

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Health, Department of Health & Human Resources TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 61

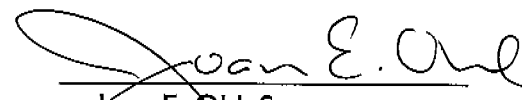
TITLE OF RULE BEING PROPOSED: Public Water Systems Capacity Development

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 305

SECTION 64-5-2(h), PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 14, 1999


Joan E. Ohl, Secretary

\$3.80

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RULE PROMULGATION HISTORY ABSTRACT**

Rule Title: 64 Public Water Systems Capacity Development

Series Number: 61

Amendment of Existing Rule: **New Rule:** X

Responsible Agency: Division of Health

Date Filed for Public Hearing or Comment Period: November 13, 1998

Date of Public Hearing (if any):

Date Public Comment Period Ended: December 15, 1998

**Date Agency-Approved Rule Filed with the
Legislative Rule-Making Review Committee:** January 6, 1999

**Date of Filing of Modified Rule as Approved by
the Legislative Rule-Making Review Committee:** January 19, 1999

Date of Final Filing: April 14, 1999

Effective Date: May 14, 1999

Authorized by: S.B. 305 (With amendments? Yes No X),
Passed: March 10, 1999

Dates Emergency Rule in Effect (if any):

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 61
PUBLIC WATER SYSTEMS CAPACITY DEVELOPMENT**

FILED
APR 14 9 20 AM '99
OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

§64-61-1. General.

1.1. Scope -- This legislative rule establishes state standards and procedures and adopts national safe drinking water standards for capacity development. The 1996 Safe Drinking Water Act amendments require states to ensure that all new community water systems and new nontransient noncommunity water systems demonstrate technical, managerial, and financial capacity to be able to comply with national drinking water regulations. Further, the Safe Drinking Water Act (SDWA) amendments require states to develop a strategy to address the capacity of all public water systems to include:

1.1.a. Determining which public water systems need help and in what order of priority;

1.1.b. Describing enhancers and inhibitors of developing capacity;

1.1.c. Determining a plan of action to help systems in need comply with the SDWA;

1.1.d. Establishing a baseline and measuring program; and

1.1.e. Identifying, in as much as possible, all persons who are interested in or involved with capacity development.

1.2. Authority -- West Virginia Code §§16-13C-2(b) and 16-1-7.

1.3. Filing date -- April 14, 1999.

1.4. Effective date -- May 14, 1999.

1.5. Administration -- This rule is administered by the division of health of the department of health and human resources.¹

¹The department of health and human resources (DHHR) was created by the Legislature's reorganization of the executive branch of state government in 1989. The department of health was renamed the division of health and made a part of the DHHR (WV Code § 5F-1-1 et seq.). Administratively, within the DHHR, the bureau for public health through its commissioner

1.6. References --

- 1.6.a. West Virginia Code §16-1-9a.
- 1.6.b. West Virginia Division of Health, Public Water Systems, 64CSR3.
- 1.6.c. West Virginia Division of Health, Drinking Water Treatment Revolving Fund, 64CSR49.
- 1.6.d. West Virginia Division of Health, Public Water Supply Operator Regulations, 64CSR4.
- 1.6.e. West Virginia Division of Health, Water Well Regulations, 64CSR19.
- 1.6.f. West Virginia Division of Health, Water Well Design Standards, 64CSR46.
- 1.6.g. West Virginia Division of Health, Intended Use Plan for the West Virginia Drinking Water Treatment Revolving Fund.
- 1.6.h. West Virginia Division of Health, Design Standards for Public Water Supply System, 64CSR42.
- 1.6.i. West Virginia Division of Health, Mobile Home Parks, 64CSR40.
- 1.6.j. West Virginia Public Service Commission, Rules and Regulations for the Government of Water Utilities, 150CSR7.
- 1.6.k. West Virginia Division of Health, Design, Information, and Procedural Manual for Mobile Home Parks, 64CSR41.

§64-61-2. Application and Enforcement.

2.1. Application - This rule applies to all community water systems and nontransient noncommunity water systems as defined in Section 3 of this rule. This rule does not apply to private water wells. This rule does not require consumers serviced by private water wells to abandon their wells nor to connect to any new or existing public water system or community water system as defined in Section 3 of this rule.

2.2. Enforcement - This rule is enforced by the director of the division of health.

§64-61-3. Definitions.

3.1. Capacity -- Capacity refers to a water system's ability to consistently provide safe

carries out the public health function of the division of health.

drinking water for its customers. A water system must have the technical abilities, managerial skills, and financial resources to meet state and federal drinking water regulations.

3.2. Capacity development -- A program and a tool which helps to ensure all community public water systems and nontransient noncommunity water systems demonstrate the technical, managerial, and financial capacity to comply with Safe Drinking Water Act requirements and to benefit their customers.

3.3. Community water system -- A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

3.4. Director -- The director of the division of health or his or her designees from the division who are charged with enforcement of this rule.

3.5. Existing public water system -- Any community water system or nontransient noncommunity water system which came into existence prior to October 1, 1999.

