at a minimum:

9.6.b.i. Use the most recent EPA approved ISCST model and instruction manual;

9.6.b.ii. Use generic worst-case meteorological data. Site specific meteorology can be used for refined analysis if the limit is exceeded in screening. Site specific data must first be approved by the Director;

9.6.b.iii. Incorporate downwash and terrain factors in the model;

9.6.b.iv. Model all odor sources, including on site sources of fugitive odor emissions, for simultaneous total impact; and

9.6.b.v. Model using worst-case, short term, peak odor emission rates.

9.6.c. For purposes of dispersion modeling of property line/receptor impacts, emission from biofilters or scrubbers should be assumed to be not less than approximately 50 D/T on average unless adequate information is submitted otherwise.

9.7. Process operation and maintenance

9.7.a. New facilities must be designed to ensure that the facility will employ procedures and equipment effective to minimize odors.

9.7.b. All existing commercial sewage sludge composting facilities that have been temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement must first optimize their operating and maintenance procedures so that odor generation is minimized as much as possible prior to the addition of any odor control equipment.

9.7.c. Plans submitted for approval regarding optimization of operating and maintenance procedures shall include but not be limited to:

9.7.c.i. An evaluation of materials handling practices prior to mixing with bulking agents including but not limited to; size of bulking agent, storage time and chemical addition prior to dewatering;

9.7.c.ii. Mixing systems designed to produce an initial homogenous mix without large clumps of raw compost material, or excessive moisture;

9.7.c.iii. Aeration systems designed to ensure that adequate and timely aeration is provided to all parts of the piles during active composting;

9.7.c.iv. Temperature feedback controlled systems such that the internal pile temperature is controlled within the optimum range--not greater than 60-65 degrees Centigrade (140-149 degrees Fahrenheit) , preferably below 60 degrees Centigrade;

9.7.c.v. Procedures for maintaining proper pile height, aeration rate, temperature control and cycle times for composting, curing and storage; and

9.7.c.vi. Air dispersion modeling showing whether curing piles should be located in an enclosed building.

9.7.d. All curing piles shall be under roof, and facilities should be evaluated on a case by case basis to determine whether storage piles need to be under roof to prevent re-establishment of biological conditions conducive to odor generation.

9.7.e. All facilities should have, at a minimum, access to an available portable aeration system available for use on curing and/or storage piles.

9.7.f. Biofilters

9.7.f.i. Biofilters should be designed at a loading rate not to exceed three cubic feet per minute per square foot (3 CFM/SF);

9.7.f.ii. Biofilters should include an irrigation system and a humidification system that is adequate to prevent drying out of the unit;

9.7.f.iii. The biofilter design should contain an evaluation of whether pre-scrubbing is necessary to prevent excessive ammonia and particulate loading;

9.7.f.iv. Biofilters should be designed with an empty bed detention time of 45-60 seconds and should be three to four feet in depth;

9.7.f.v. The facility shall provide for short term contingency in the event of catastrophic failure or for routine replacement of the biofiltration system bed media. The duration of each contingency event shall be for a period necessary to re-establish a population of organisms within the bed for optimum pollutant removal.

9.7.g. Wet chemical scrubbers.

9.7.g.i. A three stage system for wet chemical scrubbers is required. Stage one for ammonia removal, stage two for oxidation of reduced sulfur compounds (methyl disulfide, etc.), stage three for removal of chlorine carry-over from the second stage.

9.7.g.ii. Ammonia removal efficiency in the first stage must be monitored to assure that ammonia does not carry over into the second stage where it may interfere with the oxidation of reduced sulfur and other compounds in the second stage.

9.7.g.iii. The pH of the second stage must be continuously monitored to assure that any sulfuric or other acid carry-over from the first stage does not lower the pH of the second stage excessively.

9.8. Emission limitations.

9.8.a. The emission rates resulting from the BACT analysis and used in the modeling to demonstrate compliance with the design criteria of five (5) Dilutions to Threshold (D/T) , will become the facility's allowable emission rate.

9.8.b. A facility may have more than one emission limit if more than one odor source exists at the facility. Potential sources include, but are not limited to:

9.8.b.i. Emissions from treatment systems such as biofilters and chemical scrubbers;

9.8.b.ii. Areas that are vented without treatment, such as through fans, doors, windows, stacks or through building ventilation systems; and

9.8.b.iii. Outside operations, such as piles and storage areas, and lagoons; and

9.8.b.iv. Sources of fugitive emissions.

9.9. Testing.

9.9.a. All new sewage sludge composting sources and associated air pollution/odor control equipment shall undergo compliance testing twice per year, or at a frequency that the Director determines is sufficient to demonstrate compliance with odor emission limits and/or control efficiencies as contained in any Director approval for the source.

9.9.b. All existing commercial sewage sludge composting facilities that have been temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement shall also be required to undergo compliance testing.

9.9.c. Compliance testing shall consist of odor panel analysis of samples taken at the points of generation and the analysis should be conducted in accordance with ASTM Method

679-91 unless otherwise approved by the Director. The director may also require samples to be taken at other on-site or off-site locations.

9.9.c.i. Samples shall be taken from the point(s) of generation, or other sites as required;

9.9.c.ii. In no case shall sample storage time exceed 24 hours prior to odor analysis;

9.9.c.iii. Odor samples shall be collected into gas sampling bags made of Tedlar unless otherwise approved by the Director;

9.9.c.iv. Odor samples shall be collected using a sampling line made of an odor-free, chemically inert and non-reactive material;

9.9.c.v. The sampling bag shall be purged with the sample at least once prior to collecting the sample;

9.9.c.vi. The gas shall be transferred directly into the sampling bag without going through any potential sources of contamination such as pumps;

9.9.c.vii. Samples should be maintained at ambient temperature and contact with direct sunlight should be avoided;

9.9.c.viii. Air flow shall be regulated at a minimum of three (3) liters per minute per sniff port unless otherwise approved in writing by the Director;

9.9.c.ix. During odor panel testing each diluted sample must be presented to the sample with two odor-free blanks, for statistical validation purposes, by using three (3) sniff ports;

9.9.c.x. Odor panels shall consist of a minimum of 6 to 8 individuals preferably comprised of non-smokers and of both genders. Panelists shall be screened and trained;

9.9.c.xi. All olfactometer parts that come into direct contact with the sample in any way must be chemically inert and nonreactive and must be able to be purged or cleaned quickly.

9.9.d. If the compliance testing indicates an exceedance of the "back-calculated" emissions limit, the composting facility shall at a minimum:

9.9.d.i. Initiate a preliminary investigation into the reasons for the exceedances. The preliminary investigation shall include at a minimum an evaluation of whether odor control system and aeration system components are operating correctly; and

9.9.d.ii. Submit, along with the preliminary investigation, a scope of work for tasks related to a more detailed and comprehensive evaluation of the reasons for the exceedances.

9.9.e. The scope of work shall include an evaluation of whether operating and maintenance procedures can be modified to minimize odor generation rates at the facility.

9.9.f. The preliminary investigation and scope of work shall be submitted to the Director for review and approval as soon as possible but in no case later than 30 days from the facility's receipt of the compliance testing results, which results shall not be unreasonably withheld.

9.10. Determination of nuisance.

9.10.a. The determination of a nuisance condition resulting from composting odors should not be based on specific chemical thresholds. Because of synergistic effects, different levels of sensitivity to odors, and limitations on analytical methods and other factors, a nuisance may exist even when specific compounds are found to be below any established thresholds.

9.10.b. The overall method of odor analysis, most commonly performed by an odor panel, uses a total of all odor detected. Thus synergistic effects and odors from compounds too obscure or dilute to analytically measure are accounted for in the analysis.

9.10.c. Specific chemicals measured by existing analytical procedures can help evaluate the performance of pollution control equipment and should be considered as a tool to evaluate design performance as appropriate. However, the overall method of odor analysis is to be used for total off-site impacts.

9.10.d. Limited testing can not cover all operating conditions and odor level testing includes some inherent variability. Therefore, the Director will also use site visits and will consider other pertinent information, such as complaints, when determining whether odor/nuisance conditions exist off-site regardless of emissions compliance test results. The operator shall complete a standard form, prepared by the Director, for all odor complaints received by the facility. Copies of the completed form shall be sent to the Director, the local Board of Health, and the complainant.

Change sheet
for amendment to 45 CSR 4

§45-4-2. Definitions.

Added "(BACT)" after "Best Available Control Technology"

In definition of "Dilutions to Threshold (D/T)" I put parentheses around "plus the one volume of odorous air."

§45-4-9. This section applies to ~~new~~ all commercial sewage sludge composting facilities, ~~major modifications to existing commercial sewage sludge composting facilities, and~~ which includes all existing commercial or non-commercial sewage sludge composting facilities that have been determined to be creating or contributing to an off site nuisance condition, temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement.

9.2. All existing commercial ~~or non-commercial~~ sewage sludge composting facilities that have been ~~determined to be creating or contributing to an off site nuisance condition, temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement~~ shall:

9.2.b.iii. An evaluation of the need for an odor treatment/control system ~~shall be conducted~~ for all other areas such as mixing, curing, and storage areas;

9.2.b.v. A demonstration of ~~control~~ the compliance plan effectiveness through the Director approved air dispersion modeling referred to in section 9.1.b. of this rule.

9.4.d.ii. ~~A d~~ Detailed operation and maintenance steps that will be taken to minimize odors at the facility applying for the exemption should nuisance conditions occur.

9.4.e. The Division encourages innovative technology and will, on a case-by-case basis, consider applications for pilot or demonstration projects. Such applications shall be subject to the terms of subsections (a) through (d) above.

9.6.b.i. Use the most recent EPA approved ISCST model and instruction manual;

9.6.b.iv. Model all ~~odor~~ sources, including sources of fugitive emissions, simultaneously for total impacts; and

9.6.b.iv. Model all odor sources, including on site sources of fugitive odor emissions, ~~for~~ simultaneously ~~for~~ total impacts; and

9.7.b. All ~~Existing commercial or non-commercial~~ sewage sludge composting facilities that have been ~~determined to be creating or contributing to an off site nuisance condition.~~

temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement must first optimize their operating and maintenance procedures so that odor generation is minimized as much as possible prior to the addition of any odor control equipment.

9.7.c.i. An evaluation of materials handling practices prior to mixing with bulking agents including but not limited to; size of bulking agent storage time and chemical addition prior to dewatering;

9.7.c.iv. Temperature feedback controlled systems such that the internal pile temperature is controlled within the optimum range--not greater than 60-65 degrees Centigrade (140-149 degrees Fahrenheit), preferably below 60 degrees Centigrade;

9.7.d. All curing piles ~~should~~ shall be under roof, and facilities should be evaluated on a case by case basis to determine whether storage piles need to be under roof to prevent re-establishment of biological conditions conducive to odor generation.

9.7.e. All facilities should have, at a minimum, access to an available portable aeration system available for use on curing and/or storage piles.

9.7.g. Wet chemical scrubbers.

9.7.g.i. A three stage system for wet chemical scrubbers is required. Stage one for ammonia removal, stage two for oxidation of reduced sulfur compounds (methyl di-sulfide, etc.), stage three for removal of chlorine carry-over from the second stage.

9.7.g.ii. Ammonia removal efficiency in the first stage must be monitored to assure that ammonia does not carry over into the second stage where it may interfere with the oxidation of reduced sulfur and other compounds in the second stage.

9.7.g.iii. The pH of the second stage must be continuously monitored to assure that any sulfuric or other acid carry-over from the first stage does not lower the pH of the second stage excessively.

9.8.b.ii. Areas that are vented without treatment, such as through fans, doors, windows, stacks or through building ventilation systems; and

9.8.b.iii. Outside operations, such as piles and storage areas, and lagoons; and

9.8.b.iv. Sources of fugitive emissions.

9.9.b. ~~All Existing commercial or non-commercial sewage sludge composting facilities that have been determined to be creating or contributing to an off-site nuisance condition-~~ temporarily or permanently shut down or their operations limited in any way by a court order of record or determination by a Court of Record or by any Division of Environmental Protection order, action, determination, Consent Order, Agreement, or Consent Order and Agreement may

shall also be required to undergo compliance testing.

9.9.f. The preliminary investigation and scope of work shall be submitted to the Director for review and approval as soon as possible but in no case later than 30 days from the facility's receipt of the compliance testing results, which results shall not be unreasonably withheld.

9.10. Determination of nuisance.

9.10.a. The determination of a nuisance condition resulting from composting odors should not be based on specific chemical thresholds. Because of synergistic effects, different levels of sensitivity to odors, and limitations on analytical methods and other factors, a nuisance may exist even when specific compounds are found to be below any established thresholds.

