

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2009 JUL 15 PM 1:19

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: Chapter 19 Article 29-6

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 RULE BEING PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Best Management Practices for Land Application of Waste Products from  
Aquaculture Facilities

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 15, 2009

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture  
State Capitol Complex  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Best Management Practices for Land Application of Waste  
Products from Aquaculture Facilities

1. Authorizing statute(s) citation Chapter 19 Article 29-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 11, 2009

b. What other notice, including advertising, did you give of the hearing?  
Not Applicable

c. Date of Public Hearing(s) or Public Comment Period ended:  
Public Comment Period ended on July 13, 2009.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached     X     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 15, 2009

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

West Virginia Department of Agriculture

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1900 Kanawha Boulevard, East

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Charleston, WV 25305

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mstewart@ag.state.wv.us

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- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

West Virginia Department of Agriculture

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Steve Hannah, Deputy Commissioner

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1900 Kanawha Boulevard, East

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Charleston, WV 25305

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(304) 558-3200

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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**b. Date of hearing or comment period:**

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**c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

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**d. Attach findings and determinations and reasons:**

**Attached** 

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## Stewart, Micky

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**From:** Stewart, Micky  
**Sent:** Tuesday, July 14, 2009 9:22 AM  
**To:** 'Dan Miller'  
**Subject:** RE: Addition to Aquaculture rule

Dan-

The original intent of our rule was that aquaculture waste would be considered agricultural waste. The following change has been made to the definition and should clarify that point.

“Aquatic Waste” means any substance composed of excretal of animals, fish and/or other aquatic life, other than man, and may include other natural materials normally associated with the substance, commonly referred to as manure, as well as water associated with or added to the substance, also considered agricultural waste.

Hopefully this change addresses your concern.

Micky Stewart  
Executive Assistant  
West Virginia Department of Agriculture  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
Phone: (304) 558-3200  
Fax: (304) 558-2203

-----Original Message-----

**From:** Dan Miller [mailto:Dan.Miller@mail.wvu.edu]  
**Sent:** Wednesday, June 17, 2009 3:18 PM  
**To:** Hannah, Steve  
**Cc:** Morgan, Regina  
**Subject:** Addition to Aquaculture rule

Steve,

I have spoken to two large trout producers in WV and they and I agree that somewhere in the rule making process the WVDA should state that aquaculture waste (as defined in the new rule) is considered agricultural waste.

This statement will help to reduce the level of testing required for NPDES discharge permits for medium to large trout farms. There is a consensus within the producers in WV that this classification needs to be clear. As of now, by default, aquaculture waste is industrial waste. If WVDA states that aquaculture waste (as defined in the rule) is considered agricultural waste it will reduce wasteful and expensive testing for the NPDES permits for fish farms.

Thanks for your efforts,

Dan

Daniel Miller, Ph.D.  
Research Associate -Aquaculture  
West Virginia University

P.O.Box 6108  
Morgantown, WV 26505  
ph: 304-293-4832 ext.4465  
fax: 304-293-3752

## Stewart, Micky

---

**From:** Stewart, Micky  
**Sent:** Tuesday, July 14, 2009 8:54 AM  
**To:** 'Mike Shingleton'  
**Subject:** RE: Fish Manure- 2nd DRAFT

Mike,

BMPs will not be included in the rule. If passed by the legislature, the rule would become effective July 2010.

Hope I have addressed your questions.

Micky Stewart  
Executive Assistant  
West Virginia Department of Agriculture  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
Phone: (304) 558-3200  
Fax: (304) 558-2203

---

**From:** Mike Shingleton [mailto:mikeshingleton@wvdnr.gov]  
**Sent:** Monday, June 29, 2009 1:47 PM  
**To:** Hannah, Steve  
**Subject:** RE: Fish Manure- 2nd DRAFT

Will BMPs for Nutrient Management be included in the rule? When will the rule become effective?

Thanks, Mike

Mike Shingleton, Assist. Chief  
Coldwater Fish Management  
WVDNR-Wildlife Resources  
PO Box 67  
Elkins, WV 26241  
Ph:304-637-0245  
Fax:304-637-0250  
[mikeshingleton@wvdnr.gov](mailto:mikeshingleton@wvdnr.gov)

-----Original Message-----

**From:** Stewart, Micky [mailto:mstewart@ag.state.wv.us] **On Behalf Of** Hannah, Steve  
**Sent:** Tuesday, June 09, 2009 10:56 AM  
**To:** Ken Semmens; Mike Shingleton; Wolford, Isaac - Morgantown, WV; tbrandjr@yahoo.com; teresa.m.koon@wv.gov  
**Subject:** Fish Manure- 2nd DRAFT

All,

Attached is the revised **DRAFT** for your review. Thanks to everyone for the excellent comments and suggestions, hopefully all of the concerns have been addressed in this version.

Should you have any additional thoughts, comments or suggestions, please contact my office by 2:00pm tomorrow afternoon.

Again, thanks for the assistance.