3.6. Financial capacity -- The financial resources of the water system, including but not limited to the revenue sufficiency, credit worthiness, and fiscal controls.

3.7. Managerial capacity -- The management structure of the water system, including but not limited to ownership accountability, staffing, organization, and effective external linkages.

3.8. New public water system -- Any community or nontransient noncommunity water system which comes into existence on or after October 1, 1999.

3.9. Noncommunity water system -- Any public water system that is not a community water system.

3.10. Nontransient noncommunity water system -- A public water system that is not a community water system and that regularly serves the same twenty-five (25) or more persons over six (6) months per year.

3.11. Person -- An individual, partnership, association, syndicate, company, firm, trust, corporation, county or municipal government, public or private institution, department, division, bureau, agency, federal agency, or any other entity recognized by law.

3.12. Public water system -- A system which provides water to the public for human consumption through pipes or other constructed conveyances, if the system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.

3.12.a. Public water system includes:

3.12.a.1. Any collection, treatment, storage, and distribution facilities under the control of the operator of a system and used primarily in connection with the system; and

3.12.a.2. Any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

3.12.b. A public water system does not include a system which meets all of the following conditions:

3.12.b.1. It consists only of distribution and storage facilities and does not have any collection and treatment facilities;

3.12.b.2. It obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

3.12.b.3. It does not sell water to any person; and

3.12.b.4. It is not a carrier conveying passengers in interstate commerce.

3.13. Safe Drinking Water Act -- A federal statute commonly known as the "Safe Drinking Water Act" - 42 USC 300f et seq.

3.14. Sanitary Survey -- An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of the source, design, facilities, equipment, operation and maintenance for producing and distributing drinking water, as described in the federal regulations adopted in this rule.

3.15. Technical capacity -- The physical infrastructure of the water system, including but not limited to the source water adequacy, the infrastructure adequacy (including wells, source water intakes, or both, treatment, storage, and distribution), and the ability of system personnel to implement the requisite technical knowledge.

§64-61-4. Capacity Development of New Public Water Systems.

4.1. A person shall obtain a permit from the director before constructing or awarding a contract to construct a public water system. A person shall obtain approval in writing from the director before establishing a public water system, and the system shall be installed or established in accordance with the plans, specifications and instructions issued by, or approved in writing by, the director.

4.2. A person seeking a permit to construct shall submit to the director an application in accordance with the rule referenced in subdivision 1.6.b. of this rule. The application shall include an engineering report which provides a detailed discussion of the proposed system's capacity to operate, with an emphasis on financial capacity. The engineer, owner, or both shall

provide proof to the director that the owner has the technical, managerial, and financial capacity to operate and maintain the new system. The director shall consult with the public service commission and the water development authority, as well as other affiliated agencies as necessary, concerning the financial and managerial capacity.

4.3. A permit to construct may be revoked by the director for failure of the public water system to comply with this rule.

4.4. The public water system shall be constructed in accordance with the plans and specifications approved by the director in accordance with the rule referenced in subdivision 1.6.h. of this rule.

4.5. The director may issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage, or distribution facilities of the system before delivery to the consumer, as may be necessary to safeguard the public health.

4.6. A new public water system shall not commence operation without written approval to proceed from the director.

§64-61-5. Capacity Development of Existing Public Water Systems.

5.1. The director may develop a program for the issuing of a permit to operate a public water system. The director may revoke a permit for failure of the permittee to comply with the requirements of this rule or the requirements of the rule Division of Health, Public Water Systems, 64CSR3. The director shall not issue a permit until he or she has reasonable assurance that the system has achieved or is actively pursuing the technical, managerial, and financial capacity needed to operate in accordance with this rule.

5.2. The capacity of a system shall be assessed using the following indicators:

- 5.2.a. Compliance data;
- 5.2.b. Construction permits;
- 5.2.c. Sanitary surveys;
- 5.2.d. Annual reports;
- 5.2.e. Water system plans or business plans;
- 5.2.f. Compliance reports;
- 5.2.g. Self-assessment/peer reviews;
- 5.2.h. Regional plans;

- 5.2.i. Criteria used by lenders;
- 5.2.j. Financial viability assessment methods;
- 5.2.k. Operator certification;
- 5.2.l. Financial and managerial training;
- 5.2.m. Permit application data;
- 5.2.n. Capital improvement plans;
- 5.2.o. Comprehensive performance evaluation;
- 5.2.p. Consumer complaint records;
- 5.2.q. State-wide studies of water quality or quantity;
- 5.2.r. State revolving fund loan application;
- 5.2.s. Budgeting worksheets;
- 5.2.t. Annual financial reports;
- 5.2.u. Source water assessment programs;
- 5.2.v. Water conservation plans;
- 5.2.w. Emergency response plans;
- 5.2.x. Certificates of convenience and necessity (CCN);
- 5.2.y. Review of audit reports;
- 5.2.z. Bond issue reviews;
- 5.2.aa. Rate reviews and approvals;
- 5.2.bb. Credit rating services;
- 5.2.cc. Financial assurance mechanisms;
- 5.2.dd. Consumer confidence reports; and
- 5.2.ee. Interviews with personnel familiar with the system.

