

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In this Box

**FILED**

JUN 16 8 50 AM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Mining + Reclamation  
WV Division of Environmental Protection TITLE NUMBER: 38  
RULE TYPE: Interpretative; CITE AUTHORITY W. Va. Code 22-1-3, 22-1-3a,  
22-20  
AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: N/A

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 10

TITLE OF RULE BEING PROPOSED: Office of Environmental Advocate

DATE OF PUBLIC HEARING: July 18, 1994 TIME: 7 p.m.

LOCATION OF PUBLIC HEARING: First Floor Training Room

WV Division of Environmental Protection

10 McJunkin Road

Nitro, West Virginia 25143

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Roger T. Hall

WV DEP

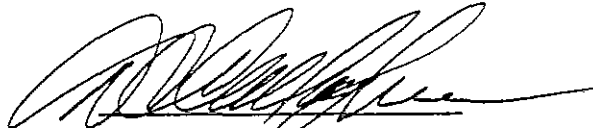
10 McJunkin Road

Nitro, WV 25143

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

  
Authorized Signature

3.80

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Office of Environmental Advocate

Type of Rule: Legislative  Interpretive  Procedural

Agency WV Division of Environmental Protection

Address #10 McJunkin Road

Nitro, WV 25143

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 40,000	\$ -0-	\$ 20,000	\$ 40,000	\$ 45,000
PERSONAL SERVICES	40,000	-0-	20,000	40,000	45,000
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

**2. Explanation of above estimates:**

This rule requires the appointment of an Environmental Advocate position within DEP. The agency has adequate office space, supplies, and equipment, but will be required to pay an estimated salary of \$40,000.

**3. Objectives of these rules:**

This rule is mandated by WV Code 22-20 which authorizes the creation of the position of Environmental Advocate within DEP. This Office will serve the public in a direct way to enhance access to DEP by the public and to allow DEP to assess public interest in environmental programs.

## SUMMARY

The Office and Environmental Advocate position is authorized under Chapter 22, Article 3 of the Code of West Virginia which becomes effective on June 10, 1994. The proposed regulations establish the duties and responsibilities for the Office of Environmental Advocate. The Office of Environmental Advocate will improve public access to the DEP and its various regulatory program offices, as well as assist the agency in its public outreach efforts.

Rule Title: Office of Environmental Advocate

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

Cost to pay estimated salary of \$40,000

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

None

**C. Economic Impact on Citizens/Public at Large.**

None

Date: June 15, 1994

Signature of Agency Head or Authorized Representative

Roger T. Hall

Roger T. Hall

TITLE 38  
INTERPRETATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF ENVIRONMENT

SERIES 10  
OFFICE OF ENVIRONMENTAL ADVOCATE

FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§38-10-1      **General**

1.1.    **Scope** - This interpretative rule governs and controls the qualifications, powers, and duties of the position of Environmental Advocate within the Division of Environmental Protection.

1.2.    **Authority** - West Virginia Code §22-1-3, 22-1-3a, 22-20

1.3.    **Filing Date** -

1.4.    **Effective Date** -

1.5.    **Incorporation by Reference - Federal Counterpart Regulations** - The Director has determined that there is no counterpart federal regulation. Due to the absence of a counterpart federal regulation, a determination of whether or not to incorporate by reference is not required, and the Director is not required to consult with the Environmental Protection Advisory Council on this rule.

1.6.    **Determination of Stringency - Federal Counterpart Regulations** - The Director has determined that there is no counterpart federal regulation, and that the absence of a federal regulation is not the result of a specific federal exemption. This rule is not construed to be more or less stringent than federal regulations.

1.7.    **Constitutional Takings Determination** - The Director has determined and does state that this rule does not constitute a constitutional taking of real property.

§38-10-2      **Appointment, Salary, and Qualifications**

2.1.    **Appointment** - The position of Environmental Advocate will be appointed by, and will serve at the will and pleasure of, the Director of the Division of Environmental Protection in accordance with West Virginia Code §22-20-1.

2.2.    **Salary** - The salary of the position of Environmental Advocate will be set by the Director, and is subject to future adjustments at the discretion of the Director.

2.3.    **Qualifications** - The Director will receive or solicit applications for the position

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2.3.    **Qualifications** - The Director will receive or solicit applications for the position

of Environmental Advocate from persons having the following minimum qualifications:

- 2.3.1. A citizen and permanent resident of the State of West Virginia.
- 2.3.2. A graduate from an accredited college or university with a four-year degree in a field of study directly related to the qualifications, powers, and duties of the position as set forth in this rule.
- 2.3.3. A minimum of two years full-time experience in work directly relating to environmental protection, or other public service work or experience which demonstrates the ability to carry out the powers and duties of the position as set forth in this rule.
- 2.3.4. A working knowledge of the legal requirements and programmatic functions of the Division of Environmental Protection.
- 2.3.5. A demonstrated ability to skillfully communicate (both written and verbal) in a public forum.
- 2.3.6. A demonstrated ability to use word processing software in a micro-computer environment.
- 2.3.7. A valid West Virginia driver's license.

