

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED
MAY 25 AM 9 37
OFFICE OF 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 Energy TITLE NUMBER: 38

CITE AUTHORITY WV Code 22-1-15, 22-1-16, 22B-1-2, 22B-1-7 and 20-5A

AMENDMENT TO AN EXISTING RULE: YES NO

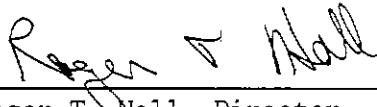
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Miscellaneous Water Pollution Control

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: N/A

TITLE OF RULE BEING PROPOSED: N/A

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.



Roger T. Mall, Director
Research, Special Projects and
Regulatory Affairs

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Miscellaneous Water Pollution Control

Type of Rule: Legislative Interpretive Procedural

Agency WV Dept. of Energy Address 1615 Washington St., East
Charleston, West Virginia 25311

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

2. Explanation of above estimates.
No increase or decrease of revenue to the state is anticipated as a result of implementing these regulations.

3. Objectives of these rules:
To establish procedures to prevent spills from operating oil and/or gas wells.

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.

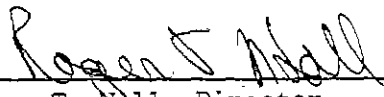
None

C. Economic Impact on Citizens/Public at Large.

None

Date April 25, 1990

Signature of Agency Head or Authorized Representative



Roger T. Hall, Director
Research, Special Projects and
Regulatory Affairs

FILED

DATE: May 25, 1990

1990 MAY 25 AM 9:37

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FROM: West Virginia Division of Energy

LEGISLATIVE RULE TITLE: Miscellaneous Water Pollution Control

1. Authorizing statute(s) citation 22-1-15; 22-1-16;
22B-1-2; 22B-1-7; and 20-3-A
2. a. Date filed in State Register with Notice of Hearing:
March 30, 1990
- b. What other notice, including advertising, did you give of the hearing?
See attached listing
- c. Date of hearing(s): April 30, 1990
- 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)
May 25, 1990
- f. Name and phone number of agency person to contact for additional information:
Roger T. Hall 348-3500

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.

N/A

b. Date of hearing: _____

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

TITLE 38
LEGISLATIVE RULES
DEPARTMENT OF ENERGY
DIVISION OF OIL & GAS
SERIES 11
MISCELLANEOUS WATER POLLUTION CONTROL

38-11-1. General.

1.1. Scope. -- This legislative rule establishes requirements relating to discharge notification and response, waste load allocations, small wastewater treatment plants, permit application filing fee, and outlet markers, and spill prevention, for facilities operated in connection with the exploration, development, production, storage and recovery of oil and gas, and related mineral resources in this state.

1.2. Authority. -- W. Va. Code §§22-1-13, 22-1-15, 22-1-16, 22B-1-2, 22B-1-7 and 20-5A-1 through 24.

1.3. Filing Date. ~~June-127-1987~~ _____

1.4. Effective Date. ~~June-127-1987~~ _____

1.5. Former Rule Superseded. -- This legislative rule supersedes West Virginia Legislative Rule, Water Resources Board, Chapter 20-5 and 20-5A, Series 3, Special Regulations in effect on July 11, 1985, to the extent that any provision of said Series 3 pertains to the exploration, development, production, storage and recovery of oil and gas, and related mineral resources in this state. The provisions of said Series 3 had continued in effect pursuant to West Virginia Code 22-1-5 for the benefit of the Department of Energy to the extent that they pertained to the provisions of The West Virginia Energy Act.

38-11-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions set forth in West Virginia Code 20-5A-2, 22B-1-1, and 22-1-3 shall apply to this rule in addition to the definitions set forth in Series 17 and 18 of the Division's rules.

38-11-3. Discharge notification and response.

3.1. The owner or operator or person in charge of a facility subject to these regulations from which a reportable discharge as

described in Section 3.3 occurs shall notify the Division of Oil and Gas by calling 1-800--642-3074 1-800-354-3312 immediately, but in no case, later than twenty-four (24) hours after becoming aware of the discharge.