9.10.b. The overall method of odor analysis, most commonly performed by an odor panel, uses a total of all odor detected. Thus synergistic effects and odors from compounds too obscure or dilute to analytically measure are accounted for in the analysis.

9.10.c. Specific chemicals measured by existing analytical procedures can help evaluate the performance of pollution control equipment and should be considered as a tool to evaluate design performance as appropriate. However, the overall method of odor analysis is to be used for total off-site impacts.

RECEIVED

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TITLE 33
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

SERIES 2
SEWAGE SLUDGE MANAGEMENT RULE

§33-2-1. General.

1.1. Scope. -- This legislative rule establishes requirements for the permitting siting, bonding, installation, establishment, construction, modification, and operation of any facility that generates, processes, recycles and/or disposes of sewage sludge by whatever means, including, but not limited to, land application, composting, incineration, mixed waste composting, or any other method of handling sewage sludge within the state. This rule applies to any person who owns or operates a sewage sludge facility or who is responsible for the processing or disposal of sewage sludge.

1.2. Authority. -- W. Va. Code §§22-15-8(e), 22-15-20(b) and 22-15-20(q).

1.3. Filing Date. -- ~~April 30, 1999~~

1.4. Effective Date. -- ~~April 30, 1999~~

1.5. Incorporation by Reference. -- Whenever federal or state statutes or regulations are incorporated into this rule by reference, the reference is to the statute or regulation in effect on the effective date of this rule.

§33-2-2. Definitions.

The following definitions shall apply to this rule unless otherwise specified herein:

2.1. "Agricultural Land" is land on which a food crop, feed crop, or fiber crop is grown. This includes, but is not limited to, range land and land used as pasture.

~~2.1.~~ 2.2. "Agronomic rate" means the whole

sewage sludge application rate, by dry weight, designed: (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and (2) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

~~2.2.~~ 2.3. "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: spouses, parents, children and siblings.

~~2.3.~~ 2.4. "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under W. Va. Code §22-15-1 et seq.

~~2.4.~~ 2.5. "Backhauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

~~2.5.~~ 2.6. "Bulking Agent" means materials mixed or composted with sewage sludge such as yard waste, wood chips, leaves and other living or dead plant tissues approved by the chief as suitable to promote the passage of air through a static pile or windrow.

2.7. "Bulk Sewage Sludge Product" is a material derived from sewage sludge that is sold or given away in quantities exceeding one metric ton.

learning of the excursion. A written plan to identify and correct the problem must be submitted for the facility within sixty days. The director may develop temporary loading rates, for a period not to exceed ~~six months~~ one year, based on the provisional limitations of Table 2 of this rule and on results from monthly sewage sludge and wastewater samples taken at the facility.

~~3.2.e.~~ 3.2.d. No person shall be allowed to land apply so much sewage sludge as to exceed the agronomic rate for that land or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land.

~~3.2.d.~~ 3.2.e. No person shall be allowed to store sewage sludge at a land application site for a period longer than one week; except storage shall be allowed for no longer than three months where provisions, approved by the chief of the Office of Water Resources of the Division, have been made to prevent leachate runoff into surface or groundwater. Septage storage shall only be allowed in-tank and for no more than three days, or as otherwise authorized by the chief of the Office of Water Resources of the Division.

~~3.2.e.~~ 3.2.f. No person shall be allowed to land apply sludge except during the hours of daylight.

3.3. Sewage Sludge Processing Facility Operational and Design Requirements.

3.3.a. Sewage sludge processing facilities must adhere to the following requirements:

3.3.a.1. Areas used for processing, curing and storage of raw materials, intermediate and final products, loading and unloading areas, impoundments, pipelines, ditches, pumps and drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface

water. Storage of finished products from the facility shall be limited to one year.

3.3.a.2. The facility must be designed and operated to control vectors and odors.

3.3.a.3. The facility must not be operated or constructed within the one hundred year flood plain unless provisions have been made to prevent the encroachment of flood waters upon the facility.

3.3.a.4. All land areas within the boundaries of a sewage sludge processing facility upon which sewage sludge, intermediate or final products come in direct contact with the land surface must be protected in accordance with the Groundwater Protection Act, W. Va. Code §22-12-1 et seq., and the rules promulgated thereunder, including 46CSR12, 46CSR58, and 46CSR59.

3.3.b. Any person operating a sewage sludge processing facility shall conduct off-site odor monitoring. The frequency of odor monitoring shall be quarterly or as otherwise specified by the director. The Bamebey-Cheney scentometer or other instrument, device or technique designated by the director may be used as a guide in the enforcement of this rule and may used in the determination of the objectionability of an odor.

3.3.b.1. When an odor is determined to be objectionable and repetitious by the director, the director may require the facility to conduct related studies within a specified time period. These studies may include, but are not limited to, sampling and analysis to identify the specific chemical compound(s) which are causing the objectionable odor, analysis of samples by odor panels, air dispersion modeling studies, and evaluation of applicable odor control devices and odor control programs.

3.4. Leachate Management Requirements.

JANUARY 7, 2000

REVISIONS TO 64CSR17, FOOD ESTABLISHMENT RULE

Change section 2.1 as follows:

2.1.c. Chapter 3, except for paragraphs 3-301.11(B), Preventing Contamination From Hands; subparagraphs 3-401.11(C)(2) and 3-401.11(D)(2), Cooking of Raw Animal Foods; subparagraph 3-501.16(C)(2), Potentially Hazardous Food, Hot and Cold Holding; and section 3-603.11, Consumer Advisory, and the word "intact" in subparagraphs 3-401.11(C) and 3-401.11(D).

2.1.c.1. The following shall be added to section 3-301.11: "Food shall be prepared with the least possible manual contact, with approved utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination."

2.1.c.2. The following shall be added to subparagraph 3-501.16(C): "Within 7 years of the effective date of this rule, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."

Add: 2.1.i.l.c. Enforcement of the above shall be in compliance with Chapter 6, Article 6 of the WV Code.

Add: 2.2 The Director shall use annexes 2 through 7 of the Food Code in the interpretation and application of this rule.

(Re-number existing 2.2 to 2.3.)

Add new sections 5 and 6, below, and renumber existing sections 5, 6, and 7 to sections 7, 8, and 9.

64-17-5 Implementation

5.1 Food establishments in operation at the time these rules become effective, and meeting all applicable prior rules, shall be deemed eligible for a permit to operate, provided that any construction taking place after the effective date of these rules shall be in compliance with these rules.

5.2 Prior to July 1, 2001, the director shall conduct the first inspection of an establishment under this rule as a courtesy inspection to advise and train the permit holder on the provisions of this rule. At the completion of the first inspection the director shall provide the permit holder with two inspection reports, one using the scoring system from the previous rule and one indicating the violations noted under this rule.

5.3 Before implementing this rule, the director shall provide training courses for permit holders and local health department personnel.

Need wording: Old rules still in effect til 7/1/2000. New rule not to be in force til 7/1/2001.

JANUARY 7, 2000

REVISIONS TO 64CSRI7, FOOD ESTABLISHMENT RULE - CONT'D

64-17-6 Food Establishment Advisory Board

- 6.1 The director shall establish an advisory board and shall serve as chairman.
- 6.2 The advisory board membership shall include, but is not limited to, representatives of the Division of Health, local health departments, the retail food industry, restaurants, institutional food service providers, senior programs, convenience stores, and school lunch programs.
- 6.3 The duties of the board shall include, but are not limited to, developing recommendations on:
- 6.3.a Training
 - 6.3.b Standardization of local health department personnel and programs
 - 6.3.c Interpretations of the provisions of this rule
 - 6.3.d Requests for waivers and variances, and
 - 6.3.e Responding to complaints.
 - 6.3.f Revisions to the rule, including bare-hand contact with ready-to-eat foods.
- 6.4 The board shall use annexes 2 through 7 of the 1999 Food Code as guidelines in the performance of their duties.

Revise 7.1, which has been renumbered to 9.1, to read:

9.1 Any person who violates any provision of this rule is guilty of a misdemeanor. Penalties shall be enforced in accordance with Chapter 16, Article 6.

ROBINSON & McELWEE LLP**MEMORANDUM**

TO: Senator Sarah M. Mincar
FROM: David L. Yaussy
DATE: November 29, 1999
RE: Upper Blackwater River Total Maximum Daily Load (TMDL)

You asked my partner, Mike McThomas, for the amendment to the state water quality standards that was proposed during the 1998 Legislative Session that would have allowed further development along the Upper Blackwater River in Canaan Valley. You may not be aware that in the fall of this year the Blackwater River Watershed Association commissioned Potesta & Associates to do a use attainability analysis, just as the U.S. Environmental Protection Agency suggested in the Upper Blackwater River TMDL report. A use attainability analysis is done to evaluate whether a stream can support one or more activities; in this case, the analysis was done to determine whether the Upper Blackwater River is a year-round trout stream. The use attainability analysis, which was presented to the West Virginia Environmental Quality Board at its October 29, 1999 meeting,¹ showed that the natural conditions of the Blackwater River above Davis do not support year-round trout populations. Consequently, the B2 use designation (the category assigned to trout waters) can be removed and replaced with the designation for warmwater aquatic life, B1. That would mean that the level of dissolved oxygen in the Upper Blackwater would have to exceed 5 mg/l, rather than the

¹The Environmental Quality Board has not made a decision yet as to whether it will support a change in the aquatic life use for the Upper Blackwater. Because of the press of business the Board has not yet had time to hear from environmental groups and others opposed to the use change.

6 mg/l concentration that would be required if the Upper Blackwater continues with a B2 designation. If the dissolved oxygen standard for the Upper Blackwater River was 5 mg/l, the river would not be considered impaired and would support additional development in Canaan Valley

The necessary change can be made by amending 46 C.S.R. 1, the West Virginia water quality standards, by striking the parenthetical "(Reserved)" and adding Section 7.2.d.9.1: "Except that the aquatic life use in the Blackwater River upstream of the town of Davis shall be Category B1" and by deleting the reference to the Blackwater River in the list of trout streams found in Appendix A of the water quality standards. This would change the assigned aquatic life use in the Upper Blackwater from B2 to B1.

You should be aware that U.S. EPA must approve a change in a use designation, such as you would propose for the Upper Blackwater River, and U.S. EPA's rules require that the use change be the subject of a public hearing. That hearing could be held by the Legislature, but it would have to meet U.S. EPA requirements for form and notice.

Allegheny Power and the Blackwater River Watershed Association were pleased to learn of your interest in this effort and they pledge their assistance. As you know so well, this is a very important issue for Canaan Valley and its economy. If I can provide you with any additional information, please let me know.

DLY:shb

cc: Michael McThomas



Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311
Telephone Number: (304) 558-0885
Fax Number: (304) 558-1222



West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael C. Castle
Director

December 22, 1999

Honorable Michael Ross, Co-Chair
Legislative Rule-Making Review Committee
Room MB49 - State Capitol
Charleston, West Virginia 25305

Honorable Mark Hunt, Co-Chair
Legislative Rule-Making Review Committee
Room MB49 - State Capitol
Charleston, West Virginia 25305

RECEIVED
DEC 22 1999
Legislative Rule Making
Review Committee

Re: Office of Air Quality - 45CSR28 Approved Rule

Dear Chairman Ross and Chairman Hunt:

The Division of Environmental Protection's (DEP), Office of Air Quality (OAQ) is herein filing for the Legislature's consideration proposed language changes to WV Code §22-5-18 which mandates the creation of an open-market air pollutant emissions trading rule and those pages of the rule 45CSR28 "Air Pollutant Emissions Banking and Trading" which contain revisions to the proposed language. The trading program mandated in the aforementioned Code section resulted from the passage of HB4578 in March, 1998.

Pursuant to a stakeholder-based rule drafting process in mid to late 1998 and completion of the agency's rule-making process in late 1998, OAQ filed 45CSR28 with the Legislative Rule-Making Review Committee on February 1, 1999. At the time of rule filing and at the LRMRC's meeting on July 11, 1999, OAQ representatives informed the Committee of the complexities and problems encountered in developing 45CSR28 particularly with respect to uncertainties in receiving the necessary approval of the Environmental Protection Agency (EPA).

EPA has drafted and revised its guidance document for states to follow in developing federally-approvable Economic Incentive Programs including open-market emissions trading programs. EPA's final draft guidance document was not published for public comment, however, until September 15, 1999 and the public comment period for this draft federal guidance document did not end until December 10, 1999. Since EPA's program requirements are still uncertain as a

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Honorable Michael Ross
Honorable Mark Hunt
December 22, 1999
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result of the status of its guidance document and pending decisions on other states' emissions trading rules, OAQ still cannot be completely confident that 45CSR28 with the revisions noted will be fully approvable by EPA.

