



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
August 9 & 10, 1993

A. AUGUST 9, 1993

I. General

The West Virginia Air Pollution Control Commission meeting began on August 9, 1993 at 9:00 a.m. and continued through August 10, 1993. The meeting was held 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. The entire proceedings were recorded on magnetic tape.

II. Commissioners Present on August 9, 1993

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

III. Materials Presented to the Commissioners

1. 45 CSR 30: revised proposed rule; OAQ agency written responses to comments received by the Commission during the public comment period.
3. 45 CSR 13: revised proposed rule; OAQ agency written responses to comments received by the Commission during the public comment period.
4. 45 CSR 25: revised proposed rule; OAQ agency written responses to comments received by the Commission during the public comment period.
5. 45 CSR 15: revised proposed rule; OAQ agency written responses to comments received by the Commission during the public comment period.
6. 45 CSR 16: revised proposed rule; OAQ agency written responses to comments received by the Commission during the public comment period.
7. 45 CSR 7: revised proposed changes to rule; Robinson & McElwee correspondence of 8/4/93 withdrawing Schuller's request; OAQ memorandum of 8/5/93 re: request of

American Alloys.

8. 45 CSR 10: revised proposed changes to rule; correspondence from Robinson & McElwee; correspondence from Wheeling-Pittsburgh Steel Company.

In addition, written comments received during the public comment period were distributed to the Commission as they were received by the Secretary.

IV. Commission Meeting

FINAL CONSIDERATION OF PROPOSED RULES

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

At the Commission's request, Randy Suter, legal counsel to the OAQ, presented a detailed explanation of the agency's written responses to comments submitted by the WVMA, NRDC, and the EPA. Each response to each comment was covered by Mr. Suter's presentation.

Next, Mr. Suter gave a detailed explanation of each revision that had been made to the proposed rule since filing with the Secretary of State. Many of the revisions were made in response to specific public comments. The revised rule presented to the Commission was the result of collaboration between the OAQ and the Commission through its legal counsel.

Discussion was had between the Commissioners and G. Dale Farley, OAQ Chief, on the interaction between regulation 30 and the revised regulation 13, which formerly operated as the agency's primary permitting program. Mr. Farley described the efforts that have been undertaken to provide consistency between the two regulations and his belief that there continues to be a need for regulation 13.

Mr. Suter then continued his presentation of OAQ responses to written comments submitted by CNG Transmission Corporation, Capitol Cement Corporation, and Mr. Fred Sampson.

Lengthy discussion was had of the fee provisions of the proposed rule. Mr. Farley presented the agency's responses to written comments regarding the rule's fee provisions submitted by the WVMA. At the Commission's request, Mr. Farley continued by providing his assessment of the revenue requirements of operating a Title V permitting program. At the Commission's request, a comment was received from Kim Brown Poland of Robinson & McElwee on a compromise fee structure. Ms. Poland suggested that the Commission consider a "rocker" mechanism which would allow the Commission to adjust the fee within certain parameters upon its finding the fee warranted adjustment. Discussion of the fee

provisions continued until the meeting was adjourned upon motion and vote at approximately 5:20 p.m.

B. AUGUST 10, 1993

I. General

The West Virginia Air Pollution Control Commission meeting resumed on August 10, 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. The entire proceedings were recorded on magnetic tape.

II. Commissioners Present on August 9, 1993

L. Newton Thomas, Chairman
Jean C. Neely, Vice Chairman
Allen Hamner
Joseph P. Schock for William T. Wallace
Howard Knotts for Gus Douglass, Jr.

IV. Commission Meeting

FINAL CONSIDERATION OF PROPOSED RULES

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

Final consideration of the proposed rule continued with the discussion of the rule's fee provisions. It was the Commission's recommendation that the rocker provision be incorporated into the fee schedule, and that the rule should require the Commission to provide some basis for utilizing such a rocker in adjusting the fees. In response to concern expressed over the Legislature's ability to take fee revenues out of the OAQ's budget, it was suggested that a statement be incorporated into the rule's scope that such fees shall be dedicated only for use in operating the Title V permitting program.

The following fee schedule was adopted by the Commission: \$15/ton "ramp-up" fee (first program year) and \$18/ton thereafter with a \$2 "rocker" or adjustment margin. These fees are subject to a CPI riser with a base year revised up to 1993.

A recommendation was offered by Mr. Farley in response to EPA concern over the lack of an anti-tampering provision for monitoring devices in the rule. The Commission authorized revision of the rule to incorporate such a provision into the proposed rule. Additionally, the Commission authorized any other minor and non-substantive drafting improvements that legal counsel may think necessary.

Whereupon, the revised version of proposed 45 CSR 30, subject to those changes authorized during consideration by the Commission, was approved upon motion and unanimous vote of those Commissioners present.

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

At the Commission's request, Mr. Farley presented the rationale for each revision that has been made to the rule since its proposal to the Commission on July 6, 1993. The proposed rule was modified in an effort by both the OAQ and the Commission's legal counsel to improve its language, and in response to public comments made to the rule.