Steve Hannah

Micky Stewart  
Executive Assistant  
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1900 Kanawha Boulevard, East  
Charleston, WV 25305  
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State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

**SUMMARY OF PROPOSED RULE**

**BEST MANAGEMENT PRACTICES FOR LAND APPLICATION OF WASTE PRODUCTS  
FROM AQUACULTURE FACILITIES  
TITLE 61 – SERIES 27**

This proposed rule establishes voluntary best management practices to prevent or minimize the entry of aquatic waste into the waters of the State and improving the soil and plant resources of this state.

Research has shown that manure from fish is similar in its chemical composition to other livestock manure and should be treated in the same manner when land applied as a source of agriculture fertilizer. Therefore, the Commissioner recommends that commercial fish operations, federal agencies, state agencies or non-profit organizations dealing in aquaculture research or the production of aquaculture for the benefit of the citizens of the state use the generally accepted Best Management Practices for Nutrient Management



State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

**STATEMENT OF FACTS AND CIRCUMSTANCES**

**BEST MANAGEMENT PRACTICES FOR LAND APPLICATION OF WASTE PRODUCTS  
FROM AQUACULTURE FACILITIES  
TITLE 61 – SERIES 27**

This proposed new rule is as result of authority given the Commissioner of the Department of Agriculture by House Bill 2474 during the 2009 legislative session, which reads in part:

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-29-6; and to amend and reenact §22-15-22 of said code, all relating to the regulation of land-based aquaculture facilities; exempting aquaculture facilities from certain sludge management requirements; and providing the Commissioner of Agriculture rule-making authority to promulgate rules after consultation with the Department of Environmental Protection, concerning the disposal or application of waste produced from an aquaculture facility.

After consultation with the Department of Environmental Protection and industry representatives, we have compiled the attached proposed rule.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Best Management Practices for Land Application of Waste Products from Aquaculture Facilities

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard, East  
Charleston, WV 25305

Phone Number: (304) 558-3200 Email: \_\_\_\_\_

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No change will occur to cost or revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Best Management Practices for Land Application of Waste Products from  
Aquaculture Facilities

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

No fees are associated with proposed rule.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 7-15-09

Signature of Agency Head or Authorized Representative

*Steve Korman*

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

FILED

2009 JUL 15 PM 1:19

SERIES 27  
BEST MANAGEMENT PRACTICES FOR LAND APPLICATION OF WASTE PRODUCTS  
FROM AQUACULTURE FACILITIES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

'61-27-1. General

- 1.1. Scope. – The rule establishes voluntary best management practices to prevent or minimize the entry of aquatic waste into the waters of the State and improving the soil and plant resources of this state.
- 1.2. Authority. – W. Va. Code '19-29-6
- 1.3. Filing Date. –
- 1.4. Effective Date. --
- 1.5. This is a new legislative rule.

'61-27-2. Definitions.

2.1. "Aquatic Waste" means any substance composed of excretal of animals, fish and/or other aquatic life, other than man, and may include other natural materials normally associated with the substance, commonly referred to as manure, as well as water associated with or added to the substance, also considered agricultural waste.

2.2. "Best Management Practices" means activities, procedures and practices to prevent or remedy the introduction of manure residues into waters to the extent technically feasible and economically practical. Best Management Practices are designed to maintain the health and long-term productivity of the soil, water and related plant and animal resources and to minimize the threat of soil, waste and nutrient contamination to the waters of the state.

2.3. "Commercial Fish Operation" means an operation that sells at least One Thousand Dollars of fish products per year.

2.4. "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

'61-27-3. Program and Policy Statements.

Research has shown that manure from fish is similar in its chemical composition to other livestock manure and should be treated in the same manner when land applied as a source of agriculture fertilizer. Therefore, the Commissioner recommends that commercial fish operations, federal agencies, state agencies or non-profit organizations dealing in aquaculture research or the production of aquaculture for the benefit of the citizens of the state use the generally accepted Best Management Practices for Nutrient Management.

July 15, 2009

Attached please find copies of two emails received during the comment period of our proposed rule, Best Management Practices for Land Application of Waste Produces from Aquaculture Facilities. After reviewing the comments received, it was deemed necessary to modify the definition of "Aquatic Waste" as follows:

2.1. "Aquatic Waste" means any substance composed of excretal of animals, fish and/or other aquatic life, other than man, and may include other natural materials normally associated with the substance, commonly referred to as manure, as well as water associated with or added to the substance, also considered agricultural waste.

It is the intention of the West Virginia Department of Agriculture (WVDA) to as clearly define the term "Aquatic Waste" as possible; therefore, addressing questions received from the industry members regarding the term and developing as complete and comprehensive definition as possible at this time.

## Stewart, Micky

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**From:** Stewart, Micky  
**Sent:** Tuesday, July 14, 2009 8:54 AM  
**To:** 'Mike Shingleton'  
**Subject:** RE: Fish Manure- 2nd DRAFT

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Ph:304-637-0245  
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Daniel Miller, Ph.D.  
Research Associate -Aquaculture  
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