

FEBRUARY 9

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

MONDAY, FEBRUARY 9, 1987

10.30 a.m.

HOUSE JUDICIARY, ROOM 410

PUBLIC HEARING

Department of Natural Resources - Hazardous Waste
Management, Series 35

COMMITTEE MEETING FOLLOWING PUBLIC HEARING

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

Monday, February 9, 1987

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

10:30 a.m.

Dan Tonkovich,
ex officio nonvoting member

Robert "Chuck" Chambers ,
ex officio nonvoting member

Senate

House

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

Knight, Chairman
Murphy
Burk
Givens
Stiles
Pritt

At the close of the public hearing which was held on the rule proposed by the Department of Natural Resources, Hazardous Waste Management, Series 35, the meeting was called to order by Mr. Tucker, Co-Chairman.

The minutes of the January 29, 1987, meeting were approved.

Delegate Stiles moved that the rule proposed by the Department of Natural Resources on Hazardous Waste Management, Series 35, be approved. The motion was adopted.

Mr. Tucker then placed before the Committee for its consideration the rule proposed by the Department of Energy, State National Pollution Discharge Elimination System (NPDES) for Mines and Minerals. Roger Hall, Administrator, Department of Energy, responded to questions from the Committee.

David Flannery, Counsel for the Department of Energy, also responded to questions by the Committee.

Mr. Knight reviewed several modifications to the rule which had been agreed to by the Department as well as several areas upon which agreement could not be reached.

Mr. Knight moved that the Committee recommend to the Department of Energy that the proposed rule be withdrawn and modified by the agency. The motion was rejected.

Mr. Hylton moved that the proposed rule, as modified, be approved.

Mr. Knight moved to amend the proposed rule on page five, subdivision 4.1.a, by adding a requirement that the agency provide notice by third-class mail to resident households within one-half mile of the outer property boundaries of the source. The motion was rejected.

Mr. Knight moved to amend the proposed rule on page eight, paragraph 6.2.1.3, and the fourth line thereof, by striking the word "sufficiently". The motion was adopted.

Mr. Knight moved to further amended paragraph 6.2.1.3, on the fifth and seventh lines thereof, by striking on each line the word "may" and inserting in lieu thereof the word "shall". The motion was rejected.

Mr. Knight moved to amend the proposed rule on page eight, paragraph 6.2.1.4, in the third line thereof, by striking the words "are of concern" and inserting in lieu thereof the words "exceed allowable limits". The motion was rejected.

Mr. Knight moved to amend on page nine, paragraph 6.2.1.6, by striking the word "may" and inserting lieu thereof the word "shall". The motion was adopted.

Mr. Knight moved to amend the proposed rule on page nine, paragraph 6.2.1.7, on the third line thereof, by striking the word "may" and inserting in lieu thereof the word "shall" and on the fourth line thereof, by striking the word "or" and inserting in lieu thereof the word "and". The motion was adopted.

Mr. Knight moved to amend the proposed rule on page twelve, subsection 8.21, on the fifth line thereof, by striking the word "may" and inserting in lieu thereof the word "shall", and on the sixth line thereof, by striking the word "or" and inserting in lieu thereof the word "and". The motion was rejected.

There being no further amendments to the proposed rule, the question was put on Mr. Hylton's motion to approve the rule as modified, with amendments. A roll call vote was demanded. upon With a vote of seven ayes, two nays, three absent and not voting, the motion adopted.

Mr. Knight moved that the Department, if it agrees, be allowed to modify the rules to take into account the amendments adopted by the Committee and to file the proposed rule as modified. The motion was adopted.

With unanimous consent of the Committee, Mr. Knight discussed the effect of Ms. Pritt's motion made and adopted at the previous meeting of the Committee held on January 29, 1987, whereby Ms. Pritt moved to withdraw the rule proposed by the Commissioner of Banking, implementing the West Virginia community reinvestment act. Mr. Knight explained that the Co-Chairmen were of the opinion that the motion had the effect of placing the subject matter of the proposed rule before the Committee for discussion but that the motion did not have the effect of modifying the previous action of the Committee in approving the rule in question.

M. E. Mowery, Counsel for the Committee, explained to the members that certain rules of the State Tax Commissioner previously approved by the Committee with amendments had been forwarded to the Legislature in the form of bills which were incomplete inasmuch as the bills, as drafted, did not include all amendments adopted by the Committee. Mr. Mowery informed the Committee that he had conferred on this matter with John Montgomery of the Tax Department and that the Tax Department had agreed to incorporate all Committee amendments into the proposed rules in question and to refile them with the Secretary of State as rules modified to meet the objections of the Committee.