5.3. A prospective new owner of a public water system shall submit to the director a written application to transfer the permit. The application shall be submitted at least fifteen (15) calendar days before the proposed change of ownership.

5.4. A public water system shall conspicuously post at its treatment plant a copy of the current permit to operate. The original shall be kept on file and available to the director upon request.

§64-61-6. Inspections and Sanitary Surveys of Public Water Systems.

6.1. Public water systems shall be inspected as scheduled by the director, and sanitary surveys shall be conducted by the director.

6.2. Surveys will be performed with in-depth emphasis on capacity development. As a minimum, inspectors shall evaluate the following:

6.2.a. The reliability of the system's overall infrastructure, including source water protection, treatment, distribution system, and storage;

6.2.b. The treatment process schematic diagrams and determination of the appropriateness of the treatments given the sources used and raw water quality;

6.2.c. The distribution system maps and plan, including operation and maintenance schedules and procedures;

6.2.d. Pump operating condition, including the presence of reserve pumps;

6.2.e. The technical competence of the system operator;

6.2.f. Overall management and operations of the system;

6.2.g. Safety practices; and

6.2.h. Records and record keeping.

§64-61-7. Penalties.

7.1. Penalties are as provided in WV Code §16-1-18. In addition, the director may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations.

§64-61-8. Administrative Due Process.

8.1. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests, or privileges shall do so in a manner

prescribed in the rule, Division of Health, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.

9756

64-61

H. B. 2546

1 Bill-Heal (By Delegates Hunt, Linch, Compton, Faircloth,
2 Jenkins and Riggs)

3 [Introduced February 1, 1999; referred to the
4 Committee on Health and Human Resources then
5 the Judiciary.]
6
7
8
9

10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to public water systems
15 capacity development.

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

17 That section one, article five, 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 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND**
22 **HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

23 §64-5-1. State board of health; division of health.

1 (a) The legislative rule filed in the state register
2 on the eighteenth day of November, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section three, article thirty-two, chapter sixteen of this
5 code, modified by the division of health to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the sixteenth day of
8 December, one thousand nine hundred ninety-seven, relating
9 to the division of health (asbestos abatement licensing, 64
10 CSR 63), is authorized.

11 (b) The legislative rule filed in the state register
12 on the first day of August, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 eight, article thirty-three, chapter sixteen of this code,
15 modified by the division of health to meet the objections
16 of the legislative rule-making review committee and refiled
17 in the state register on the sixteenth day of December, one
18 thousand nine hundred ninety-seven, relating to the
19 division of health (breast and cervical cancer diagnostic
20 and treatment fund, 64 CSR 69), is authorized.

21 (c) The legislative rule filed in the state register
22 on the first day of August, one thousand nine hundred
23 ninety-seven, under the authority of section ten, article

1 five-j, chapter sixteen of this code, modified by the
2 director of the division of health to meet the objections
3 of the legislative rule-making review committee and refiled
4 in the state register on the twenty-third day of January,
5 one thousand nine hundred ninety-eight, relating to the
6 division of health (clinical laboratory technician and
7 technologist licensure and certification, 64 CSR 57), is
8 authorized.

9 (d) The legislative rule filed in the state register
10 on the twenty-second day of December, one thousand nine
11 hundred ninety-seven, authorized under the authority of
12 section two, article thirteen-c, chapter sixteen of this
13 code, relating to the division of health (drinking water
14 treatment revolving fund, 64 CSR 49), is authorized.

15 (e) The legislative rule filed in the state register
16 on the fourth day of June, one thousand nine hundred
17 ninety-seven, authorized under the authority of section
18 seven, article one, chapter sixteen of this code, modified
19 by the division of health to meet the objections of the
20 legislative rule-making review committee and refiled in the
21 state register on the sixteenth day of December, one
22 thousand nine hundred ninety-seven, relating to the
23 division of health (sewage systems, 64 CSR 9), is

1 authorized with the following amendment:

2 On page 7, subsection 5.1. following the sentence
3 which ends "local health department offices." by inserting
4 the following: "Provided, That the director shall issue a
5 permit for the installation of a National Sanitation
6 Foundation Class I home aeration unit to be installed on a
7 single family dwelling unit when no other approved system
8 can be installed."

9 (f) The legislative rule filed in the state register
10 on the third day of August, one thousand nine hundred
11 ninety-eight, authorized under the authority of section
12 two, article thirteen-c, chapter sixteen, of this code,
13 modified by the division of health to meet the objections
14 of the legislative rule-making review committee and refiled
15 in the state register on the nineteenth day of January, one
16 thousand nine hundred ninety-nine, relating to the division
17 of health (public water systems capacity development, 64
18 CSR 61), is authorized.

19

20 NOTE: The purpose of this bill is to authorize the
21 Division of Health to promulgate a legislative rule
22 relating to Public Water Systems Capacity Development.

23

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