3.2. The person who notifies the Division pursuant to 3.1 shall report the type of substance and the estimated quantity discharged, if known; the location of the discharge; actions the person reporting the discharge proposed to take to contain, clean-up and remove the substance, if any, and any other information concerning the discharge which the Division may request at the time of notification. A written verification of such notification shall be submitted upon request of the Division.

3.3. The following discharges from a facility subject to these regulations are "reportable discharges" within the meaning of this section:

3.3.1. Any discharge which would be reportable pursuant to Section 311(b) of the Federal Water Pollution Control Act Amendment of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. 1321, and the regulations promulgated thereunder;

3.3.2. Any upset or bypass causing effluent limitations established under the general permit to be exceeded; or

3.3.3. Any pit failure which results in a discharge to any surface water of the state.

3.4. The owner or operator of a facility from which a reportable discharge has occurred, or any person responsible for causing such discharge, shall attempt to stop the discharge and shall take reasonable measures to contain, clean-up and remove the discharge, to the extent he is capable of doing so.

38-11-4. Waste load allocations.

4.1. Sewage Discharges - Waste load allocations for sewage dischargers are to be issued by the Director to potential applicants for a Water Pollution Control Permit (West Virginia Code 22B-1-7) to assist with planning of wastewater treatment works which will meet effluent limitations guidelines and not violate State Water Quality Standards for the receiving waters. Applications for the waste load allocations shall be made for any facilities which will produce or result in a discharge of sewage to the state's surface waters. Waste load allocations are not intended to be, and shall not be interpreted to be, an advance

approval of wastewater treatment ~~facilities~~ facilities which may be proposed nor is it an assurance that a Water Pollution Control Permit will be issued. It is emphasized that waste load allocations are issued on major effluent criteria only for planning purposes.

4.1.1. Application forms may be prescribed by the Director requiring submission of necessary information and data by the applicant to enable the Division of Oil and Gas to make a waste load allocation determination. Such determination shall be valid for a period of time specified by the Director. Re-application for a new waste load allocation will be required upon expiration of the preceding waste load allocation unless application for a Water Pollution Control Permit has been filed.

4.1.2. Waste load allocations shall prescribe the concentration and quality of significant wastewater substances and physical, chemical, or biological conditions for the proposed discharge. The waste load limitations shall represent thirty (30) day and seven (7) day average values for biochemical oxygen demand, solids, nitrogen, and other criteria defining the load, except for pH and dissolved oxygen which are ~~instantaneous~~ instantaneous limits, if it is deemed necessary to assure protection of water uses immediately downstream from the point of discharge to the receiving waters.

4.1.3. Waste load allocations are not required prior to an application to dispose of treated domestic sewage effluent by land treatment and disposal methods. Applications for a Water Pollution Control Permit for such purpose will be reviewed on a case-by-case basis. Such systems may require a Water Pollution Control Permit from the Director, Division of Oil and Gas, Department of Energy.

4.2. Other discharges - (Reserved).

4.3. Waste load allocations for the achievement of water quality standards shall normally be based on a specified low flow. The design flow for this purpose shall be the minimum, mean seven (7) consecutive day flow with a ten (10) year return frequency.

4.3.1. United States Geological Survey data may be used in determining the mean seven (7) consecutive day drought flows with a ten (10) year recurrence interval but this does not preclude the use of other reliable data systems as they become available.

4.4. In cases where a waste discharge is proposed to a wet weather stream, the allocation shall define the treatment plant effluent quality which will not affect designated uses of downstream waters in the nearest downstream segment of the stream, but in no case less than the established water quality standard for that segment.

4.5. More stringent requirements may be specified by the Director where necessary to protect downstream uses, or where special conditions such as recreation, or water supply impoundments, or danger to aquatic, or animal life exists.

4.6. A waste load allocation may be denied when the assimilative capacity of the receiving waters is being fully utilized or if the additional waste load would result in a violation of water quality standards.

38-11-5. Small wastewater treatment plants.

5.1. The requirements of this section apply to sewage treatment plants of forty thousand (40,000) gallons per day capacity or less at facilities subject to these regulations.