In accordance with our letter to you on September 1, 1999, OAQ and its stakeholder group have met several times and have attempted to construct revisions to 45CSR28 and suggested Code revisions which we believe can better conform the program to current and anticipated federal requirements.

We have briefly described the revisions to the version of 45CSR28 filed with the Committee on February 1, 1999 as follows:

1. The second sentence of subsection 2.18 defining "geographic area" was deleted due to concerns that it conflicted with or added confusion to the geographic restrictions on emission credit use established in Section 10. For clarity OAQ also listed, in the first sentence, "pollutant" as one of the factors considered by the director in defining a geographic area.

2. A proviso was added at the end of the sentence at subsection 4.3 to clarify that reductions in emissions of hazardous air pollutants that were also volatile organic compounds (VOCs) or particulate matter (PM) could generate emission credits that could allow an increase in non-hazardous VOC or PM at a particular facility or emissions source.

3. The similar language in subsection 4.4 and subdivision 16.1.c was amended to better conform to the authorizing statute and to clarify that the director will consider geographically disproportionate air quality impacts resulting from emissions trading to potentially preclude emission credit use and also in periodic program evaluations. This attempts to address particular EPA concerns about general equity and environmental justice associated with the trading process.

4. A new subsection, 4.14, was added to clarify that possession of an emission reduction credit conveys no property rights. This is also an EPA requirement.

5. In an attempt to address continuing EPA concerns about allowing the registration and use of emission credits from facility shutdowns, several significant revisions were drafted:

(a) New subdivision 7.1.d and subsection 12.7 were added to require notice to the director of intent to register shutdown-related credits within sixty (60) days of the rule's effective date. The intent of this provision is to allow a relatively quick assessment of whether the amount of such credits will be problematic with respect to program implementation and federal approval and credit quality and also to force legitimate "old" shutdown credits into the system quickly. This provision may also serve to reduce the number of shutdown credits by disallowing their registration after the 60-day notice period.

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West Virginia
Division of
Environmental Protection

(b) Subdivision 11.1.b was revised to eliminate the reference to voluntary emission reduction credit transfer to the Development Office or a public interest group and to more importantly discount pre-program shutdown credits by 50% for the benefit of air quality. Emission reduction credit generators are not precluded from donating or transferring legitimate credits to the Development Office, public interest groups or any other party. Any persons possessing emission reduction credits, however, must meet the credit use restrictions of the rule.

6. Subsection 13.4 was slightly amended to correct redundant use of the word "certification."

7. The first sentence of subsections 12.5 and 13.5 were amended to provide for electronic submission of registrations only if authorized by the director.

8. Subsections 15.3 and 15.5 were slightly revised to clarify that:

(a) a discovery by an investigation of the director of overestimated or improper credits being registered would subject the person so registering to the requirement for providing treble the number of defined credits.

(b) a person reporting to the director their discovery of insufficient registered credits would be required to provide up to treble the number of deficient credits in the director's discretion.

9. The second sentence of subsection 6.5 was corrected by adding the inadvertently omitted word "IF" at the beginning of the sentence as drafted in the February 1, 1999 proposed rule.

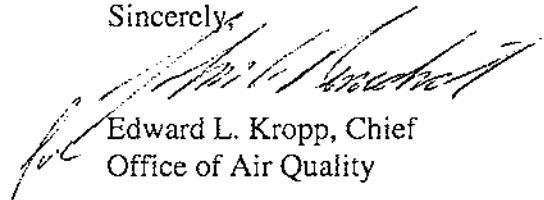
10. In subsection 4.11 the specific federal register citation was deleted as a result of ongoing litigation relative to the federal rules contained in that reference.

11. A new subsection, 11.4, was added to more closely conform 45CSR28 to the Michigan rule upon which the OAQ rule is based. The provision creates a more restrictive time period for use of certain emission reduction credits resulting from early compliance with new emission control requirements. OAQ has tried to closely track the Michigan rule due to its apparent EPA approvability and working history.

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Page Four

The necessary changes to WV Code §22.5.18 reflected in the attached draft were agreed to by the rule development stakeholder group whose members believe they are required to avoid, to the extent possible, problems with EPA rule approval or to eliminate unnecessary and problematic constraints for rule-making.

Sincerely,



Edward L. Kropp, Chief
Office of Air Quality

Enclosures

cc: Joseph Altizer, Counsel
LRMRC

LRMRC Members

2.18. "Geographic area" means any specific region designated by the director, considering the pollutant, topography, air quality contribution of sources, and any air quality concerns relevant to that region.

2.19. "Hazardous air pollutant" means an air pollutant listed pursuant to 42 U.S.C. §7412(b).

2.20. "Mobile source" means any vehicle or engine that is used for on-highway or non-road purposes, the mobile source-related fuel or fuel delivery system used by the vehicle or engine, or both, and the operation strategies associated with the vehicle or engine. For the purpose of this definition, non-road vehicles and engines include all non-road vehicles and engines used in marine vessels, locomotives, and airplanes, as well as non-road vehicles and engines described in the definition of "non-road" contained in the federal clean air act or federal guidance.

2.21. "National ambient air quality standard" means a primary or secondary standard established by the administrator of the United States Environmental Protection Agency pursuant to section 109 of the federal clean air act.

2.22. "Netting" means the generation and use of an emission reduction credit at a modified stationary source to lower the net emissions increase below significant levels so that the modified stationary source is not subject to new source review requirements under federal or state regulations.

2.23. "New source review" means the permitting requirements for new and modified sources contained in 45CSR13, 45CSR14, 45CSR19 and in parts C and D of title I of the federal clean air act and in 40 C.F.R. §§51.165, 51.166, and 52.21.

2.24. "Nonattainment area" means any area of the state designated by the administrator of the United States Environmental Protection Agency in accordance with section 107(d) of the federal clean air act and 40 C.F.R. part 81 as having not attained the relevant national ambient air quality standard for a given criteria pollutant.

2.25. "Offset" means the use of an emission reduction credit to compensate for emission increases of volatile organic compounds or criteria pollutants, except ozone, from a major new or major modified stationary source subject to the requirements of 45CSR19 and section 173 of the federal clean air act.

2.26. "Overage" means emissions above those specified by an applicable requirement.

2.27. "Ozone season" means the period of time beginning on and including April 1 and continuing through October 31 of each calendar year.

2.28. "Permanent" means that the relevant change in operating procedures, control equipment or other source of emission reductions shall be continuous for the period during which emission reductions are made for the purpose of generating emission reduction credits.

2.29. "Quantifiable" means that the amount, rate, and characteristics of emissions and emission reductions can be measured through an accurate, reliable, and replicable method

§45-28-4. Prohibitions and restrictions.

4.1. The use of emission reduction credits in an attainment area shall not cause a violation of a national ambient air quality standard, a prevention of significant deterioration increment, or an applicable attainment area maintenance plan. The use of emission reduction credits in a nonattainment area shall result in emission reductions consistent with the requirements for reasonable further progress for the nonattainment area and the attainment demonstration specified in the state implementation plan.

The proposed use of emission reduction credits resulting in increased actual emissions or overages equivalent to or exceeding any of the following amounts at a facility shall require air quality analyses employing procedures approved by the director demonstrating that the provisions of this subsection are met:

PM ₁₀ :	15 tons per year
SO ₂ :	40 tons per year
NO ₂ /NO _x :	40 tons per year
CO:	100 tons per year
VOC:	40 tons per year
Lead:	0.6 ton per year

The director on a case-by-case basis may require an air quality analysis for use of emission reduction credits in amounts below those above based upon the proposed short-term rate of emissions, source emissions parameters and air quality in the geographic area of emission reduction credit use.

4.2. The use of emission reduction credits is prohibited for both of the following:

4.2.a. In place of installing equipment determined to constitute, or for the purposes of complying with a best available technology requirement for a specific toxic air pollutant established under 45CSR27, an emission limitation or work practice standard established by federal new source performance standards under section 111 of the federal clean air act and 40 C.F.R. part 60, an emission limitation or work practice standard established under the national emission standards for hazardous air pollutants under section 112 of the federal clean air act and 40 C.F.R. part 61, or a maximum achievable control technology requirement established for a hazardous air pollutant under section 112 of the federal clean air act and 40 C.F.R. part 63.

4.2.b. In place of installing necessary equipment and complying with an emission limitation determined to constitute best available control technology pursuant to section 165 of the federal clean air act or 45CSR14 or the lowest achievable emission rate established under section 173 of the federal clean air act or 45CSR19.

4.3. The use of emission reduction credits shall not result in an actual emissions increase of any hazardous air pollutant at a particular facility nor shall one or more hazardous air pollutants be traded for a different group of hazardous air pollutants, provided that emission reduction credits generated by reductions of hazardous air pollutants which are volatile compounds or particulate matter may be used to allow increases of volatile organic compounds or particulate

matter, respectively, which do not contain hazardous air pollutants.

4.4. The director may prohibit the use of emission reduction credits if he or she determines that such use would be inconsistent with the Code, the federal clean air act or protection of human health and welfare and the environment, including any disproportionate air quality impacts.

4.5. Emission reduction credits for one criteria pollutant shall not be used to allow overages or satisfy emission offset requirements for another criteria pollutant. Emission reduction credits for volatile organic compounds shall not be used to allow emission overages or to satisfy emission offsets for nitrogen oxides or vice versa unless such emissions trading conforms with a federally-approved implementation plan to attain and maintain attainment with the national ambient air quality standard for ozone.

4.6. Emission reduction credits of volatile organic compounds, as a class of compounds, may be used to compensate for emission overages of volatile organic compounds, as a class of compounds, but shall not be used to allow emission overages of a specific volatile organic compound, except where a demonstration has been made to the director that the use would result in an environmental benefit in the use area.

4.7. The use of emission reduction credits to comply with a federal requirement in any area that has or needs a federally approved attainment demonstration or maintenance plan is prohibited where the emission reduction credits were generated through the shutdown of a source, process or process equipment, except where the director has demonstrated, to the satisfaction of the United States Environmental Protection Agency, that the relevant approved attainment demonstration or maintenance plan will not be compromised by the use of these emission reduction credits.

4.8. Nothing in this rule shall be construed to relieve any person of the requirement to obtain a permit under the provisions 45CSR13, 45CSR14, 45CSR19 and 45CSR30. Emission reduction credits may only be used in a manner consistent with federal new source review requirements.

4.9. The use of sulfur dioxide or oxides of nitrogen emission reduction credits under this rule at affected sources subject to sulfur dioxide or oxides of nitrogen allowance allocations under the 1990 amendments to title IV of the clean air act is allowed only to the extent that the sulfur dioxide or oxides of nitrogen emission reduction credits are not used or transferred under the 1990 amendments to title IV of the federal clean air act. Nothing in this rule shall be construed to interfere with the free trade provisions under the 1990 amendments to title IV of the federal clean air act.

4.10. Emission reductions made to correct violations of any applicable emission standard or limitation or emission reductions resulting from a source, process, or process equipment in violation of an applicable monitoring, reporting, or recordkeeping requirement shall not be eligible to generate emission reduction credits to be used or traded under this rule.

4.11. Any source which participates in a regional nitrogen oxides trading program established pursuant to final rules promulgated by the United States Environmental Protection Agency at ~~63 FR 57536 (October 27, 1998)~~ shall be prohibited from generating, trading or using nitrogen oxides emissions reduction credits under this rule.

4.12. Emission reductions that are not real, surplus, enforceable, permanent, and quantifiable shall not be eligible for emission reduction credit generation, use, or trading.

4.13. Where emission reduction credits are generated and used within the same facility, the use of emission reduction credits for a specific pollutant shall not result in an overall increase in the emissions of the specific pollutant from that facility.

4.14. An emission reduction credit represents a limited authorization to emit an air pollutant and does not have associated property rights.

§45-28-5. Ozone season restrictions.

5.1. Emission reduction credits for volatile organic compounds and oxides of nitrogen generated during an ozone season may be used any time during a calendar year, but emission reduction credits used for the purpose of compliance with an ozone season emission limitation for volatile organic compounds or oxides of nitrogen shall have been generated during an ozone season.

5.2. Emission reduction credits generated for volatile organic compounds and oxides of nitrogen exclusively during the non-ozone season shall be used only during the non-ozone season in the same or a subsequent calendar year.

§45-28-6. Emission reduction credit baseline.

6.1. The emission baseline from which emission reduction credits may be generated shall be established to determine the amount of actual emissions from a source, process, or process equipment before the initiation of an activity to reduce emissions for the purposes of creating emission reduction credits. The emission baseline shall be expressed in tons of pollutant emitted per ozone season or per year.