Mr. Knight moved that the Committee approve the refiling of the proposed rules as modified by the Tax Commissioner. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 2/9/87

TIME: 10:30 A.M.

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

RE: _____

DOE - issues & amendments - RODP
Roll Call #1

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 2-9-87

TIME: _____

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.				✓
Burk, Robert W., Jr.			✓	
Givens, Roy E.			✓	
Pritt, Charlotte				✓
Stiles, Floyd R.			✓	
Murphy, Patrick H.			✓	
Tonkovich, Dan, President				
Tucker, Larry A.			✓	
Boettner, John "Si"		✓		
Harman, C. N.			✓	
Holmes, Darrell E.		✓		
Hylton, Tracy W.			✓	
Tomblin, Earl Ray		✓		
TOTAL		3	7	2

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review Com.

DATE: 2/9/87

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
JOHN MONTGOMERY	CHARLESTON	TAX DEPARTMENT	<input checked="" type="checkbox"/> IF REQUESTED
JEFFREY HERRICK	CHARLESTON	NATURAL RESOURCES	
N.V. Raman	1260 Greenbrier St Charleston	Natural Resources	
Freddie A. Sizemore	Charleston	Air Poll Cont Comm	
Ron McIlwain	Fairmont	Monongahela Power Co.	
Gary A. Tack	Fairmont	Monongahela Power Co.	X
Robert D. Worden	Charleston	WV Manufacturer Ass'n	X
James Noe	Willow Island	American Cyanamid	X
A. KEVIN THOMAS	CHAS.	BANKING DEPT.	
Ron Shipton	Chas	WV DNR	if requested.
Dean A. Calland	Pgh	Babst Calland Cleverly & Zeman	X
Roger T. Hall	1616 Wash St F Chas. WV	DOE	
Richard E. Sherman	Charleston	DuPont Belle Plant	X
John Putbaugh	2507 Duobelen Hrs	WV Highways	
Becky Cain	St. Albans	League of Women Voters	
Joyce Merytk	"	"	
DAVID FLANNERY	Charleston	WVDOE	



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA, INC.

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

STATEMENT TO THE WEST VIRGINIA DEPARTMENT OF ENERGY

RE: Proposed NPDES Regulations for Mines and Minerals

DATE: January 10, 1987

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

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

More specific concerns and questions include:

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

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

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

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

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

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

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

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

6.) Section 5.1 - It appears that this section deletes some references to penalty assessments and we see no other references made to new or different ones. Is it the intention to eliminate these penalties entirely?

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

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

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

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

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

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

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

Becky Cain
Becky Cain
President

DEPARTMENT OF ENERGY
NPDES RULES FOR MINES AND MINERALS
Series 20

Based upon questions raised by Rule-making Committee members, and counsel to the Committee at the initial meeting regarding these rules, and upon follow-up discussions, the Department of Energy is prepared to make the following amendments to the rules to meet those concerns:

1. 3.4.1 - The conflict of interest subsection will be modified to be applicable to both the "Commissioner and any designated permit-issuing authority." This change has the effect of requiring that the Commissioner meet the conflict test as well as anyone to whom he might delegate permitting authority.
2. 4.1 - The exceptions to the parts of 40 C.F.R. §122.21 incorporated by reference dealing with applications for permits will be modified in accordance with Committee counsel's comments. Accordingly, the excepted subsections will be only §122.21(c) (2), (f) (5), (g) (10) ^(h) and (i) ^{(k) and (m)}.
3. 4.3.1.1 - The typographical error will be corrected to read "designated" rather than "designed."
4. 6.2.1.3 - The word "mitigate" will be replaced by the word "correct" to alleviate a concern that the word "mitigate" is too ambiguous in dealing with toxic effects monitoring. It is recognized that "correct" does not mean eliminate all discharges; rather, it is meant to connote that the toxic effect will be brought under control so as to meet water quality standards.
5. 6.2.1.7 - For the same reasons set forth with respect to Section 6.2.1.3, the word "mitigate" will be changed to "correct."
6. 8.2 - A technical amendment will be made to this subsection to delete the last four sentences of 40 C.F.R. §124.5(b) which relate solely to federal appeal procedures not applicable to West Virginia.