5.2. Operational reliability for such plants shall be provided in order that pollutants are not discharged during periods of power failure.

5.3. The wastewater treatment structure shall be protected against physical damage for the twenty-five (25) year flood level and operability be maintained during the ten (10) year flood level.

5.4. No construction, installation, modification or operation of a wastewater disposal system (treatment plant sewers, life stations, and appurtenances) shall be performed until a Water Pollution Control Permit has been issued for such facilities.

38-11-6. Outlet markers.

6.1. In accordance with West Virginia Code 22B-1-7 and 20-5A-5 each holder of a Water Pollution Control Permit for a facility subject to these regulations shall post a permanent marker at the establishment under permit in accordance with the following unless an alternative marker requirement is established by permit:

6.1.1. A marker shall be posted on the stream bank at each surface water outlet covered by the permit.

6.1.2. The marker shall consist of the name of the establishment to which the permit was issued, the permit number, and the outlet number.

6.1.3. The marker shall be a minimum of two (2) feet by two (2) feet and shall be a minimum of three (3) feet above ground level.

38-11-7. Spill Prevention - Production Facilities

7.1. At each production facility, which includes all wells, flowlines, separation equipment, storage facilities, injection facilities, and auxiliary non-transportation-related equipment and facilities, all operators must have appropriate containment and/or diversionary structures or equipment to prevent discharged oil or other pollutants from reaching the waters of the state. One of the following preventative systems or its equivalent shall be used as a minimum; unless an appropriate water pollution control permit provides for another method of spill prevention:

7.1.1. Dikes, berms, or retaining walls sufficiently impervious to contain spilled oil or other pollutants;

7.1.2. Curbing;

7.1.3. Culverting, gutters or other drainage systems;

7.1.4. Weirs, booms or other barriers;

7.1.5. Spill diversion ponds;

7.1.6. Retention ponds;

7.1.7. Sorbent materials.

7.2. At tank batteries central treatment stations, the dikes or equivalent required under 7.1 should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs 7.5, 7.6, and 7.7 of this section. Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods.

7.3. Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

7.4. No tank should be used for the storage of oil or other pollutants unless its material and construction are compatible with the material stored and the conditions of storage.

7.5. All tank battery and central treatment plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in 7.1. Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

7.6. All tanks containing oil or other pollutants should be visually examined by a competent person as to their condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

7.7. New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation, to prevent spills. Consideration should be given to one or more of the following:

7.7.1. Adequate tank capacity to assure that a tank will not overflow should a pumper/gauger be delayed in making his regular rounds;

7.7.2. Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank;

7.7.3. Adequate vacuum protection to prevent tank collapse during a pipeline run;

7.7.4. High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

7.8. All above ground valves and pipelines, including gathering lines and transportation lines, should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

9.1.5. Maximum storage or handling capacity of the facility and normal daily throughput;

9.1.6. Description of the facility, including maps, flow diagrams, and topographic maps;

9.1.7. The complete copy of the SPCC Plan with any amendments as required under 40 C.F.R. §112, or Best Management Plan (BMP) as required under any permit;

9.1.8. The cause(s) of such spill, including a failure analysis of system or sub-system in which the failure occurred;

9.1.9. The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

9.1.10. Additional preventive measures taken or contemplated to minimize the possibility of recurrence;

9.1.11. Such other information as the Director may reasonably require pertinent to the Plan or spill event.

9.2. The Director shall review the information submitted and shall issue an order which will require any corrective action he deems necessary to protect against future spills, and forward his recommendations to the Regional Administrator for EPA.

7.9. Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an discharge.

7.10. Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

§38-11-8. Spill Prevention - Workover Operations

8.1. Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil or other pollutants from reaching waters of state.

8.2. Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

8.3. Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well.

