

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: W.Va. Division of Environmental Protection TITLE NUMBER: 38

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 20-5M-5

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2E

TITLE OF RULE BEING PROPOSED: Groundwater Protection Regulations
Coal Mining Operations

DATE OF PUBLIC HEARING: October 16, 1992 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: W. Va. Division of Environmental Protection
10 McJunkin Road
Nitro, West Virginia 25143-2506
Attn: Stephen C. Keen

COMMENTS LIMITED TO: ORAL WRITTEN BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Division of Environ. Protection

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Roger T. Hall a.c.
Roger T. Hall



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

State Capitol, Room R-151

Charleston, West Virginia 25305-0310

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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

September 16, 1992

Dave Callaghan. Director
Division of Environmental Protection
#10 McJunkin Road
Nitro, West Virginia 25143

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RE: Proposed Rule - Title 38, Series 2E (Groundwater
Protection Regulations/Coal Mining Operations)

Dear Dave:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,
John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
T:RUL-DEP2.RUL

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FISCAL NOTE FOR PROPOSED RULES 1992 SEP 16 PM 1:29

OFFICE OF WEST VIRGINIA
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Rule Title: Groundwater Protection Regulations Coal Mining Operations

Type of Rule: X Legislative Interpretive Procedural

Agency Div. of Environmental Protection Address 10 McJunkin Road
Nitro, WV 25143-2506

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates.

These regulations will not result in any increase or decrease in state revenues.

3. Objectives of these rules:

These rules set forth a series of practices which surface coal mining operations must follow in order to protect the state's groundwater resources.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date September 16, 1992

Signature of Agency Head or Authorized Representative

Roger J. Hall /c.e

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SUMMARY

These proposed regulations establish a series of practices which are to be complied with by those engaged in surface mining operations in the State for the protection of groundwater resources. The draft rules address areas of groundwater protection which are not provided for under the State Clean Water Act or the State Surface Mining and Reclamation Act.

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TITLE 38
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 2E
GROUNDWATER PROTECTION REGULATIONS
COAL MINING OPERATIONS

1. General.

1.1 **Scope and Purpose.** These regulations establish a series of practices for the protection of groundwater which are to be followed by any person who conducts coal mining operations subject to the provisions of Chapter 20-5M-1 et seq. of the West Virginia Code and subject to regulation under Chapter 22A, Article 3 of the Code of West Virginia, and/or under Chapter 20, Article 5A of the Code of West Virginia, as it relates to coal mining operations.

1.2 **Authority.** West Virginia Code 20-5M-5.

1.3 **Filing Date.** September 16, 1992

1.4 **Effective Date.**

2. Definitions.

2.1 Act means the West Virginia Groundwater Protection Act, West Virginia Code 20-5M-1 et seq.

2.2 Coal Mining Operation means any facility or activity which falls within the definition of "surface mine," "surface mining," or "surface mining operations" set forth in subsection (w), Section (3), Article 3, Chapter 22A of the West Virginia Surface Coal Mining and Reclamation Act.

2.3 Contamination means any man-made or man-induced degradation of the chemical, physical, biological or radiological integrity of groundwater resulting from activities regulated under this rule. The baseline for determination of such degradation shall be the background concentration or level, unless that site has been granted a variance or deviation from background quality as provided in the Act, or is the subject of an order, agreement, or permit which in accordance with the Act would require protection of groundwater quality at a different concentration or level.

2.4 Director means the Director of the Division of Environmental Protection of the Department of Commerce, Labor, and Environmental Resources or the Director's authorized designee.

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Series 2E, Section 2

2.5. Existing Facility or Existing Coal Mining Operation means, for the purpose of this regulation, any facility or activity which was in operation prior to the effective date of this regulation, or on which construction begins prior to ninety (90) days after the effective date of these regulations.

2.6 Impoundment means an area which is a natural topographic depression, man-made excavation, or diked area that is designed or improved in such a manner so as to hold an accumulation of contaminated surface runoff, process wastewater, product, or sewage, or any other liquid substance that could contaminate groundwater.