6.2. The emission baseline from which emission reduction credits may be generated shall be determined by using the most representative, accurate, and reliable process and emission data available for the source, process, or process equipment according to the following hierarchy:

6.2.a. When required to demonstrate compliance with an applicable requirement or where such measurement is practicable and reasonable, continuous emission monitoring or other direct measurement, parametric monitoring, or other surrogates for the measurement of emissions shall be used to determine the emission baseline. The baseline shall be established for the 2-year period or two (2) ozone seasons before the date that an emission reduction occurs, unless it can be demonstrated to the director that a different time period is more representative of historical operations and is consistent with the state implementation plan.

6.5. Any baseline calculated pursuant to subsection 6.2 shall be adjusted by subtracting from the baseline any emission increases from another source, process, or process equipment in the same source category and under common ownership or control resulting from a shutdown or curtailment of the source, process, or process equipment making the emission reductions. If no such emission increases will occur as a result of shutdown or curtailment, the person registering emission credits generated from shutdown or curtailment shall so certify in the notice provided under section 12.

§45-28-7. Eligibility of emission reductions for emission reduction credits; generation and calculation.

7.1. For emission reductions to be eligible to generate emission reduction credits, all of the following conditions shall be met:

7.1.a. For all criteria pollutants, in addition to volatile organic compounds and oxides of nitrogen, the emissions shall be consistent with West Virginia's State Emission Inventory System.

7.1.b. The emission reductions shall have been generated on or after January 1, 1991, and shall not have been used or have been committed to satisfy prior or continuing emission offset requirements under section 173 of the federal clean air act or 45CSR19, for demonstrating attainment or maintenance of any applicable national ambient air quality standard under the state implementation plan, or for netting requirements under section 173 of the federal clean air act, 45CSR19, and section 165 of the federal clean air act and 45CSR14, or for emission netting if authorized under 45CSR13.

7.1.c. The emission reductions shall be real, surplus, enforceable, permanent, and quantifiable.

7.1.d. Persons intending to register emission reduction credits associated with the shutdown of a source, process, or process equipment which occurred prior to the effective date of this rule shall, within sixty (60) days of the effective date of this rule, provide notice to the director of such intent to register emission reduction credits in accordance with Section 12 of this rule. Failure to timely submit a notice of intent in accordance with subsection 12.7 shall make emission reductions associated with such shutdowns ineligible for registration as emission reduction credits.

7.2. Emission reductions for generation of emission reduction credits may be created using any of the following procedures:

7.2.a. Installation or modification of air pollution control equipment.

7.2.b. Modification of process or process equipment.

7.2.c. Reformulation of fuels, raw materials or products.

7.2.d. Implementation of energy conservation programs.

reduction credits are proposed to be used.

10.6.b. The source, process, or process equipment which generated the emission reduction credits is located within 100 kilometers of the nearest border of the nonattainment or maintenance area where the emission reduction credits are proposed to be used.

10.7. The use of other criteria pollutant emission reduction credits shall only be allowed where at least one of the following criteria and the provisions of subsection 4.1 are satisfied:

10.7.a. The emission reduction credits are proposed to be used in the same geographic area where the emission reduction credits were generated.

10.7.b. The geographic area where the emission reduction credits are proposed to be used is an attainment area for the criteria pollutant and the source generating the credits used contributes to air quality in the area impacted by the user source.

10.7.c. The geographic area where emission reduction credits are proposed to be used is a nonattainment or maintenance area for the criteria pollutant, and the area where the emission reduction credits were generated is an adjacent area which contributes to the relevant air quality problem in the proposed use area.

§45-28-11. Emissions reduction credit discounts and emission reduction credit retirement for air quality benefit.

11.1. Unless otherwise provided under this rule, other rules promulgated under the Code or the federal clean air act, emission reduction credits entered into the registry created pursuant to section 14 shall be discounted or retired as follows:

11.1.a. For all criteria air pollutants, volatile organic compounds and nitrogen oxides, ten (10) percent of all creditable emission reductions shall be retired to provide a net air quality benefit from trading. The remaining ninety (90) percent of creditable emission reductions shall be listed on the registry as emission reduction credits, and shall be eligible for trading or use for a period of ten (10) calendar years from the year of emission reduction credit generation. All such emission reduction credits unused at the end of the ten (10) year period shall also be retired to provide a net air quality benefit from trading.

11.1.b. Emission reduction credits generated by source shutdowns which are in compliance with all eligibility requirements of this rule and which were generated after January 1, 1991 and before the effective date of this rule shall be discounted by 50%. The discounted emission reduction credits shall be retired in lieu of the 10% air quality benefit discount provided under subdivision 11.1.a.

11.2. Any person who generates or acquires emission reduction credits may voluntarily retire such emission reduction credits to benefit air quality.

11.3. The director shall retire and remove from the registry, created pursuant to section 14, all excess emission reduction credits donated to the director under subsection 15.3.

11.4. Emission reduction credits generated by emission reductions which are necessary to comply with a proposed applicable requirement, and which occur after the date the applicable requirement is proposed and before final compliance dates specified by or pursuant to the rule creating the applicable requirement, may be used or traded for a period of 5 calendar years after the year of generation or 1 calendar year after the effective date of final compliance, whichever occurs first.

§45-28-12. Registration of emission reductions for the generation of emission reduction credits to be used or traded.

12.1. A person applying to register emission reductions to generate emission reduction credits shall provide, to the director, notice and certification of the emission reductions being generated and shall pay a registration fee in accordance with section 14 and subsection 12.5.

12.2. For emission reductions generated between January 1, 1991 and the effective date of this rule, the notice and certification required by subsection 12.1 shall be submitted within twelve (12) months of the effective date of this rule.

12.3. The notification required by subsections 12.1 and 12.2 shall utilize a form provided by the director and include all of the following information:

12.3.a. The name and location, by address and county, of the sources, processes, or process equipment at which emission reductions have been or will be made and where the records are or will be kept.

12.3.b. The name, address, and telephone number of the responsible official providing notice and certification of the emission reductions being generated.

12.3.c. The total emission reductions, in tons per year or tons per ozone season, by pollutant and attainment status for the pollutant in the generation source area, to be registered.

12.3.d. An identification of the source, process, or process equipment at which the emission reduction occurs to generate an emission reduction credit.

12.3.e. A brief description of the method or methods used to reduce emissions.

12.3.f. The effective date that the emission reduction occurred or will occur and the duration of the emission reduction strategy.

12.3.g. Calculations of either of the following, as applicable:

12.3.g.1. For emission reductions that have already occurred, actual emissions after the emission reduction method has been implemented, which shall be calculated in a manner consistent with the method used to calculate the baseline.

12.3.g.2. For emission reductions that will occur, expected emissions after the proposed emission reduction method is implemented, which shall be calculated in a manner

12.4.a. That to the best of the responsible official's knowledge, the information contained in the notice is true, accurate, and complete.

12.4.b. That the emission reductions generated are real, surplus, enforceable, permanent, and quantifiable.

12.4.c. That the emission reduction strategy began on or before the period of emission reduction credit generation start date specified in a notice determined to be complete by the director, and that the emission reduction strategy will either continue through, or will terminate upon, the period of emission reduction credit end date specified in a notice determined to be complete by the director .

12.4.d. That the emission reductions were not used elsewhere as emission reduction credits or retired.

12.4.e. That the emission reduction credits and any associated emission increases or decreases have been calculated in accordance with an emission quantification protocol meeting the requirements of this rule and comply with all eligibility, prohibition and limitation provisions of this rule.

12.4.f. That emission reductions being registered from a source shutdown or curtailment will not result in emission increases from other sources, processes, or process equipment under common control.

12.5. The notice and certification required under this rule shall be submitted to the director by certified mail or, if authorized by the director, electronically for a determination of completeness. Within sixty (60) days of receipt of the notice and certification for emission reductions generated after the effective date of this rule, the director shall make a determination and provide a written response to the person submitting the notice and certification as to the completeness of the submittal. For emission reductions generated before the effective date of this rule, the director shall make such determination and provide a written response within one hundred and eighty (180) days of receipt of the notice and certification. A determination of completeness or incompleteness made by the director shall be considered a final agency decision subject to review by the air quality board pursuant to the Code and W.Va. Code §§22B-1-1 et seq. A determination of completeness does not constitute an approval by the director. The director shall notify the person requesting registration of emission reduction credits of the amount of registration fees required pursuant to subsection 14.6 within the notice of completeness provided under this subsection. Within five (5) business days of the date of receipt of payment of the required registration fee the director shall enter the information required by section 14 in the emission trading registry. Immediately upon entry in the emission trading registry, the information in the notice and certification shall be available to the public, except for information that is determined to be confidential under W.Va. Code §22-5-10 and 45CSR31. If the notice and certification are determined by the director to be incomplete, the proposed emission reductions are not eligible to generate emission reduction credits and no registration fee shall be assessed. A notice of incompleteness shall not preclude or prejudice a person from submitting a corrected or revised notice and certification.

12.6. The methods used, or operational changes made, to create emission reductions for the generation of emission reduction credits for which a complete notice and certification is submitted to the director shall become legally enforceable operating requirements upon the start date of the period of emission reduction credit generation, specified in a notice determined to be complete by the director. The methods used and operational changes made to reduce emissions and the conditions and requirements for the generation of emission reduction credits shall continue to be legally enforceable operating requirements throughout the period of emission reduction credit generation, and shall be incorporated into an operating permit, permit to construct/modify, or permit to operate if required by the Code, rules promulgated thereunder, or the federal clean air act.

12.7. The notice of intent required by subdivision 7.1.d. shall be received by the director not later than the date sixty (60) calendar days after the effective date of this rule and shall contain the following information:

12.7.a. The names, unit identification numbers (if any) and location, by address and county, of the sources, processes, or process equipment that have been shutdown for which emission reduction credit registration is intended:

12.7.b. The month and year in which the sources identified in subdivision 12.7.a were shutdown; and

12.7.c. For each pollutant for which emission reduction credit registry will be sought, an estimate of the maximum amount of emissions reductions, in tons, which are associated with each source, process, or process equipment shutdown.

§45-28-13. Registration of use, trading or retirement of emission reduction credits.

13.1. A person applying to use, trade or retire emission reduction credits under the provisions of this rule shall provide prior notice to the director.

13.2. The notice to use emission reduction credits shall utilize a form provided by the director and include all of the following information:

13.2.a. The name and location, by address and county, of the source, process, or process equipment at which the emission reduction credits are proposed to be used.

13.2.b. The name, address, and telephone number of the responsible official providing notice of the proposed use or trading of emission reduction credits.

13.2.c. The number of emission reduction credits to be used at each source, process or process equipment unit in tons per year or tons per ozone season and the maximum short-term emission rate that will occur during the emission reduction credit use period based upon the underlying applicable requirement or otherwise provided in this rule.

13.2.d. A description of the source, process, or process equipment at which the emission reduction credits are proposed to be used.

13.3.f. The number of emission reduction credits by pollutant, in tons per year or tons per ozone season, which are proposed to be traded or retired.

13.4. Each of the notices required by subsections 13.2 and 13.3 shall be accompanied by a certification, by the responsible official, that the information contained in the notice is true, accurate, and complete. Where notice to use emission reduction credits is being provided pursuant to subsection 13.2, a certification that the source, process, or process equipment shall be operated in compliance with all applicable requirements and the conditions and requirements for the use of emission reduction credits under this rule shall also be included, provided that certification does not have to assert that the use of emission reduction credits is consistent with attainment area maintenance plans or nonattainment area reasonable further progress requirements or attainment demonstrations.

13.5. The notices and certifications required by subsections 13.2, 13.3, and 13.4 shall be submitted to the director by certified mail or, if authorized by the director, electronically for a determination of completeness. Within sixty (60) days of receipt of the notice and certification, the director shall make a determination, and provide a written response to the person submitting the notice and certification, as to the completeness of the submittal. A determination of completeness or incompleteness made by the director shall be considered a final agency decision subject to review by the air quality board pursuant to the Code and W.Va. Code §§22B-1-1 et seq. A determination of completeness does not constitute an approval by the director. If the notice is determined to be complete, the director shall, within five (5) business days, enter the information required by section 14 into the emission trading registry. The information in the notice and the certification shall be available to the public immediately upon entry in the emission trading registry, except for information that is determined to be confidential under W.Va. Code §22-5-10 and 45CSR31. If the notice is determined by the director to be incomplete, the proposed use or trade of emission reduction credits shall not occur. A notice of incompleteness shall not preclude or prejudice a person from submitting a corrected or revised notice and certification.

13.6. The director shall not issue a notice of completeness for a proposed use of emission reduction credits until he or she determines that the air quality protection and maintenance provisions of subsection 4.1 are satisfied based upon the information contained in the notice required by subsection 13.2 and/or the director's independent analyses of air quality impacts and attainment and maintenance plan requirements for the areas affected by the emission reduction credits use. The director shall send a written response to the person who submitted the notice of use and certification determined to be inconsistent with the provisions of subsection 4.1 explaining why the determination was made. A determination of inconsistency with the provisions of subsection 4.1 by the director shall not preclude or prejudice a person applying to use emission reduction credits from submitting a revised notice and certification to address the inconsistencies identified by the director.