§38-11-9. Submittal of Spill Prevention Plans

9.1. Notwithstanding compliance with any division regulation or permit, whenever a facility has: Discharged more than 1000 U.S. gallons into the waters of the state in a reportable discharge or discharged oil or other pollutants into the waters of the state in two reported discharges within any twelve month period, the owner or operator of such facility shall submit to the Director the following:

9.1.1. Name of the facility;

9.1.2. Names(s) of the owner or operator of the facility;

9.1.3. Location of the facility;

9.1.4. Date and year of initial facility operation;

PUBLIC HEARING RECORD
WEST VIRGINIA DIVISION OF ENERGY
MISCELLANEOUS WATER POLLUTION CONTROL REGULATIONS

CSR 38-11

April 30, 1990

The hearing record was opened at 9:00 a.m. April 30, 1990 with Ted Streit, Director of the Oil and Gas Section presiding. No persons appeared to give testimony. The hearing record was closed at 9:30 a.m.

Written comments were received prior to close of the comment period.

CHARLESTON
E. GLENN ROBINSON
CHARLES McELWEE
JOHN C. PALMER IX
DAVID M. FLANNERY
JOSEPH S. BEESON
DAVID K. HIGGINS
M. ANN BRADLEY
ROBERT D. FLUHARTY
JOSEPH M. PRICE
KIM BROWN POLAND
MICHAEL B. VICTORSON
DAVID L. KYGER
TIMOTHY M. MILLER
WILLIAM C. PORTH, JR.
LYNN A. SMITH
HENRY C. BOWEN
WILLIAM E. ROBINSON
DOUGLAS C. McELWEE
DAVID L. YAUSSY
EDWARD L. KROPP
BRENT D. BENJAMIN
ROBERT E. LANNAN II

LAW OFFICES
ROBINSON & McELWEE
P. O. BOX 1791
CHARLESTON, WEST VIRGINIA 25326

TELEPHONE (304) 344-5800
TELEFAX (304) 344-9566
600 UNITED CENTER

LEXINGTON OFFICE
P. O. BOX 1580
LEXINGTON, KENTUCKY 40592
TELEPHONE (606) 231-8131
TELEFAX (606) 255-1168
LEXINGTON FINANCIAL CENTER

SARAH STUMP KOLS
CHRISTOPHER B. POWER
R. CLARKE VANDERVORT
KENT J. GEORGE
KATHY G. BECKETT
SCOTT A. CHURILLA
DAVID S. RUSSO
KEITH J. GEORGE
JOHN C. CUMMINGS
KATHERINE M. MASON
MARK A. TOOR
W. BRADLEY SORRELLS

LEXINGTON
EDWARD N. HALL
R. ALLAN WEBB
JOHN D. McCANN
GINA S. McCANN
BRAD A. SPRAYBERRY

*ADMITTED TO PRACTICE IN
KENTUCKY AND WEST VIRGINIA

April 25, 1990

Mr. Theodore M. Streit
Director
Oil and Gas Section
West Virginia Division of Energy
1615 Washington Street, E.
Charleston, West Virginia 25305

Re: Comments Regarding Proposed SPCC
Rule on Behalf of IOGA of West
Virginia and the West Virginia
Oil and Natural Gas Association.

Dear Director Streit:

Your March 26, 1990, proposal to revise CSR §§38-1-1 et seq. to establish a state SPCC program has been carefully reviewed by the Independent Oil and Gas Association of West Virginia and the West Virginia Oil and Natural Gas Association. The comments are offered on behalf of these organizations.

We recognize that the regulation that you are considering for adoption is similar in certain aspects to the regulation of the United States Environmental Protection Agency ["EPA"] related to SPCC plans. To the extent that it is DOE's intention to adopt a regulation identical to that of EPA's to allow DOE independent enforcement powers with respect to these issues, we have no objection. It is significant, however, that your proposed regulation deviates from EPA requirements in several ways. These comments will focus on the more significant of these deviations.

Whereas EPA's regulation is applicable to the prevention of discharges of oil, the regulation that you have proposed would be applicable not only to oil, but also to "other pollutants". It would, therefore, appear that the proposal would require operators

ROBINSON & McELWEE

Mr. Theodore M. Streit
April 23, 1990
Page 2

to apply these regulations to brine -- a material and unwarranted expansion of existing EPA requirements. See proposed CSR §38-11-7. At a time when EPA is actively considering a significant tightening of its SPCC requirements applicable to oil, we do not believe it is appropriate to extend the state program to include all sources of pollutants to surface streams. We urge you to limit any state SPCC regulation to oil or, at a minimum, to establish independent requirements with respect to facilities handling "other pollutants".

