



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
AIR POLLUTION CONTROL COMMISSION

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MINUTES
WEST VIRGINIA POLLUTION CONTROL COMMISSION
OAQ Conference Room at 1558 Washington Street East
July 6, 1993
9:00 a.m.

I. General

The West Virginia Air Pollution Control Commission met on July 6, 1993 at 9:00 a.m. in the Office of Air Quality's Conference Room located at 1558 Washington Street, East, Charleston, West Virginia. Chairman L. Newton Thomas, Jr. called the meeting to order. A transcript of the entire proceedings was taken by a court reporter.

II. Commissioners Present for Meeting

L. Newton Thomas, Chairman
Jean C. Neely, Vice Chairman
Allen Hamner
Joseph P. Schock for William T. Wallace
Samuel Kusic

III. Materials Presented to the Commissioners

The following documents were distributed:

1. 45 CSR 28: Proposed rule as filed with the Secretary of State on 11/13/92; 6/30/93 Memorandum and attachments; WVMA Summary of Comments.
2. 45 CSR 30: Proposed rule as filed with the Secretary of State on 6/2/93; written comments of CNG Transmission Corporation.
3. 45 CSR 13: Proposed rule as filed with the Secretary of State on 6/2/93.
4. 45 CSR 25: Proposed rule as filed with the Secretary of State on 6/2/93.
5. 45 CSR 15: Proposed rule as filed with the Secretary of State on 6/2/93.
6. 45 CSR 16: Proposed rule as filed with the Secretary of State on 6/2/93.
7. 45 CSR 7: Proposed changes to rule as filed with the Secretary of State on 6/2/93; Current 45 CSR 7 effective 5/27/83.

8. 45 CSR 10: Proposed changes to rule as filed with the Secretary of State on 6/2/93; Current 45 CSR 10 effective 10/16/78; 6/28/93 Correspondence and attachments from Wheeling Pittsburgh Steel Corporation; 7/1/93 Correspondence and attachment from David M. Flannery.
9. Summary of Legislative Amendments to Rules Considered for Final Filing; Various 5/28/93 correspondence from the Secretary of State re: final filing of 45 CSR 5, 45 CSR 14, 45 CSR 19, 45 CSR 21, 45 CSR 29, 45 CSR 31, and 45 CSR 32.

IV. Commission Meeting

A. PUBLIC HEARINGS ON PROPOSED RULES

1. Reconsideration of Regulation 28 (45 CSR 28) - Gasoline Dispensing Facility Vehicle Refueling Emissions Controls

Consideration of 45 CSR 28 had been continued for a period of six months at the Commission's January 1993 meeting. G. Dale Farley, Chief of the Office of Air Quality (OAQ), summarized the status of 45 CSR 28 in light of recent litigation involving EPA promulgation of on-board vehicle canister regulations which may supplant the need for the State's adoption of 45 CSR 28. Further, Mr. Farley and John Benedict, also of the OAQ, made comments on recent EPA counsel memoranda regarding the imposition of discretionary sanctions for states failing to implement Stage II of the Clean Air Act (CAA).

PUBLIC COMMENTS

Jack Harrison, director of the West Virginia Petroleum Council made comments on regulation 28, and requested that the Commission continue its consideration of the regulation.

Marvin Gray, of the West Virginia Gasoline Dealers Association added his comments in support of the continuation of consideration of regulation 28.

Whereupon, a Motion to continue consideration of regulation 28 for a period of not more than six months, leaving open the public comment period, passed by a unanimous vote of the Commissioners.

2. Regulation 30 (45 CSR 30) - Operating Permit Program.

Randy Suter of the OAQ was called upon by the Commission to give a synopsis of the agency's rationale for this proposed rule, and to receive questions from the Commissioners.

Among other questions and comments by the Commission, the following suggestions were made regarding the proposed rule:

It was suggested by Vice Chairman Neely that the language in § 2.5.j be changed to reflect the adoption of some other modification by the EPA rather than the either/or scenario presently contemplated by the section. Mr. Schock suggested that an option be provided for source calculation of fees in the interim permits prior to completion of permit application, to which it was responded that the permit shield provisions may serve this purpose.

Vice Chairman Neely also suggested that §7.2 be modified to allow for a copy of the file be provided in local public libraries to give the public notice of permits under consideration.