**§38-10-3 Assignment of Duty Station and Support**

3.1. **Assignment** - The Environmental Advocate will be assigned by the Director to an Office within the Division of Environmental Protection.

3.2. **Support** - The Environmental Advocate will be provided with logistical support as follows:

- 3.2.1. Suitable office space within the Division of Environmental Protection Headquarters' Office.
- 3.2.2. Basic complement of office equipment and supplies.
- 3.2.3. Secretarial/clerical support as necessary to carry out the duties of the position.
- 3.2.4. Per-diem and travel expenses, in accordance with the rules of the Governor's Travel Management Office, as necessary to carry out the duties of the position.

3.2.5. Training and educational tuition, fees, and expenses as necessary to carry out the duties of the position.

3.2.6. Use of pool vehicles as available and as necessary to carry out the duties of the position.

**§38-10-4 Powers and Limitations** - The Environmental Advocate will carry out the duties of the position as set forth in this rule, and as prescribed by the Director in accordance with the following:

4.1. The Environmental Advocate will make inquiries and receive responses from the Director's executive staff and the Chief of each Office as necessary to carry out the duties of the position. The Environmental Advocate will not request any information which is confidential, i.e., personnel records, corporate or trade secrets protected by statute, work product, etc., except as authorized by the Director.

4.2. The Environmental Advocate will consult with and request information from other agencies of state or federal government, as necessary to carry out the duties of the position.

4.3. The Environmental Advocate will make public any available information except confidential information as described in subsection 4.1 of this section.

4.4. The Environmental Advocate will attend meetings, hearings, proceedings, etc., as necessary to carry out the duties of the position.

4.5. The Environmental Advocate will take such actions as deemed appropriate on behalf of any person, *provided*, That such action is lawful and is not in conflict with subsections 4.9 and 4.10 of this section.

4.6. The Environmental Advocate will provide advice and council to any person as necessary to carry out the duties of the position.

4.7. The Environmental Advocate will prepare and/or distribute correspondence, documents, records, reports, etc., as appropriate and necessary to carry out the duties of the position.

4.8. The Environmental Advocate will be guided in all actions by the nine purposes set forth in West Virginia Code §22-1-1 (b).

4.9. The Environmental Advocate will not represent any person in, or file on behalf of any person, legal or quasi-legal actions, either in support of or opposed to the Division of Environmental Protection without the expressed approval of the Director, and under the supervision of the Division of Environmental Protection's General Counsel.

4.10. The Environmental Advocate will not organize public campaigns in support of, or in opposition to official positions taken by the Division of Environmental Protection on environmental matters, and will not actively participate in any such organized campaign.

**§38-10-5 Duties of the Environmental Advocate Office** - The Environmental Advocate will perform the duties of the position as follows:

5.1. Develop and implement a process to evaluate public opinion on the quality and effectiveness of the functions of the Division of Environmental Protection. This process will utilize customer survey forms, or other suitable and appropriate methods. The development of this evaluation process should be completed within six (6) months of the date of appointment and updated periodically.

5.2. Attend meetings, public hearings, proceedings, and conferences to collect and distribute information on a range of environmental issues, and to acquire knowledge and skills required to carry out the duties of the position.

5.3 Systematically become familiar with, and acquire a working knowledge of all programmatic functions of the Division of Environmental Protection.

5.4. Provide advice and assistance to citizens seeking resolution of environmental problems. To conserve resources, the Environmental Advocate should concentrate on issues that have wide-ranging, state-wide implications, rather than on isolated or local issues unless they are of a precedent-setting nature.

5.5. Assist the Division of Environmental Protection to develop and publish brochures outlining the services of the position, as well as other information efforts that are appropriately conducted in concert with the Public Information Office or the Director.

5.6. Participate in or sponsor public service media programming on a variety of environmental issues.

5.7. Assist citizens with obtaining information, interpreting information, and directing citizens to sources of technical information.

5.8. Assist and advise citizens on how to participate in state agency processes, such as public comments on rules, statutory amendments, draft permits etc..

5.9. Write articles for publication by the Public Information Office and other print media regarding a variety of advocate activities or areas of environmental interest.

5.10. Direct citizens to appropriate public legal resources.

5.11. Attend executive and other agency staff meetings, where appropriate, and share

information as appropriate.

**5.12.** Assist the Division of Environmental Protection in reaching negotiated settlement of issues in dispute between the Division of Environmental Protection and citizens or citizens' groups as required by the Director.

**5.13.** Develop annually an action plan for the coming year of position operation which contains realistically achievable objectives. The first year plan of operation will be completed within six (6) months of appointment. Each plan will be revised quarterly to accommodate changes in focus arising from public interest or programmatic needs.

**5.14.** Prepare an annual statement summarizing the accomplishments of the position to be published in the Division of Environmental Protection's annual report.