13.7. The methods used, operational changes made and maximum short-term emission rates established to accommodate the use of emission reduction credits for which a complete notice is submitted to the director pursuant to subsection 13.2 shall become legally enforceable operating requirements upon the effective date of the notice of completeness issued by the director, or the beginning date of the emission reduction credit use period specified in a notice determined to be complete by the director. The conditions and requirements for the use of emission reduction

time when the actions were completed or a schedule describing when the actions will be taken and completed.

15.2.c.4. A revised notice and certification of emission reduction credit generation.

15.2.c.5. Certification by a responsible official that, to the best of the responsible official's knowledge, the information in the notice of insufficient reductions is true, accurate, and complete.

15.2.d. Upon submitting the notice of insufficient reductions, the person submitting the notice shall do one of the following, as applicable:

15.2.d.1. If emission reduction credits were or are being used or traded, then the person submitting the notice shall, within thirty (30) days, either implement and register emission reductions or obtain emission reduction credits sufficient to compensate for the number of emission reduction credits that were not real, surplus, enforceable, permanent, and quantifiable. Reconciliation of emission reduction credits shall be on the same basis, either tons per year or tons per ozone season, as credits found not to be real, surplus, enforceable, permanent, and quantifiable.

15.2.d.2. If emission reductions have been registered but the associated emission reduction credits have not been used or traded, then the person submitting the notice shall, concurrent with the submittal of the notice of insufficient reductions, submit a revised notice of emission reduction credit generation or written request for the director to withdraw the emission reduction credits from the emission trading registry.

15.3. If the director finds, without being provided a notice pursuant to subsection 15.2, that a person has registered emission reductions for the generation of emission reduction credits that are not real, surplus, enforceable, permanent, and quantifiable and the emission reduction credits have been or are being used or traded, then the person who generated and registered the insufficient emission reductions shall generate, or obtain, and donate emission reduction credits to the director in an amount equal to treble the number of emission reductions or emission reduction credits that were not real, surplus, enforceable, permanent, and quantifiable. If the director finds, after having been provided notice under subsection 15.2, that a person has registered emission reductions for the generation of emission reduction credits that are not real, surplus, enforceable, permanent, and quantifiable and the emission reduction credits have been or are being used or traded, the person who generated and registered the insufficient emission reductions may be required to generate, or obtain, and donate emission reduction credits to the director in an amount up to treble the number of emission reductions or emission reduction credits that were not real, surplus, enforceable, permanent, and quantifiable. Reconciliation of emission reduction credits shall be on the same basis, either tons per year or tons per ozone season, as credits found not to be real, surplus, enforceable, permanent, and quantifiable. Emission reduction credits donated to the director under this subsection shall be retired to assure realization of an air quality benefit and maintenance and attainment of national ambient air quality standards. A donation of emission reduction credits under this subsection shall not be considered to be a civil or criminal penalty. In addition to providing a donation under this rule, a person may be subject to civil and criminal enforcement actions, penalties, and imprisonment as provided under the Code.

15.4. Upon reconciliation of the emission reduction credits pursuant to subsection 15.2., the credits shall be considered real, surplus, enforceable, permanent and quantifiable.

15.5 The granting of a reconciliation period by the director under subsection 15.2 may be considered as a mitigating factor in the imposition or assessment of penalties by the director in any enforcement action, including the determination whether to require the generator to donate additional credits under subsection 15.3.

15.6. Emission reduction credits must be held prior to being used or traded. A person who fails to hold sufficient emission reduction credits to maintain compliance with the applicable requirement or requirements identified in the notice of emission reduction credit use shall be in violation of this rule.

15.7. If the director determines that a person has violated the provisions of the Code or this rule, then the director may take appropriate enforcement action as provided under the Code and this rule. In an enforcement proceeding, a person who generates and registers emission reductions shall have the burden of proof that the emission reductions generated and registered are real, surplus, enforceable, permanent, and quantifiable. A person who uses emission reduction credits shall have the burden of proof of due diligence with respect to verification of the validity and accuracy of the emission reduction credits used to comply with applicable emission requirements and the provisions of this rule.

§45-28-16. Program evaluations and individual audits.

16.1. The director shall conduct, or cause to be conducted, an evaluation of the emission trading program established under the provisions of this rule. The evaluation shall be conducted every three (3) years, or more frequently if deemed necessary by the director, to make all of the following emission trading program assessments:

16.1.a. Whether the program is consistent with the maintenance of national ambient air quality standards and has resulted in emission reductions consistent with reasonable further progress towards attainment and maintenance of national ambient air quality standards.

16.1.b. Whether requirements for monitoring, recordkeeping, reporting, and enforcement have resulted in a sufficiently high level of compliance.

16.1.c. Whether the program has caused any localized adverse effects to the public health, safety, or welfare or to the environment, including any disproportionate air quality impacts. This assessment shall include an analysis of the effects of emission trading on the emissions and impacts of toxic or hazardous air pollutant emissions.

16.1.d. Whether the program is achieving reductions across a spectrum of sources, including area and mobile sources.

16.1.e. Whether provisions for conducting audits of emission reduction credit transactions have resulted in a sufficient number of audits being conducted across a spectrum of sources.

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

(a) ~~Within one hundred eighty days after the effective date of this section,~~ The director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a [§29A-3-1 et seq.] of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) ~~Any person reducing air emission from a source to a greater extent than otherwise required by state or federal law is entitled to an emissions credit in the amount of the excess emission reduction. The director shall establish a system by legislative rule for quantifying, verifying, determining eligibility, and registering, trading and using all emissions reduction credits, which are eligible for banking and trading if achieved after the first day of January, one thousand nine hundred ninety-one, to the extent permitted by federal law. Credits also shall be available for permanent shutdowns. Provided, That the credits may be transferred by the depositor to the state office of economic development or to a public interest group of the depositor's designation. Except for voluntary reductions of nitrogen oxides, Ten percent of any emission reduction credits registered with the director shall be credited to an account for the benefit of the state and retired from future use, if not used within ten years. : Provided, That fifty percent of any emission reduction credits generated from permanent shutdowns prior to the effective date of the legislative rule or rules promulgated pursuant to this section shall be retired from future use. All other emissions reduction credits registered shall remain in effect until used and debited or retired, if Credits not used within ten years shall be retired from future use. The director may charge a reasonable transaction fee at the time any credits are registered and shall deposit the fees in the air pollution control fund.~~

(c) ~~Emission credits registered by a person in accordance with subsection (b) of this section may be used by the person to satisfy emission reduction requirements that would otherwise be required under state or federal law or the credits may be used for the same purpose at another source, by the person who registered the credit or by another person to whom the credit was transferred. Same source use of banked emission credits requires prior notification to the West Virginia office of air quality. The rules may not prohibit the transfer of credits among persons, but shall establish procedures by which transfers are identified, tracked and accounted for in the program. The division may establish the emissions trading program as a state, multistate or regional program as long as the program contributes to the goal of improving the air quality in West Virginia and in the air quality region where the source is located.~~

(d) ~~The director may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, establishing classes of volatile organic compounds, and shall allow banking and trading of different volatile organic compounds within the same class. In lieu thereof, trading shall be allowed among all volatile organic compounds where not inconsistent with federal law and where similar degrees of hazard and qualitative impact are anticipated with respect to air quality. For any emissions banking and trading program used for the purpose of~~

~~making progress toward attaining or maintaining the national ambient air quality standard for ozone, the director may allow reductions of volatile organic compounds to be substituted for required reductions of oxides of nitrogen, or reductions of oxides of nitrogen to be substituted for required reductions of volatile organic compounds, where appropriate, if not inconsistent with federal law. (1998, c. 145.)~~

JANUARY INTERIM SCHEDULE
Legislative Interim Meetings
January 9, 10, and 11, 2000

Sunday, January 9, 2000

5:00 - 7:00 p.m.

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

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

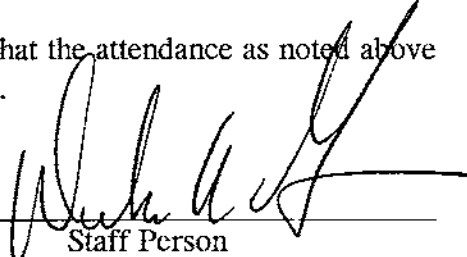
Senate

Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Unger ✓
Minear ✓

House

Hunt, Chair ✓
Linch, Vice Chair ✓
Compton ✓
Jenkins ✓
Faircloth ✓
Riggs ✓

I certify that the attendance as noted above
is correct.



Staff Person

Debra

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee Date 1-9-2000
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Mike Dausy		WVDEP	If Requested

Sunday, January 9, 2000

5:00 - 7:00 p.m.

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

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Unger ✓
Minear ✓

Hunt, Chair ✓
Linch, Vice Chair ✓
Compton ✓
Jenkins ✓
Faircloth ✓
Riggs ✓

minutes 12/12 & 12/14 approved

Child Enforcement - Credit reporting

Pita explained

Approve

Hunt
adopted

Child Support - Awards

Pita explained

Approve

Hunt
adopted

Office of Waste Mgt - Sewage Sludge

Had been laid over - Agency has prepared awards
which were distributed.

Joe responded to questions

Mike Zeto, Chief Insp. Environmental Enforcement → responded
to questions.

Anderson

Approve

mgs v company
for his
other
Chairman

Dan Halloran addressed the C E responded to q's

● daron Amendment / withdrawn
adopted

Anderson Reconsider

Anderson Modification that was distributed
adopted

Division of Assn. - Public Worker

Jack Frame, Pres. of the Well Dillers Assn. addressed
the C and responded to Q's.

?
Foot of the agenda
adopted

● QAQ - Odors

Joe explained posture of rule

Tom Degan, WV Environmental Council explained amendment
distributed by Senator Snyder

Rev. Buford, Asst. Atty. Gen. addressed the C &
responded to Q's

Dave Miller, Dep. C. Atty. addressed the C

Karen Watson, Counsel to ~~OTQ~~ addressed C & responded
to A

~~Karen~~ Karen Price - WV Manuf's Assn. - addressed the C

Still have problem w/ 2.4.

Anderson Foot of agenda
adopted

Health - Food

● Ban For? Datt responded to Q's
that Approve made adopted / (distributed by Datt)

that
adopted Approve as mod.

adopted

Water Resources - Groundwater

Joe explained
Approve

DAQ - Air Pollutant Emissions - Banking & Trading

Joe explained rule had be laid over indef. &
reexplained the proposed rule

Hunt
adopted

Approve as mod
Karen Price - support

Hunt
adopted

Rec bill to Off Committee

Waste Mgt - Hazardous Waste

Joe explained

Mike Dorsey, Asst Chief ^{for waste mgt} ... responded to questions

Hunt
adopted

Approve as mod.

EQB - Water Quality Stds

Explained - Agency has proposed mods

Hunt
adopted
Miner
rejected

Approve as mod
Amend - ?

Libby Chatfield - Technical Advisor to Bd responded to questions

David ~~Jeasey~~ Jeasey, Robinson & McFlwee
Yaussey

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 9, 2000
5 p.m. to 7 p.m.
Senate Finance Committee Room M-451

1. Approval of Minutes - December 12 and 14, 1999

2. Review of Legislative Rules:

*Approved ✓
as modified*
Office of Air Quality
Air Pollutant Emissions Banking and Trading, 45CSR28

*Approved ✓
as modified*
Division of Health
Food Establishments, 64CSR17

*Foot of the ✓
agenda*
Division of Health
Public Water Systems Design Standards, 64CSR77

*Approved ✓
as modified*
Office of Waste Management
Sewage Sludge Management Rule, 33CSR2

W/Drawn
Alcohol Beverage Control Administration
Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and
Private Wine Restaurants, 175CSR4 *W/Drawn*

*Foot of the ✓
agenda*
Office of Air Quality
To Prevent and Control the Discharge of Air Pollutants into the
Open Air which Causes or Contributes to an Objectionable Odor or
Odors, 45CSR4

Approved ✓
Office of Water Resources
Groundwater Protection Standards at Steam Generating Facilities,
47CSR57A

*Approved ✓
as modified*
Office of Waste Management
Hazardous Waste Management Rule, 33CSR20

*Approved ✓
as mod.*
Environmental Quality Board
Requirements Governing Water Quality Standards, 46CSR1

Approved ✓
Child Enforcement Division
Providing Information to Credit Reporting Agencies, 78CSR14

Approved ✓
Child Enforcement Division
Guidelines for Child Support Awards, 78CSR16

3. Other Business

JANUARY 10

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 10, 2000
9 a.m. to 12 p.m.
Senate Finance Committee Room M-451

1. Review of Legislative Rules:

- a. **Division of Health**
Public Water Systems Design Standards, 64CSR77
- b. **Office of Air Quality**
To Prevent and Control the Discharge of Air Pollutants into the Open Air which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4
- c. **Office of Mining and Reclamation**
Rules for Mining and Restoration for Sandstone, Limestone and Sand, 38CSR2A
- d. **Office of Mining and Reclamation**
Rules for Mining and Reclamation of Minerals Other Than Coal, Limestone, Sandstone and Sand, 38CSR2B
- e. **Office of Mining and Reclamation**
West Virginia Surface Mining Reclamation Rule, 38CSR2
- f. **West Virginia State Athletic Commission**
Administrative Rules and Regulations of the West Virginia State Athletic Commission, 177CSR1
- g. **Governor's Committee on Crime, Delinquency and Correction**
Law Enforcement Training Standards, 149CSR2
- h. **Office of Explosives and Blasting**
Surface Mining Blasting Rule, 199CSR1
- i. **West Virginia Development Office**
Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development, 145CSR8

2. Other Business

Monday, January 10, 2000

9:00 a.m. - 12:00 Noon

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

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Hunt, Chairman
Linch, Vice Chairman
Compton
Jenkins
Faircloth
Riggs

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

Mr. Ross moved that the rule proposed by the *Office of Air Quality-To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4*, be moved to the foot of the agenda. The motion was adopted.