2.7 Liner means a continuous layer of natural or man-made materials which is sufficient to restrict the downward or lateral movement of contaminants.

2.8 New Facility or New Operation means any coal mining operation, facility, or activity which submits a new application ninety (90) days or longer after the effective date of this regulation.

2.9 Permit means any license, certification, registration, permit, or any other approval granted by an agency authorized to regulate facilities or activities which may have an impact on groundwater.

2.10 Practice means any action which is protective of groundwater.

2.11 Secondary Containment means the use of dikes, berms, synthetic or natural liner systems, double-walled containment vessels, or any combination thereof to prevent contaminants from entering groundwater.

3. Groundwater Protection Plans and Practices for Coal Mining Operations.

3.1 Hydrologic and water quality protection practices established under the authority of Chapter 20, Article 5A, or Chapter 22A, Article 3 of the Code of West Virginia and the legislative rules promulgated thereunder, were enacted in part to protect groundwater and are hereby incorporated by reference into this rule. In cases where such statute or legislative rules are more restrictive or in conflict with the Act or these legislative rules, the statute or rule most protective of groundwater applies.

3.2 Groundwater Protection Plans.

3.2.1 Each groundwater protection plan shall at a minimum contain the following:

3.2.1.a An inventory of all operations and activities that may reasonably be expected to contaminate groundwater, and an indication of the current existence of and the potential for groundwater contamination. These include but are not limited to evaluation of materials handling areas, loading and unloading areas, equipment cleaning, construction activities, maintenance activities, and impoundment areas.

3.2.1.b A description of new and/or existing controls or activities to prevent groundwater contamination.

3.2.1.c Schedules and procedures for employee training addressing the prevention of groundwater contamination.

3.2.1.d Provisions for inspections to be conducted at least every six (6) months to ensure that all elements of the coal mining operation's groundwater protection program are in place, properly functioning, and appropriately managed.

3.2.1.e Groundwater monitoring procedures as deemed appropriate for the facility and/or as required by the Director.

3.2.2 All coal mining operations being conducted one (1) year after the effective date of these regulations shall have implemented a groundwater protection plan; provided, that the groundwater protection plan shall be included with any new permit application submitted under Chapter 22A, Article 3, or Chapter 20, Article 5A of the Code of West Virginia, ninety (90) days or later after the effective date of these regulations; provided, that the Director may waive this requirement for an operation which has been granted Phase II bond release in accordance with Chapter 22A, Article 3, of the Code of West Virginia, if he finds that such is not necessary for the purposes of the Act.

3.2.3 The groundwater protection plan may be integrated with the statement of probable hydrologic consequences and the hydrologic reclamation plan required by Chapter 22A, Article 3 of the Code of West Virginia and regulations promulgated pursuant thereto.

3.2.4 A copy of the groundwater protection plan shall be kept on-site, or at the operator's nearest readily accessible

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office, and shall be made available for review by the Director upon request.

3.2.5 The Director may require modification to groundwater protection plans to assure adequate protection of groundwater. Further, the Director may during review of a groundwater protection plan require such other information as he reasonably needs to evaluate the plan.

3.2.6 In addition to the basic groundwater protection plan requirements, each plan shall address the specific requirements set forth in paragraphs 3 through 7 of this section to the extent the operation includes such areas or features.

3.3 Outside Material Storage or Disposal Areas (Coal, Raw Materials, etc.)

3.3.1 Existing areas at which coal, raw material, product or wastes are stored or disposed shall be evaluated for the existence of and the potential to cause groundwater contamination. Where potential for contamination exists, action shall be taken to eliminate, to the degree practicable, the potential for groundwater contamination.

3.3.2 New areas at which coal, raw material, product or wastes are to be stored shall be designed and operated to prevent contamination of groundwater.