In addition, we object to the provisions of proposed Section 7.1 which includes within the scope of the term production facility such items as "gathering lines." Inasmuch as the remainder of the regulation would impose a requirement that such facilities be provided with dikes and berms, we hope you will agree with us that it is completely infeasible and unjustifiable to extend such requirements (even if they were otherwise justified) to gathering lines. Containment devices around gathering lines would likely be precluded by land-use restrictions as well as practical impossibilities that would be associated with providing containment over literally miles of pipelines. Perhaps more significantly there is no compelling environmental protection reason why such a requirement should be imposed on the industry. We urge that this definition be significantly revised.

We also note that proposed Section 7.2 requires dikes around all tank batteries, without exception. EPA's regulations found at 40 C.F.R. §112.7(e)(5)(ii)(a) makes it expressly clear that dikes are required only "where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters". We do not believe there is any legal or factual basis for requiring dikes around tanks in a circumstance where there is no reasonable possibility of an accidental discharge reaching navigable waters. We urge you to include in your regulation the omitted language from the federal program.

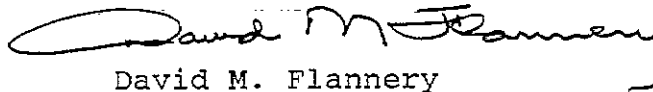
We also point out that important language has been omitted from Section 9.1 of your proposed regulation which has the effect of establishing the level at which reports should be made to the director on the occasion of spills. We urge that the language be modified to conform to the federal regulation to make it clear that the reportable event related to the discharge of oil in two spill events be related to "harmful quantities" which are "reportable under Section 311(b)(5) of the Federal Water Pollution Control Act."

ROBINSON & McELWEE

Mr. Theodore M. Streit
April 23, 1990
Page 3

We greatly appreciate the opportunity to provide you with these comments on your proposed regulation and we invite you to contact us with any questions you may have regarding these matters.

Very truly yours,

A handwritten signature in cursive script that reads "David M. Flannery". The signature is written in dark ink and is positioned above the typed name.

David M. Flannery

DMF/kck

cc: Mr. George E. Dials
Rex Burford, Esquire
Mr. David T. Stamm

RESPONSE TO COMMENTS FILED AT PUBLIC HEARING ON PROPOSED SPILL
REGULATIONS - AMENDMENTS TO WV CSR 38-11

Notice of the proposed rule making to prevent spills and discharges into the waters of the state, was made on March 30, 1990, by the W. Va. Division of Energy Oil & Gas section as authorized under W. Va. Code 22B-1-2, 22B-1-7, 20-5A, 22-1-12, 22-1-15 and 22-1-16,

The proposed regulations endeavor to prevent spills or reportable discharges of oil and other stored substances in the oil and gas industry, and to allow the Oil and Gas Section to examine plans or procedures of operators who show a record of repeated discharges.

Written and oral comments were solicited on or before April 30, 1990, and the Section received comments from two organizations representing numerous oil and gas operators. These comments can be viewed or copies obtained by writing to: Director, Oil and Gas Section, Division of Energy, W. Va. Department of Commerce, Labor & Environmental Resources, 1615 Washington Street, Charleston, W. Va. 25311.

All of the comments were given careful consideration and a number of changes were made to the regulations. These changes incorporated either suggestions made in the comments or ideas initiated by the suggestions.

A discussion of these changes is as follows:

Comments to the proposed regulations had four (4) issues of concern with one overall concern of "to the extent that it is DOE's intention to adopt a regulation identical to that of EPA's to allow DOE independent enforcement powers with respect to these issues, we have no objection. It is significant, however, that your proposed regulation deviates from EPA requirements in several ways."

The state has found however, that the existing federal regulations fall short in preventing spills and reportable discharges from the State's oil and gas operators. The Oil and Gas Section's records show the following reported spill events occurred in the last 18 months.