Joseph Altizer, Associate Counsel, explained the rule proposed by the *Office of Mining and Reclamation-West Virginia Surface Mining Reclamation Rule, 38CSR2*, and stated that the Agency has agreed to technical modifications.

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

Rita Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the *West Virginia State Athletic Commission, 177CSR1*, and stated that the Commission has agreed to technical modifications. She and Steve Allred, member of the Commission, responded to questions from the Committee.

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

Ms. Pauley explained the rule proposed by the *Governor's Committee on Crime, Delinquency and Correction-Law Enforcement Training Standards, 149CSR2*, and stated that the Committee has agreed to technical modifications. She and Donald Davidson, representing the Governor's Committee, responded to questions from the Committee.

Mr. Anderson moved to amend subsection 15.3 of the proposed rule by adding a colon after the word "courses" and inserting the words "Provided, That persons appointed to the position of chief

deputy shall be exempt from the physical ability test.”; and to amend subsection 16.5 after the word “may” by striking out the word “not”. The motion was adopted.

Mr. Ross moved to amend subsection 16.5 of the proposed rule by adding a new sentence at the conclusion of the paragraph to read, “Employing agencies must report to the law enforcement training subcommittee, within 10 working days, all final judgments or settlements with a dismissal order entered against any certified officer for abuse or neglect of duty.” The motion was adopted.

Mr. Ross moved that the proposed rule be approved as modified and amended. The motion was adopted.

Dr. Henry Taylor, Director of the Bureau of Public Health, explained the modifications to the rule proposed by the *Division of Health-Public Water Systems Design Standards, 64CSR77*. Bill Harold, from the Engineering Division; Becky McClure and Jim Hodges, from West Virginia-American Water Company; addressed the Committee and responded to questions.

Mr. Ross moved to approve the proposed modifications except those that deal with check valves. The motion was adopted.

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

Mr. Altizer reviewed his abstract on the rule proposed by *Office of Explosives and Blasting-Surface Mining Blasting Rule, 199CSR1*, and stated that the Agency has agreed to technical modifications. Mike Mace, Chief, Office of Explosives and Blasting; Dave Davis, Deputy Director of the West Virginia Development Office; Darcy White, former inspector for the Office of Mining and Reclamation; and K. O. Damron, Vice President of Governmental Services for A.T. Massey Coal, addressed the Committee and responded to questions.

Mr. Ross moved to amend the rule by decreasing the fees to bring in \$750,000 per year. After further discussion, Mr. Ross asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Ross moved to amend the rule by decreasing the fees to bring in \$1,500,000 per year. The motion was adopted. Ms. Compton and Mr. Snyder voted “No”.

Mr. Ross moved that the proposed rule be approved as modified and amended. The motion was adopted.

Ms. Pauley explained the rule proposed by the *West Virginia Development Office-Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development, 145CSR8*, and responded to questions from the Committee.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Mining and Reclamation-Rule for Mining and Restoration for Sandstone, Limestone and Sand, 38CSR2A*, and

stated that the Agency has agreed to technical modifications. He, Mike Clousen, Contractors Association, and Rocky Barton, Department of Environmental Protection, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

The meeting was adjourned.

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H. B. / S.B.

(By

[Introduced]

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to repealing a legislative rule relating to the
14 prevention and control of air pollution from coal
15 refuse disposal areas.

16 ***Be it enacted by the Legislature of West Virginia:***

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**
22 **PROMULGATE LEGISLATIVE RULES.**

1 §64-3-1. Division of environmental protection.

2 (a) The legislative rule filed in the state register
3 on the first day of January, one thousand nine hundred
4 sixty-five, authorized under the authority of section
5 seven, article five, chapter twenty-two, of this code
6 relating to the division of environmental protection (to
7 prevent and control air pollution from coal refuse disposal
8 areas, 45 CSR 1), is repealed.

NOTE: The purpose of this bill is to repeal legislative rule 45 CSR 1, relating to the prevention and control of air pollution from coal refuse disposal areas.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

1 OAQ Emission credits amendment

2 H. B./ S.B.

3 (By

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5 [Introduced]

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10 A BILL to amend and reenact section eighteen, article five,
11 chapter twenty-two of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating to
13 market based banking and trading, modifying state banking
14 and trading requirements to comply with federal program
15 changes.

16 ***Be it enacted by the Legislature of West Virginia:***

17 That section eighteen, article five, chapter twenty-two of
18 the code of West Virginia, one thousand nine hundred thirty-one,
19 as amended, be amended and reenacted, to read as follows:

20 **§ 22-5-18. Market-based banking and trading programs,**

21 **emissions credits; director to promulgate**

22 **rules.**

1 (a) ~~Within one hundred eighty days after the effective date~~
2 ~~of this section, the~~ The director shall propose legislative
3 rules for promulgation in accordance with article three, chapter
4 twenty-nine-a of this code, to the full extent allowed by
5 federal and state law, one or more rules establishing a
6 voluntary emissions trading and banking program that provides
7 incentives to make progress toward the attainment or maintenance
8 of the national ambient air quality standards, the reduction or
9 prevention of hazardous air contaminants or the protection of
10 human health and welfare and the environment from air pollution.

11 (b) ~~Any person reducing air emission from a source to a~~
12 ~~greater extent than otherwise required by state or federal law~~
13 ~~is entitled to an emissions credit in the amount of the excess~~
14 ~~emission reduction.~~ The director shall establish a system by
15 rule for quantifying, verifying, determining eligibility, and
16 registering, trading and using all emissions reduction credits,
17 ~~which are eligible~~ for banking and trading if achieved after the
18 first day of January, one thousand nine hundred ninety-one, to
19 the extent permitted by federal law. Credits also shall be
20 available for permanent shutdowns. ~~Provided, That the credits~~
21 ~~may be transferred by the depositor to the state office of~~
22 ~~economic development or to a public interest group of the~~

1 ~~depositor's designation. Except for voluntary reductions of~~
2 ~~nitrogen oxides, ten~~ Ten percent of any emission credits
3 reduction registered with the director shall be credited to an
4 account for the benefit of the state and retired from future
5 use, if not used within ten years. Provided: That fifty percent
6 of any emission reduction credits generated from permanent
7 shutdowns prior to the effective date of the legislative rule or
8 rules promulgated pursuant to this section shall be retired from
9 future use. All other emissions reduction credits registered
10 shall remain in effect until used and debited or retired, ~~if~~
11 Credits not used within ten years shall be retired from future
12 use. The director may charge a reasonable transaction fee at
13 the time any credits are registered and shall deposit the fees
14 in the air pollution control fund.

15 ~~(c) Emission credits registered by a person in accordance~~
16 ~~with subsection (b) of this section may be used by the person to~~
17 ~~satisfy emission reduction requirements that would otherwise be~~
18 ~~required under state or federal law or the credits may be used~~
19 ~~for the same purpose at another source, by the person who~~
20 ~~registered the credit or by another person to whom the credit~~
21 ~~was transferred. Same source use of banked emission credits~~
22 ~~requires prior notification to the West Virginia office of air~~

1 ~~quality. The rules may not prohibit the transfer of credits~~
2 ~~among persons, but shall establish procedures by which transfers~~
3 ~~are identified, tracked and accounted for in the program. The~~
4 ~~division may establish the emissions trading program as a state,~~
5 ~~multistate or regional program as long as the program~~
6 ~~contributes to the goal of improving the air quality in West~~
7 ~~Virginia and in the air quality region where the source is~~
8 ~~located.~~

9 ~~(d) The director may propose legislative rules for~~
10 ~~promulgation in accordance with article three, chapter~~
11 ~~twenty-nine a of this code, establishing classes of volatile~~
12 ~~organic compounds, and shall allow banking and trading of~~
13 ~~different volatile organic compounds within the same class. In~~
14 ~~lieu thereof, trading shall be allowed among all volatile~~
15 ~~organic compounds where not inconsistent with federal law and~~
16 ~~where similar degrees of hazard and qualitative impact are~~
17 ~~anticipated with respect to air quality. For any emissions~~
18 ~~banking and trading program used for the purpose of making~~
19 ~~progress toward attaining or maintaining the national ambient~~
20 ~~air quality standard for ozone, the director may allow~~
21 ~~reductions of volatile organic compounds to be substituted for~~
22 ~~required reductions of oxides of nitrogen, or reductions of~~

- 1 ~~oxides of nitrogen to be substituted for required reductions of~~
- 2 ~~volatile organic compounds, where appropriate, if not~~
- 3 ~~inconsistent with federal law.~~

NOTE: The purpose of this bill is to amend the state market-based banking and trading programs for emission credits of certain air pollutants to reflect federal law changes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Amendment to 149CSR2

By amending subsection 16.5, on page 50 after the word "may" by striking out the word "not".

And on page 51

by adding a new sentence at the conclusion of subsection 16.5 to read as follows:

"Employing agencies must report to the law enforcement training subcommittee, within 10 working days, all final judgments or settlements with a dismissal order entered against any certified officer for abuse of neglect duty."

JANUARY INTERIM SCHEDULE
Legislative Interim Meetings
January 9, 10, and 11, 2000

Monday, January 10, 2000

9:00 - 12:00 Noon

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

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair	<u>✓</u>
Anderson, Vice Chair	<u>✓</u>
Minard	<u>✓</u>
Snyder	<u>✓</u>
Unger	<u>✓</u>
Minear	<u>✓</u>

House

Hunt, Chair	<u>✓</u>
Linch, Vice Chair	<u>✓</u>
Compton	<u>✓</u>
Jenkins	<u>✓</u>
Faircloth	<u>✓</u>
Riggs	<u>✓</u>

I certify that the attendance as noted above
is correct.



Staff Person

Debra

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review

Date 1-10-2000

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.

1-10-00 LRMPC Committee Meeting

(9) continued

Passes rule w/ modifications
w/ exception of check values
A Motor R.O.

h. 199 CSR 1

Mac, Director of Office of Explosives & Blasting
Dustin Turley:

Passes move rule

Dana Davis, Deputy Dir of WV Develop. Office
to Damron, VP Governmental Services for AT Massey
Boss move mod. direct fee to go - \$750,000 per yr.
for both offices

agency can't accept - move as amend.

Boss move to ~~mod~~ amend. to 1.5 mil.

Pass amend.

Del Corp. Don. Inj. record in reg.

adopt rule

i. 195 CSR 8 adopted w/o Mod. moved by Minard

c. 38 CSR 2A

moves rule w/ mod

Mike Clouser, Dir Assoc of WV, Crushed Agg. Council

Boss move to foot of agenda - Pass

meet 9:00 AM Wed.

1-10-99 L/K/M/K/C
Monday 9 AM Meeting

6) moved to foot

8) I presented - Ross moved as modified - adopted.

8) Rita presented.
Ross (?) R.O. of Modifications

9) Rita Presented rule -

Mac Davidson recognized to respond to questions
Anderson's new rule of ~~an~~ modification

- except chief deputy removed from physical examination qualifications for chief chiefs. if drawn as read. offer an amendment chief amendment adopted -

Sen Ross offered motion that revocation of certification, create duty - See Rita for language. ^{support?}

- Faircloth - 50.16.5 struck "not."
Ross new rule to foot of agenda adopted 2 amendments.

9) Dr. Taylor recognized - Modification were distributed by Teri -

- Carol changes in rule for committee - Bill Herald Engineer, Gen. Division - responded to questions

Becky Mc Clellan WVA Water Co. recognized.