There was discussion of whether the CAA contemplated that the fee structure contained in this rule should create incentives to reduce emissions. Mr. Farley responded that the CAA contemplated the permitting fee structure to fund the agency's administration of the program. Whereupon the discussion was had on the calculation of fees and late fee penalties. It was observed that the collection date for fees should be sensitive to the state's end of fiscal year, and perhaps the fee schedule in regulation 30 need be modeled after the schedule in regulation 22.

It was also noted that in the provisions for conditioned minor source permits, the list of "insignificant activities" has been omitted.

PUBLIC COMMENTS:

David Yaussey of Robinson & McElwee, representing the WV Manufacturers Association, Appalachian Power Company, and the Ohio Power Company, gave his oral comments regarding the proposed rule to the Commission. Among other suggestions, Mr. Yaussey advocated a base fee of \$18/tpy with a \$4k tpy cap, and a window of flexibility for the Chief to adjust.

Whereupon, the public hearing on the proposed regulation 30 was concluded, holding open a 30 day public comment period.

3. Regulation 13 (45 CSR 13) - Permits for the Construction, Modification, etc. of Stationary Sources.

Mr. Farley presented his agency's rationale for the proposed rule.

PUBLIC COMMENTS

Kim Brown Poland of Robinson & McElwee, representing the WV

Manufacturers Association presented oral comments regarding the proposed rule. Ms. Poland's comments focused on several areas in which the proposed rule did not conform with, and conflicted with other air regulations. Some attention was also given to the list of hazardous air pollutants and the implications of the list without any de minimis exemptions.

Whereupon, the public hearing on the proposed regulation 13 was concluded, holding open a 30 day public comment period.

4. Regulation 25 (45 CSR 25) - The Prevention and Control of Pollutants from Hazardous Waste Treatment Facilities.

Mr. Farley presented his agency's rationale for the proposed rule, after which there was some discussion regarding the impact of the moratorium by executive order on commercial hazardous waste facilities.

PUBLIC COMMENTS

Ann M. Bradley of Robinson & McElwee, representing the WV Manufacturers Association presented oral comments on the proposed rule. Ms. Bradley's comments focused on the need to coordinate the rule with other agencies with jurisdiction over the regulation of hazardous pollutants. Ms. Bradley also suggested the need for a memorandum of agreement between the OAQ and the Office of Waste Management delegating the authority for regulating all hazardous wastes to the Office of Waste Management.

Whereupon, the public hearing on the proposed regulation 25 was concluded, holding open a 30 day public comment period.

5. Regulations 15 & 16 (45 CSR 15 & 45 CSR 16) - Emission Standards for Hazardous Pollutant and Standards of Performance for New Stationary Sources.

Mr. Farley presented oral comments to the Commission regarding the agency's rationale for the proposed rule.

NO PUBLIC COMMENTS WERE OFFERED ON THESE PROPOSED RULES

Whereupon, the public hearing on the proposed regulations 15 & 16 was concluded, holding open a 30 day public comment period.

6. Regulation 7 (45 CSR 7) - The Prevention and Control of Manufacturing Process Particulate Emissions; Industry Requests for Regulatory Relief.

Mr. Farley explained that changes have been proposed to the rule in response to requests by three regulated companies for relief from specific requirements under regulation 7. The OAQ

has been working with these companies to achieve a consensus on the modifications to the rule. However, before these proposed changes will be sent to the legislature, the companies must provide technical and economic rationale for the changes, and inform the OAQ whether the overall emissions will increase. Further the changes will require the OAQ to make revisions to the state SIP.

PUBLIC COMMENTS

Kim Brown Poland of Robinson & McElwee, representing Schuller International Corporation, presented oral comments to the Commission. At this time, Schuller requests the Commission to continue its consideration of proposed changes to § 4.5 until such time as the company can provide modelling data to the Commission, while keeping open the public comment period.

Scott Dismukes representing American Alloys presented the Commission with oral comments on that company's request for relief from the provisions of regulation 7 for "blowing hole taps" and "submerged arc furnaces." Mr. Dismukes presented testimony that the EPA regulations provide exemptions for these manufacturing processes under the NSPS.

