WEST VIRGINIA CODE: §22-1-3A

§22-1-3a. Rules -- New or amended environmental provisions.

Except for legislative rules promulgated for the purpose of implementing the provisions of section four, article twelve, section six, article seventeen, and section six, article eighteen, all of this chapter, and notwithstanding the provisions of section four, article five of this chapter, legislative rules promulgated by the director which become effective on or after July 1, 1994, may include new or amended environmental provisions which are more stringent than the counterpart federal rule or program to the extent that the director first provides specific written reasons which demonstrate that such provisions are reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the event that legislative rules promulgated by the director which become effective on or after July 1, 1994, include new or amended environmental provisions which are less stringent than a counterpart federal rule which recommends, but does not require, a particular standard or any federally recommended environmental standard whether or not there be a counterpart federal rule, the division shall first provide specific written reasons which demonstrate that such provisions are not reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristic of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the absence of a federal rule, the adoption of a state rule shall not be construed to be more stringent than a federal rule, unless the absence of a federal rule is the result of a specific federal exemption.

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