10.9.9. Jim Hodges Operations Eng. WVA Water Co. expressed concern w/ 10.9.9.

objections to two check valves.

JANUARY 12

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, January 12, 2000
9 a.m. to 10 a.m.
Senate Finance Committee Room M-451

1. **Review of Legislative Rules:**

a. **Office of Air Quality**

To Prevent and Control the Discharge of Air Pollutants into the Open Air which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4

b. **Office of Mining and Reclamation**

Rules for Mining and Restoration for Sandstone, Limestone and Sand, 38CSR2A

c. **Office of Mining and Reclamation**

Rules for Mining and Reclamation of Minerals Other Than Coal, Limestone, Sandstone and Sand, 38CSR2B

2. **Other Business**

a. *Committee Report*

b. *Consideration of Bills*

Wednesday, January 12, 2000

9:00 a.m. - 10:30 a.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Hunt, Chairman
Linch, Vice Chairman
Compton
Jenkins
Faircloth
Riggs

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

Joseph Altizer, Associate Counsel, explained that the rule proposed by the *Office of Air Quality-To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4*, had been moved to the foot of the agenda at the Committee's previous meeting.

Mr. Altizer explained the modification offered by the Department of Agriculture. He and Dave Miller, Deputy Commissioner of Agriculture, responded to questions from the Committee. Karen Watson, Counsel for the Office of Air Quality, stated that she could not accept the modification.

Mr. Faircloth moved to amend the proposed rule regarding the farm exemption and that the rule never exceed federal regulations. Skip Kropp, Chief of the Office of Air Quality, addressed the Committee concerning the amendment. The motion was adopted. Mr. Linch voted "No".

Mr. Anderson moved to approve the proposed rule as modified and amended. The motion was adopted.

Mr. Altizer explained that the rule proposed by the *Office of Mining and Reclamation-Rules for Mining and Restoration for Sandstone, Limestone and Sand, 38CSR2A*, had been moved to the foot of the agenda at the Committee's previous meeting.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Mining and Reclamation-Rules for Mining and Reclamation of Minerals Other Than Coal, Limestone, Sandstone and Sand, 38CSR2B*, and stated that the Agency has agreed to technical modifications.

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

Mr. Altizer explained the bill the Committee directed Counsel to draft regarding repealing a legislative rule relating to the prevention and control of air pollution from coal refuse disposal areas.

Mr. Hunt moved that the Committee introduce the bill to the Legislature. The motion was adopted.

Mr. Altizer explained the bill the Committee directed Counsel to draft concerning exemptions for property from ad valorem property taxation rule by removing certain provisions used in determining eligibility for tax exempt status for homes for the aged.

Mr. Hunt moved that the Committee introduce the bill to the Legislature. The motion was adopted. Mr. Snyder asked that he not be a sponsor of this bill.

Mr. Altizer explained the bill the Committee directed Counsel to draft concerning market based banking and trading, modifying state banking and trading requirements to comply with federal program changes.

Mr. Hunt moved that the Committee introduce the bill to the Legislature. The motion was adopted.

Mr. Hunt moved that the Committee direct its staff to: prepare the Committee's report and submit the report to the Clerk's office of each House; draft a bill of authorization for each rule contained in the report; and cause the bills to be introduced in each House with the members of the Committee as sponsors in their respective Houses. The motion was adopted.

The meeting was adjourned.

...move that the Committee direct its staff to: prepare the Committee's report and submit the report to the Clerk's office of each House; draft a bill of authorization for each rule contained the report; and cause the bills to be introduced in each house with the members of the Committee as sponsors in their respective houses

1 H. B. \ S.B.

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(By Delegates \ Senators)

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[Introduced ; referred

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to the Committee on .]

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10 A BILL to amend and reenact section two, article seven, chapter
11 sixty-four of the code of West Virginia, one thousand
12 nine hundred thirty-one, as amended, relating to amending
the department of tax rule which provides exemptions for
14 property from ad valorem property taxation rule by
15 removing certain provisions used in determining
16 eligibility for tax exempt status for homes for the aged.

17 *Be it enacted by the Legislature of West Virginia:*

18 That section two, article seven, chapter sixty-four of
19 the code of West Virginia; one thousand nine hundred thirty-
20 one, as amended, be amended and reenacted, to read as follows:

21 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**
22 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

23 **§64-7-2. Department of tax and revenue; and state tax**
24 **commissioner.**

The legislative rule contained in title one hundred ten,

1 series three, and filed in the state register on the first day
2 of May, one thousand nine hundred eighty-nine, under the
3 authority of section nine, article three, chapter eleven of
4 this code, relating to the tax department (exemption of
5 property from ad valorem taxation 110CSR3) is reauthorized
6 with the following amendment:

7 On page twenty-eight, section twenty-six, subsection 2,
8 by striking out the entire subsection 26.2.

NOTE: The purpose of this bill is to amend the Division of Tax Rule relating to exemptions of property from ad valorem taxation, to delete certain criteria utilized in determining property tax exemption status for homes for the aged.

This section is new; therefore strike-throughs and underscoring have been omitted.

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H. B./ S.B.

(By

[Introduced]

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to repealing a legislative rule relating to the
14 prevention and control of air pollution from coal
15 refuse disposal areas.

16 ***Be it enacted by the Legislature of West Virginia:***

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**
22 **PROMULGATE LEGISLATIVE RULES.**

1 §64-3-1. Division of environmental protection.

2 (a) The legislative rule filed in the state register
3 on the first day of January, one thousand nine hundred
4 sixty-five, authorized under the authority of section
5 seven, article five, chapter twenty-two, of this code
6 relating to the division of environmental protection (to
7 prevent and control air pollution from coal refuse disposal
8 areas, 45 CSR 1), is repealed.

NOTE: The purpose of this bill is to repeal legislative rule 45 CSR 1, relating to the prevention and control of air pollution from coal refuse disposal areas.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

1 OAQ Emission credits amendment

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H. B./ S.B.

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(By

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[Introduced]

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10 A BILL to amend and reenact section eighteen, article five,
11 chapter twenty-two of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating to
13 market based banking and trading, modifying state banking
14 and trading requirements to comply with federal program
15 changes.

16 ***Be it enacted by the Legislature of West Virginia:***

17 That section eighteen, article five, chapter twenty-two of
18 the code of West Virginia, one thousand nine hundred thirty-one,
19 as amended, be amended and reenacted, to read as follows:

20 **§ 22-5-18. Market-based banking and trading programs,**
21 **emissions credits; director to promulgate**
22 **rules.**

1 (a) ~~Within one hundred eighty days after the effective date~~
2 ~~of this section, the~~ The director shall propose legislative
3 rules for promulgation in accordance with article three, chapter
4 twenty-nine-a of this code, to the full extent allowed by
5 federal and state law, one or more rules establishing a
6 voluntary emissions trading and banking program that provides
7 incentives to make progress toward the attainment or maintenance
8 of the national ambient air quality standards, the reduction or
9 prevention of hazardous air contaminants or the protection of
10 human health and welfare and the environment from air pollution.

11 (b) ~~Any person reducing air emission from a source to a~~
12 ~~greater extent than otherwise required by state or federal law~~
13 ~~is entitled to an emissions credit in the amount of the excess~~
14 ~~emission reduction.~~ The director shall establish a system by
15 rule for quantifying, verifying, determining eligibility, and
16 registering, trading and using all emissions reduction credits,
17 ~~which are eligible~~ for banking and trading if achieved after the
18 first day of January, one thousand nine hundred ninety-one, to
19 the extent permitted by federal law. Credits also shall be
20 available for permanent shutdowns~~±~~. ~~Provided, That the credits~~
21 ~~may be transferred by the depositor to the state office of~~
22 ~~economic development or to a public interest group of the~~

1 depositor's designation. ~~Except for voluntary reductions of~~
2 ~~nitrogen oxides, ten~~ Ten percent of any emission credits
3 reduction registered with the director shall be credited to an
4 account for the benefit of the state and retired from future
5 use, if not used within ten years. *Provided:* That fifty percent
6 of any emission reduction credits generated from permanent
7 shutdowns prior to the effective date of the legislative rule or
8 rules promulgated pursuant to this section shall be retired from
9 future use. All other emissions reduction credits registered
10 shall remain in effect until used and debited or retired, ~~if~~
11 Credits not used within ten years shall be retired from future
12 use. The director may charge a reasonable transaction fee at
13 the time any credits are registered and shall deposit the fees
14 in the air pollution control fund.

15 ~~(c) Emission credits registered by a person in accordance~~
16 ~~with subsection (b) of this section may be used by the person to~~
17 ~~satisfy emission reduction requirements that would otherwise be~~
18 ~~required under state or federal law or the credits may be used~~
19 ~~for the same purpose at another source, by the person who~~
20 ~~registered the credit or by another person to whom the credit~~
21 ~~was transferred. Same source use of banked emission credits~~
22 ~~requires prior notification to the West Virginia office of air~~

1 ~~quality. The rules may not prohibit the transfer of credits~~
2 ~~among persons, but shall establish procedures by which transfers~~
3 ~~are identified, tracked and accounted for in the program. The~~
4 ~~division may establish the emissions trading program as a state,~~
5 ~~multistate or regional program as long as the program~~
6 ~~contributes to the goal of improving the air quality in West~~
7 ~~Virginia and in the air quality region where the source is~~
8 ~~located.~~

9 ~~(d) The director may propose legislative rules for~~
10 ~~promulgation in accordance with article three, chapter~~
11 ~~twenty-nine-a of this code, establishing classes of volatile~~
12 ~~organic compounds, and shall allow banking and trading of~~
13 ~~different volatile organic compounds within the same class. In~~
14 ~~lieu thereof, trading shall be allowed among all volatile~~
15 ~~organic compounds where not inconsistent with federal law and~~
16 ~~where similar degrees of hazard and qualitative impact are~~
17 ~~anticipated with respect to air quality. For any emissions~~
18 ~~banking and trading program used for the purpose of making~~
19 ~~progress toward attaining or maintaining the national ambient~~
20 ~~air quality standard for ozone, the director may allow~~
21 ~~reductions of volatile organic compounds to be substituted for~~
22 ~~required reductions of oxides of nitrogen, or reductions of~~

1 ~~oxides of nitrogen to be substituted for required reductions of~~
2 ~~volatile organic compounds, where appropriate, if not~~
3 ~~inconsistent with federal law.~~

NOTE: The purpose of this bill is to amend the state market-based banking and trading programs for emission credits of certain air pollutants to reflect federal law changes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

JANUARY INTERIM SCHEDULE
Legislative Interim Meetings
January 9, 10, and 11, 2000

Wednesday, January 12, 2000

12 Noon

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

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

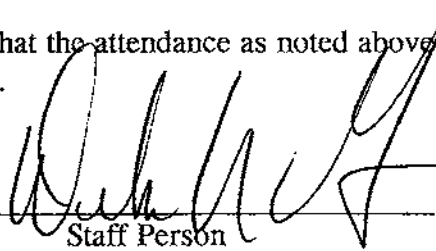
Senate

Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Unger ✓
Minear _____

House

Hunt, Chair _____
Linch, Vice Chair ✓
Compton ✓
Jenkins ✓
Faircloth ✓
Riggs ✓

I certify that the attendance as noted above
is correct.



Staff Person

Debra

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review

Date 1-12-2000

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.

Due 1-26-2000

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, January 12, 2000
9 a.m. to 10 a.m.
Senate Finance Committee Room M-451

1. Review of Legislative Rules:

Approved ✓
as modified
and amended

Office of Air Quality

To Prevent and Control the Discharge of Air Pollutants into the Open Air which Causes or Contributes to an Objectionable Odor or Odors, 45CSR4

Approved ✓
as modified

Office of Mining and Reclamation

Rules for Mining and Restoration for Sandstone, Limestone and Sand, 38CSR2A

Approved ✓
as modified

Office of Mining and Reclamation

Rules for Mining and Reclamation of Minerals Other Than Coal, Limestone, Sandstone and Sand, 38CSR2B

2. Other Business

- a. Committee Report
- b. Consideration of Bills

Wednesday, January 12, 2000

~~12 Noon~~ 9 am

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

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Unger ✓
Miner

House

Hunt, Chair ✓
Linch, Vice Chair ✓
Compton ✓
Jenkins ✓
Faircloth ✓
Riggs ✓

Ross called the meeting to order.

OAQ - Odor

Joe explained posture → agency modification

Dave Miller, Dept. C. Agriculture responded to q's

Karen Watson - agency cannot accept the modification
responded to questions.