Next, Mr. Farley presented the OAQ's responses to and discussion was had on written comments received regarding rule 13. Some members of the Commission voiced concern that regulating substances on the list of Hazardous Air Pollutants contained on Table C of the rule would duplicate already existing hazardous substance regulations. Table C of the rule (which was identified as Table B in the proposed rule filed with the Secretary of State on June 2, 1993) reflected Clean Air Act § 112 Hazardous Air Pollutants. Upon discussion of this topic, a motion was introduced to delete Table C and any references to it from the rule. The motion carried by a 4-1 vote with Commissioner Neely voting against the motion.

Upon further discussion of the rule, the Commission suggested changes to various sections. Of particular note, the Commission suggested that 1980 be changed to 1990 on page 6, and that "for cause" language be added to the chief's discretion in § 5.2. Upon the conclusion of the discussion, additional comments were solicited from attendees. The Commission also authorized legal counsel to make any necessary non-substantive drafting changes before filing the proposed rule with the Secretary of State.

Whereupon, the revised version of proposed 45 CSR 13, subject to those changes authorized during consideration by the Commission, was approved upon motion and unanimous vote of those Commissioners present. (At the conclusion of the vote, Commissioner Hamner excused himself and remained absent from the meeting to attend to a prior commitment.)

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

Randy Suter presented a review of the revisions made to rule 15 since its proposal to the Commission on July 6, 1993. No

public comments had been received in response to rule 15.

Mr. Suter next reviewed changes made to rule 16 since its proposal on July 6, 1993. Mr. Suter also presented the OAQ's responses to rule 16 comments submitted by WVMA.

Whereupon, the revised version of proposed 45 CSR 15 and 45 CSR 16 were approved, each upon separate motion and unanimous vote of those Commissioners present.

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

At the request of the Commission, Mr. Farley reviewed the changes to the proposed rule since the rule's submission to the Commission on July 6, 1993. Late comments were received on August 8, 1993, from Wheeling-Pittsburgh Steel Corporation. These public comments were not responded to, nor were they included in the official record since they were received after the public comment period had expired. However, the Commission allowed comment from attendee William Samples of the Wheeling-Pittsburgh Steel Company, who submitted the late comments.

Discussion next turned to the purpose of the rule, which has been proposed in response to Wheeling-Pittsburgh Steel's request to amend rule 10 to allow for periodic shut downs of its desulfurization equipment for maintenance while continuing to operate its coke battery ovens. Currently, such shut downs are in violation of the regulation. Comparison was made with the regulations of other states, a few of which require the installation of redundant pollution control equipment, and most of which allow for periodic shut downs.

The OAQ noted for the record that it was not a proponent of writing regulatory relief into the rule, but was not opposed to the language of the rule in the form as currently drafted by the OAQ. After further deliberation, the Commission adopted the version of the revisions to rule 10 as proposed by the OAQ as opposed to a slightly different version proposed by Wheeling-Pittsburgh Steel.

Whereupon, the proposed rule as was approved upon motion and a vote of 3-0 in favor of the rule, with Commissioner Neely abstaining from the vote.

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

At the request of the Commission, Mr. Farley presented the

OAQ's position on these requests for regulatory relief through amendment to existing rule 7. Mr. Farley commented that he could not recommend these changes at the present time. Mr. Farley based his position of non-recommendation on the inadequate submission of technical rationale documents by Elkem Metals and American Alloys, lack of time to review the information that had been submitted for OAQ review, and his doubt that the EPA would approve the resulting SIP (State Implementation Plan) revision resulting from the proposed revisions to the rule.

Comments from attendees were solicited by the Commission. Ms. Poland representing Schuller International responded by reiterating her written withdrawal of that company's request for relief at the present time. No other comments were forthcoming from attendees.

Whereupon, a motion was made to table the proposed revisions to 45 CSR 7, as requested by American Alloys, Elkem Metals, and Schuller International, and to continue the rule's consideration until a future date to be determined by the Commission, carried by a unanimous vote of the Commissioners present.

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

At the Commission's request, David White of the OAQ reviewed revisions to the rule since its proposal on July 6, 1993. Revisions to the proposed rule included replacing references to the Division of Environmental Protection with the Office of Air Quality, replacing April 23, 1992 with June 11, 1993 in § 2.20; deletion of the definition of "Chief" in §3.1.a; deletion of §4.13.b; replacement of "Chief" with "Director" in § 9. Mr. White also made a detailed presentation of the agency's responses to written comments on the proposed rule.

Upon consideration of the rule, the Commission also suggested the following modifications: correction of the legislative reference in § 3.1, and replace "control" with "prevent" in § 4.10. Mr. Kopelman, legal counsel to the OAQ, suggested that § 1.5 be changed to amend rather than to repeal and replace the former rule.

The Commissioners discussed the rule's impact on the Office of Waste Management's regulation of hazardous wastes, and inquired whether that agency had reviewed the proposed rule for potential interagency conflicts. It was confirmed that the Office of Waste Management had reviewed the rule and found no substantive conflicts.

Whereupon, the revised version of proposed 45 CSR 25, subject to those changes enumerated above, was approved upon motion and unanimous vote of those Commissioners present.

OTHER COMMISSION BUSINESS

Upon a motion to adopt the minutes of Commission meetings held on February 8, 1993 and July 6, 1993, such minutes were adopted by a unanimous vote of the Commissioners present.

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

I hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on August 9 & 10, 1993 by the West Virginia Air Pollution Control Commission.

Resubmitted as revised this 15TH day of October, 1993.



Britt A. Bernheim, APCC Secretary