3.4 Loading and Unloading Areas; Distribution and Bulk Facilities.

3.4.1 Loading and unloading stations including but not limited to areas used to load and unload drums, trucks, and railcars shall have spill prevention and control facilities and procedures. Spill containment and cleanup equipment shall be readily accessible.

3.4.2 New distribution facilities shall be designed to prevent spills and leaks from contaminating groundwater.

3.4.3 Bulk containers shall be installed in structures designed to prevent spills and leaks from contaminating groundwater.

3.5 Impoundments.

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3.5.1 Existing impoundments shall be evaluated for the existence of and the potential to cause groundwater contamination. Where potential for contamination exists, action shall be taken to eliminate, to the degree practicable, the potential for groundwater contamination.

3.5.2 New impoundments shall be designed and operated to prevent contamination of groundwater. New impoundments which are found to have the potential to contaminate groundwater shall use a liner or other appropriate control system.

3.5.3 All wastewater impoundments shall install a groundwater monitoring system that is appropriate for the facility.

3.5.4 Closure of Impoundments.

3.5.4.a All wastewater shall be treated and removed. All solids, sludges, etc., should be properly disposed of unless in-place closure is to take place, in which case the material shall be stabilized unless determined innocuous.

3.5.4.b Unless approved for retention as permanent structures, impoundments should be graded, leveled and closed in accordance with regulations promulgated pursuant to the Federal Mine Safety and Health Act, at 30 C.F.R. 77.216, and/or the requirements of the West Virginia Dam Control Act, (Code 20-5D-1 et seq), and/or the West Virginia Surface Coal Mining and Reclamation Act (Code 22A-3-1 et seq), as applicable.

3.6 Pipelines and Pumps.

3.6.1 New pipelines and pumps at coal mining operations must be designed and constructed to prevent contamination of groundwater, and should be installed above ground where practicable. New pipelines or pumps that are installed below ground should have secondary containment or leak detection and control systems.

3.7 Storage Tanks and Drums.

3.7.1 Above-ground storage tanks shall have secondary containment that is appropriate considering the potential to contaminate groundwater. Such secondary containment shall be adequately designed and constructed to contain the materials for a time sufficient to allow removal and disposal without additional contamination of groundwater, but in no case will that

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time be less than seventy-two (72) hours.

3.7.2 New tanks may only be installed underground for overriding safety, legal, security, or fire protection concerns, and shall be provided with leak detection systems.

3.7.3 Secondary containment is not required for sumps and tanks used only as secondary containment for other facilities.

3.7.4 Drums shall be stored so that spills and leaks are contained. Measures shall be taken to prevent drum deterioration caused by weather or other environmental influences and damage due to handling.

4. Monitoring.

4.1 Pursuant to Chapter 22A, Article 3, and Chapter 20, Article 5A of the Code of West Virginia, the Director may require placement and maintenance of a reasonable number of piezometers or monitoring wells at coal mining operations in order to monitor for groundwater contamination and water levels. Existing facilities not currently monitoring groundwater shall do so if required by the Director.

4.2 In addition to the base line groundwater information required by CSR 38-2-3.22 and monitoring required by CSR 38-2-14.7, the Director may require such other base line data and monitoring as he determines appropriate to meet the requirements of these regulations or the Act. A waiver of groundwater monitoring granted under CSR 38-2-14.7(c) may operate as a waiver for the purposes of these regulations and the Act if, in addition to the demonstration required by CSR 38-2-14(c), the applicant demonstrates and the Director finds in writing that monitoring is not necessary for the purposes of the Act or these regulations.

4.3 Monitoring wells or piezometers shall be located, drilled, and constructed in a manner that allows accurate measurements of groundwater contamination and water levels and prevents contamination of groundwater through the finished well hole or casing.

4.4 Monitoring wells or piezometers shall be designed and installed in accordance with applicable rules promulgated pursuant to the Act.

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5. Fees.

5.1 Coal mining operations shall be subject to the fee schedule and fee payment requirements as set forth in CSR 47-55-1 et seq. Failure to remit fees when and as due is a violation of these regulations.