Barbara Little of Jackson & Kelly, representing Elchem Metals presented oral comments and two witnesses to give testimony regarding this company's request for relief from the provisions of regulation 7. Ms. Little's comments focused on the EPA's promulgation of NSPS which exempt blowing tap holes from regulation, and argues that this more recent federal NSPS should take precedence over this state rule. Witness Bob Allen and Eugene Hogan from Elchem Metals presented testimony explaining the affected manufacturing process and the practical consequences of the enforcement of regulation 7 on the industry.

At the conclusion of the public comments, Chairman Thomas directed attention towards Secretary Ranson's consent to the proposed rule, which is conditioned upon "adequate technical data and documentation to establish that the proposed changes are needed and that they can be made without unreasonable impact on air quality." Thus, the Commission's approval of nay such proposed changes would require such proof from the companies requesting the relief.

Whereupon, the public hearing to consider proposed changes to regulation 7 was adjourned, holding open the public comment period for 30 days.

8. Regulation 10 - Prevention and Control of Air Pollution from the Emission of Sulfur Oxides; Industry Request for Regulatory Relief.

Mr. Farley explained that changes have been proposed to the rule in response to a request by Wheeling-Pittsburgh Steel Company for relief from § 3(d). The OAQ has been working with this company to achieve a consensus on the modifications to the rule. However, before the proposed changes will be sent to the legislature, the company must provide technical and economic rationale for the changes, and inform the OAQ whether the overall emissions will increase. Further the changes will require the OAQ to make revisions to the state SIP.

PUBLIC COMMENTS

William Samples of Wheeling-Pittsburgh Steel Company presented oral comments regarding his company's request for modifications to the rule. First, Mr. Samples testified regarding the affected manufacturing process and the impact of compliance on the company's business. Mr. Samples testified that allowing scheduled maintenance for the pollution control equipment rather than only for malfunctions would result in an overall reduction in emissions.

Whereupon, the public hearing to consider proposed changes to regulation 10 was adjourned, holding open the public comment period for 30 days.

V. Regular Commission Meeting

1. Final Adoption of Rules Authorized by the Legislature

- a. 45 CSR 5: After a discussion of legislative amendments to the rule, a Motion to adopt the regulation and file it on the latest possible date, with an effective date of 90 days therefrom, was passed by a unanimous vote.
- b. 45 CSR 14: A Motion to adopt the regulation with an immediate effective date upon filing was passed by a unanimous vote.
- c. 45 CSR 19: A Motion to adopt the regulation with an immediate effective date upon filing was passed by a unanimous vote.
- d. 45 CSR 21: After a discussion of legislative amendments to the rule, a Motion to adopt the regulation with an immediate effective date upon filing was passed by a unanimous vote.

- e. 45 CSR 29: After a discussion of legislative amendments to the rule, a Motion to adopt the regulation with an immediate effective date upon filing was passed by a unanimous vote.
 - f. 45 CSR 31: A Motion to adopt the regulation with an immediate effective date upon filing was passed by a unanimous vote.
 - g. 45 CSR 32: A Motion to adopt the regulation with an immediate effective date upon filing was passed by a unanimous vote.
2. Election of the Chairman
- L. Newton Thomas was elected Chairman by a unanimous vote.
3. Election of the Vice Chairman
- Jean C. Neely was elected Vice Chairman by a unanimous vote.
4. Secretary
- Britt A. Bernheim was elected Secretary by a unanimous vote.
5. Other Business
- a. Consideration of the Minutes from the February meeting were deferred until the next meeting of the Commission.
 - b. Regulation 22: A discussion was had of this emergency filed rule. Several Commissioners expressed concern over the fee schedule contained in the rule since the OAQ has determined that the generation of such fees may not be necessary in light of the new permitting fee schedule which would have replaced regulation 22. A Motion to have the secretary request the withdrawal of regulation 22, subject to the concurrence of Secretary Ranson, was passed by a unanimous vote.
 - c. Appeal Nos. 93-01 & 93-02: Discussion of the pending motion to dismiss appellant ACT, whereupon it was decided to deny the motion upon a vote with one dissent.

Following the conclusion of the other business, a motion to adjourn the meeting passed by a unanimous vote.

I hereby certify that the foregoing is a true and correct record of the proceedings of the July 6, 1993 meeting and hearings of the West Virginia Air Pollution Control Commission.

Submitted this 13th day of July, 1993.



Britt A. Bernheim, APCC Secretary