Spill type	Number of spills	Percent	Total spilled volume in bbls	Percent
Crude oil	336	80	2,973.6	19
Salt water	5	1	157.0	1
Fresh water*	12	3	3,228.0	21
Fresh water* with soap	28	7	6,400.0	42
Frac. fluid*	5	1	1,175.0	8
Pit leak*	18	4	999.7	7
Other	14	4	347.0	2
Totals	418	100	15,272.3	100

*Drilling fluids permit

Oil and Gas Section data suggests that 80% of these spills are crude oil, yet almost 80% of the volume of spills comes from non-crude oil sources.

It is the Oil and Gas Section's intention to bring both these areas under better control.

The first specific issue of those commenting felt that the proposed regulations should pertain to oil spill prevention only. The Oil and Gas Section would like to make its regulations and practices uniform so that there is less confusion and also has a problem with other types of spills than just oil. Therefore, it has modified the language in 7.1 to allow for permit specific requirements for various other pollutants, and if there is no other specific pollutant spill prevention, then these regulations will apply.

The second issue of those commenting was that the proposed regulation 7.1 included gathering lines in the requirements for diking. The Oil and Gas Section agrees that this provision is unnecessary in 7.1 and has moved the regulation affecting gathering lines to regulation 7.8. Regulation 7.8 was expanded to include all oil pipelines under the supervision of the Oil and Gas Section since approximately 60% of oil spills originate from pipelines.

The third issue raised by those commenting was that proposed Regulation 7.2 requires dikes around all tank batteries, without exception. The Oil and Gas Section did not interpret the regulation

in this manner, in that the regulation only requires some method of containment of which diking is one option. The regulation does require all tanks to have some sort of containment or diversion. The Oil and Gas Section believes that in West Virginia this is a minimum requirement to keep pollutants out of the waters of the state, due to our hilly terrain. Therefore, the Oil and Gas Section believes it is necessary to leave this regulation as is.

The last issue raised by those commenting was the requirement that spill events were not defined under state regulations. The Oil and Gas Section agrees this must be defined so that the Oil and Gas Section may focus its resources on those operators, who are, for one reason or another, repeatedly causing spills into the waters of the state. Therefore, it has modified the regulations to define when a spill becomes significant enough to report. The Oil and Gas Section changed regulation 9.1 to require that information be submitted when two or more reportable discharges which are defined in Regulation 3.3 occur in less than a year.

The Oil and Gas Section believes it has now taken all public comment under consideration in its proposed regulations and will file them with Legislative Rule Review Committee.



STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
1615 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE: 348-3500

FILED

MAY 25 AM 9:37

GASTON CAPERTON
GOVERNOR

March 23, 1990

STATE OF WEST VIRGINIA
GEORGE E. DIALS
COMMISSIONER

Dear Publisher:

Attached is a public hearing notice on proposed rules and regulations for the West Virginia Department of Energy.

You may wish to make your readers aware of this notice and the public hearing through a public service announcement. This is not a legal notice.

Your cooperation is appreciated.

Sincerely yours,

Roger T. Hall
Director, Research, Special
Projects, and Regulatory
Affairs

RTH:crs

Attachment

PUBLIC NOTICE MAILING LIST

1. Clarksburg Publishing Company
Clarksburg Exponent and Telegram
324-326 Hewes Avenue
Clarksburg, West Virginia 26301
 2. Inter-Mountain
Post Office Box 1339
Elkins, West Virginia 26241
 3. Herald Dispatch
946 Fifth Avenue
Huntington, West Virginia 25720
 4. Beckley Newspapers, Inc.
Raleigh Register and Beckley Post-Herald
Post Office Drawer P or R
Beckley, West Virginia 25801
 5. The Dominion Post
Greer Building
Morgantown, West Virginia 26505
 6. The Ogden Newspapers, Inc.
Wheeling News Register and Intelligencer
1500 Main Street
Wheeling, West Virginia 26003
 7. The Charleston Gazette
Post Office Box 2993
Charleston, West Virginia 25330
-