6. Prohibitions.

6.1 It shall be unlawful for any person, unless an authorization has been issued by a groundwater regulatory agency, to deliberately allow crude oil, or any petroleum product derived from crude oil, or septage, or natural gas, or salt water, or any chemical mixture which may contaminate groundwater to escape from any well, pipeline, impoundment, storage tank, treatment unit, or storage container, or to deliberately allow such materials to flow onto the land surface in a manner that could contaminate groundwater.

6.2 Groundwater quality may not be degraded by any facility operation or any activity unless: 1) a valid permit exists and/or 2) the Director has taken action pursuant to subsection (f) - (1), Section 5 of the Act.

7. Enforcement.

7.1 Any person who violates the Act or these regulations shall be subject to civil and criminal penalties, injunctive relief, enforcement orders, and procedures as set forth in Section 10 of the Act.

7.2 The appeal and review procedures set forth in Section 11 of the Act shall be applicable to actions arising under these regulations.

7.3 Civil penalties for violations of these regulations shall be assessed by the Director in accordance with CSR 47-56.

7.4 Violations by a coal operator, arising from acts or omissions subject solely to these regulations or the Act, shall not be counted toward a pattern of violations or in determining the history of violations pursuant to Chapter 22A, Article 3 of the Code of West Virginia, and regulations pursuant thereto.

8. Remediation.

8.1 The Director may conduct or order other persons to

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conduct remedial actions which are appropriate to the type and extent of contamination, and which are subject to applicable permit conditions and variances and deviations from existing water quality and water quality standards that are allowed under the Act. The Director encourages agreements for investigation and cleanups in appropriate cases.

8.2 The use of permanent solutions to the maximum extent practical to correct groundwater contamination is preferred.

8.3 Cleanup actions shall not rely primarily on dilution and dispersion of the substance if active remedial measures are technologically and economically practicable. Natural attenuation of groundwater contamination may be an appropriate remediation response.

8.4 Adequate groundwater monitoring shall be conducted to demonstrate control and containment of the substance. The Director shall specify which parameters should be monitored in a remedial operation. The groundwater monitoring must continue until results assure adequate remedial action was taken.

8.5 In addition to any required remediation, the Director may order the facility or activity to mitigate for the loss of use, or for any significant adverse impact to groundwater.

8.6 Remediation Guidelines. (Reserved)

9. Applicability of Requirements.

9.1 The Director may, to the extent authorized by the Act, waive some or all of the requirements of this rule upon determining in writing that such requirements are not necessary to protect groundwater from contamination.

9.2 Where the standards for facility design or the activities required by this rule are less stringent than the standards and activities required by other statutes, regulations, permit conditions or orders applicable to a facility, the more stringent requirement will apply.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

September 14, 1992

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

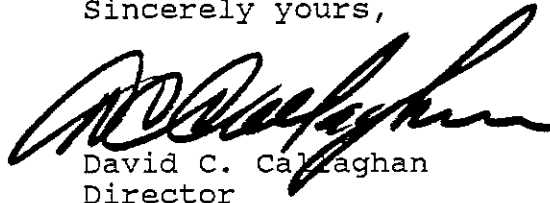
Mr. John Ranson
Cabinet Secretary
Department of Commerce, Labor
and Environmental Resources
Capitol Complex R-151
Charleston, West Virginia 25305

Dear John:

Attached you will find a copy of proposed regulations governing protection of groundwater relative to surface mining operations. These draft rules are a product of several months of work by the groundwater task group established by Ed Hamrick subsequent to passage of the Groundwater Act. The task group met last Friday to prepare this draft to go out for public review and comment. The Legislative Rulemaking Review Committee has granted a thirty-day extension of their final filing date of September 18, 1992.

As you know, it is necessary for your office to approve this action, and it is by this letter that I am requesting your approval for filing the draft regulations with the Secretary of State's office on September 15, 1992. Your cooperation in this regard is appreciated.

Sincerely yours,



David C. Callaghan
Director

DCC;RTH:cc

Attachment

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