Faircloth Moves to amend - regarding farm exemption & never exceed fed
adopted regs

Anderson Skips? Chief OAQ Linch voted "No"
adopted Moves w/ mod Eamed

~~Faircloth~~ Office Mining & Reclamation - Sandstone
Approve as mod

OMER - Other

Faircloth Approve as mod.
adopted

Bills - Joe explained

① Repeal 450SR1

Hunt
adopted

Approve

② Tax - exemption Tax Dept Rule for old age homes

Farelata
adopted

Approve

~~Says do not~~

③ OAQ admissions credits

Hunt

Approve

adopted

Hunt

Committee report & bills

adopted

Wink

meeting next week - ABCC, OAQ rules

adopted

JANUARY 20

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Thursday, January 20, 2000
5 p.m.
Senate Finance Committee Room M-451

1. Review of Legislative Rules:

- a. **Office of Air Quality**
Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter, 45CSR8
- b. **Office of Air Quality**
Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone, 45CSR9
- c. **Office of Air Quality**
Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, 45CSR13
- d. **Office of Air Quality**
To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators, 45CSR24
- e. **Alcohol Beverage Control Administration (Emergency Rule)**
Licensing of Retail Liquor Stores, 175CSR5

2. Other Business

Thursday, January 20, 2000

5 p.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Hunt, Chairman
Linch, Vice Chairman
Compton
Jenkins
Faircloth
Riggs

Absent

Absent

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

Joseph Altizer, Associate Counsel, explained the rule proposed by the *Office of Air Quality-Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter, 45CSR8*, and stated that the Agency has agreed to technical modifications.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Air Quality-Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone, 45CSR9*, and stated that the Agency has agreed to technical modifications.

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

Rita Pauley, Associate Counsel, explained the rule proposed by the *Office of Air Quality-Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, 45CSR13*, and stated that the Agency has agreed to technical modifications. Mike Herron, President of the Independent Oil and Gas Association of West Virginia, and Edward Kropp, Deputy Director of the Department of Environmental Protection, addressed the Committee and responded to questions.

Mr. Minard moved to amend the proposed rule by lowering the general permit fee from \$1,000 to \$500. The motion was adopted.

Mr. Anderson moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. Atlizer reviewed his abstract on the rule proposed by the *Office of Air Quality-To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators, 45CSR24*.

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

Ms. Pauley explained the emergency rule filed by the *Alcohol Beverage Control Commissioner-Licensing of Retail Liquor Stores, 175CSR5*. Frank Angotti, Delegate from Harrison County, addressed the Committee. Richard Cutlip, retail store owner in Mercer County, and Donald Stemple, Alcohol Beverage Control Commissioner, addressed the Committee and responded to questions.

Mr. Snyder moved that the Committee meet again to discuss the emergency rule. The motion was adopted.

The meeting was adjourned.

12-14-99

Prices Before Taxes

Prepared By	Initials	Date
Approved By		

WILSON JONES COMPANY

17508 ColumnsWrite

MADE IN U.S.A.

	750 ML	Jack Daniels Black	Popov	JIM BEAM	CROWN ROYAL	ABSOLUT	Price Paid for zone
1							
2	Liquors & MORE-PRINCETON	17.90	7.70	11.75	21.80	17.55	#405,000.
3							
4							
5							
6	PENN LIQUOR	16.65	7.20	11.05	20.65	17.15	#101,111
7							
8							
9							
10							
11	BIG APPLE	16.65	7.20	11.05	20.65	17.15	#60,500
12							
13							
14							
15							
16							
17	7-11 - BERKLEY SPRINGS	16.99	7.39	10.99	21.09	17.99	??
18							
19							
20							
21	FAYETTEVILLE	18.19	7.39	11.99	24.49	18.39	#251,012
22							
23							
24							
25							
26	DAK HILL	17.29	7.49	11.49	21.39	17.49	
27							
28							
29							
30							
31							
32	SPENCER ABC	15.50	6.75	10.30	19.25	15.95	#60,000.
33							
34							
35							
36							
37	LIQUOR MART	15.85	6.84	10.53	19.68	16.34	#15,500.
38							
39							
40							

↑
2 days

12-14-99

Prices Before Taxes

Prepared By	Initial	Date
Approved By		

WILSON JONES COMPANY

17506 ColumnWrite 20

MADE IN U.S.A.

	730 ML	JACK DANIELS BLACK	POPOV	JIM BEAM	CROWN ROYAL	ABSOLUT	Price paid for zone
1							
2	CLASSIC LIQUOR	15.59	6.69	10.39	19.29	16.09	\$11,300.
3							
4							
5							
6							
7	RITE AID RIPLEY	15.89	6.89	10.59	16.99	16.39	\$60,552
8							
9							
10							
11							
12	RITE AID SUMMERSVILLE	15.89	6.89	10.59	16.69	16.39	\$96,201
13							
14							
15							
16							
17	THE LOFT	15.99	6.99	10.99	19.99	16.99	\$227,500
18							
19							
20							
21							
22	ONE STOP BEVERAGE	17.60	7.60	11.70	21.75	17.50	\$259,000.
23							
24							
25							
26							
27	THE LIQUOR SHOP	15.86	6.85	10.53	19.69	16.35	\$186,300
28							
29							
30							
31							
32	HINTON	17.11	7.49	11.34	21.30	17.59	\$54,000
33							
34							
35							
36							
37	DURBIN LIQUOR	15.70	6.80	10.45	19.50	—	\$5,600
38							
39							
40							

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Date 1-20-2000
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Sally Knapp	CHARLESTON	DEP	
KAREN WATSON	CHARLESTON	DEP	
JANE BENEDET	CHARLESTON	DEP	
MIKE HERRON	CHARLESTON	IOGA	—
Del. FRANK ANGIOTTI	CLARKSBURG	House of Delegates	

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Thursday, January 20, 2000
5 p.m.
Senate Finance Committee Room M-451

1. **Review of Legislative Rules:**

modified

- a. **Office of Air Quality**
Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter, 45CSR8

modified

- b. **Office of Air Quality**
Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone, 45CSR9

*modified +
amended*

- c. **Office of Air Quality**
Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, 45CSR13

approved

- d. **Office of Air Quality**
To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators, 45CSR24

- e. **Alcohol Beverage Control Administration (Emergency Rule)**
Licensing of Retail Liquor Stores, 175CSR5

2. **Other Business**

Ross called meeting to order

Ross asked Joe abt exemption for Phillips from Sewage
Judge to rule

OAQ - Ambient Air, Sulfur

OAQ - Ambient Air, Carbon Monoxide

Joe explained together.

Faircloth
adopted

Approve 450SR8 as mod.

Anderson
adopted

Approve 450SR9 as mod.

OAQ - Permits

Rita explained & responded to questions.

Mike Harrah?, ever dir oil & gas addressed the C
regarding \$1,000 permit

Shio Krapp?

" " "

Anderson
Ministry
adopted

Approve as mod

lower fee to \$500 (amend)

Anderson
adopted

Approve as mod & amend

OAQ - Hospital

Joe explained & ans'd questions

Linch
adopted

Approve

ABCC - Retail Liquor Stores

Pita explained & responded to questions

Delegate Argotti addressed the C

Richard Cutlip - liquor store owner in Princeton

Stemple ^{addressed the C} responded to q's from C

~~Lie~~ Lie over 1 wk

notify C in writing of meeting date.

Snyder
adopted

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: _____

TIME: _____

NAME

Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker

Hunt, Mark, Co-Chair

Linch, Larry, Vice-Chair

✓ _____

Compton, Mary Pearl

✓ _____

Faircloth, Larry V.

✓ _____

Jenkins, Evan

Riggs, Dale

✓ _____

SENATE

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

✓ _____

Anderson, Leonard, Vice-Chair

✓ _____

Minard, Joseph

✓ _____

Minear, Sarah

✓ _____

Snyder, Herb

✓ _____

Unger, John

✓ _____

TOTAL

RE:

Call Karen Watson - DO NOT HAVE 10 DAYS!

JANUARY 28

Friday, January 28, 2000

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

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Hunt, Chairman	Absent
Linch, Vice Chairman	
Compton	
Jenkins	Absent
Faircloth	
Riggs	

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

Debra Graham, Counsel, explained the emergency rule filed by the *Alcohol Beverage Control Commissioner-Licensing of Retail Liquor Stores, 175CSR5*, and responded to questions. Donald Stemple, Commissioner, and Jill Patterson, partner with the firm of Smith, Cochran and Hicks, addressed the Committee and responded to questions. Rita Pauley, Associate Counsel, responded to questions from the Committee.

The meeting was adjourned.

Textual description of the formula used in calculating the minimum acceptable bids:

Calculation of the minimum bids based upon the weighted-average purchases in each zone:

We calculated the average annual purchases in each zone by weighting the purchases of each license based on the **actual years stores operated** under those licenses since 1991. In instances where licenses had been sold, or a store had closed and moved elsewhere, we considered the purchases before the sale or relocation and after the sale or relocation as a single store (year). **Years in which the licenses were not in operation were not used in calculating the average annual purchases per license.**

	Zone 31	Zone 40
1991	\$ 19,162	\$ -
1992	68,807	-
1993	56,439	-
1994	49,717	-
1995	57,794	-
1996	59,739	50,484
1997	54,311	85,622
1998	66,090	155,917
1999	68,992	177,537
total purchases	\$ 501,050	\$ 469,560

	divided by 9	divided by 9
simple average annual purchases per license in the zones	\$ 55,672	\$ 52,173

	divided by 9	divided by 4
weighted-average annual purchases per license in the zones	\$ 55,672	\$ 117,390

The weighted-average purchases per license operating in each zone were then used as the basis to allocate the \$19 million to each market zone. The weighted-average purchases per license was multiplied by the number of licenses operating in that zone. We totaled all of the zones and backed-in to a factor of .4233 to achieve \$19 million. In other words, the amount required for the State to achieve the \$19 million goal is equal to .4233 of the annual liquor purchases made by the retailers

each year. The weighted-average purchases from each zone multiplied by the factor of .4233 equals the minimum bids acceptable from each zone.

The total minimum bids acceptable for each zone were then divided by the total licenses currently operating in the zone to determine the minimum acceptable bid for each license.

	Zone 31	Zone 40
Weighted-average annual purchases from each zone	\$ 55,672	\$ 117,390
Multiplied by .4233 factor	* .4233	* .4233
Minimum bid acceptable from zone	23,567	49,694
Divided by number of licenses authorized for that zone	1	1
Minimum bid for each license	\$ 24,000	\$ 50,000
	<i>% of purchases</i> 5%	11%

An adjustment to the minimum acceptable bids in zones where additional licenses have been proposed was determined necessary to reflect the increased competition resulting from the authorization of additional licenses. This adjustment was calculated by dividing the minimum acceptable in those zones with and without the additional license. The adjusted minimum acceptable bid for each license is the average of that calculation.

Assume an additional license was added in Zone 31

	1 license	2 licenses
Minimum bid for zone	\$ 23,567	\$ 23,567
Divided by the number of licenses	1	2
Minimum bid for each license	23,567	11,784
Average minimum bid (23,567 + 11,784) / 2 = \$17,675		17,675
Minimum bid for each license		\$ 18,000
		<i>% of purchases</i> 4%

This adjustment reduced the minimum bid for each license to reflect the increase in competition that may occur if these additional licenses are awarded. The calculation of the factor (.4233) was based on the number of licenses currently operating in the State. The additional licenses added

provide for an amount to be realized in excess of \$19 million to provide a contingency for the possibility that not all proposed licenses may be awarded.

In the three (3) zones where there are no currently operating licenses, the minimum acceptable bids were determined based upon:

1. the operating history of the license in relation to neighboring zones before the store was closed in the case of Mingo County;
2. the purchase histories of the bordering zones in the case of Hancock County; and,
3. a nominal amount in the case of Calhoun. Calhoun County is dry. A bid was received and awarded in 1990. Award of a bid in 1999 will allow the winner of the award the benefits bestowed upon new licensees in the future.

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making
Please print or write plainly.

Date 1-28-2000

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-28-2000

TIME: _____

NAME Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker	_____	_____	_____	_____
Hunt, Mark, Co-Chair	_____	_____	_____	_____
Linch, Larry, Vice-Chair	✓	_____	_____	_____
Compton, Mary Pearl	✓	_____	_____	_____
Faircloth, Larry V.	✓	_____	_____	_____
Jenkins, Evan	_____	_____	_____	_____
Riggs, Dale	✓	_____	_____	_____

SENATE

Tomblin, Earl Ray, President	_____	_____	_____	_____
Ross, Michael, Co-Chair	✓	_____	_____	_____
Anderson, Leonard, Vice-Chair	✓	_____	_____	_____
Minard, Joseph	✓	_____	_____	_____
Minear, Sarah	✓	_____	_____	_____
Snyder, Herb	✓	_____	_____	_____
Unger, John	✓	_____	_____	_____

TOTAL _____

RE: _____

