

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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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: Office of Oil + Gas
WV Div. of Environmental Protection TITLE NUMBER: 35*

CITE AUTHORITY WV Code 22-1-3, 22-1-10, 22-1-11, 22-6-2, 22-6-7 & 22-11-1
through 22-11-27

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1 *

TITLE OF RULE BEING AMENDED: Miscellaneous Water Pollution Control Rules

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

TITLE OF RULE BEING PROPOSED: _____

*Previously 38CSR11

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

7.20



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

July 28, 1997

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 35CSR1 - Miscellaneous Water Pollution
Control Rule

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,


John E. Caffrey
Commissioner

JEC:cc

Attachment

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Environmental Protection - Office of Oil and Gas

LEGISLATIVE RULE TITLE: Miscellaneous Water Pollution Control Rules

1. Authorizing statute(s) citation WV Code 22-1-3, 22-1-10, 22-1-11, 22-6-2, 22-6-7, & 22-11-1 through 22-11-27.

2. a. Date filed in State Register with Notice of Hearing
June 19, 1997

b. What other notice, including advertising, did you give of the hearing?

Indepth, Public Notice Bulletin, State-Wide News Release

c. Date of Hearing(s) July 22, 1997

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received XX

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

July 31, 1997

f. Name and phone number(s) of agency person(s) to contact for additional information:

Theodore M. Streit, Chief

WV Division of Environmental Protection - Office of Oil & Gas

#10 McJunkin Road, Nitro, WV 25143-2506

304-759-0514

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: N/A

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

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 35CSR1 -Miscellaneous Water Pollution Control Rules

A. AUTHORITY: WV Code 22-1-3, 22-1-10, 22-1-11, 22-6-2, 22-6-7, and 22-11-1 through 22-11-27

B. SUMMARY OF RULE:

Rule establishes requirements relating to waste discharges and spill prevention for facilities operated in connection with the exploration, production, storage and recovery of oil and gas.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Technical clean-up to change code references, punctuation, spelling, etc.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

The federal counterpart regulation is 40CFR, Part 112; is not adopted by reference but is a comparable rule; and is as effective as the federal rule.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION
ADVISORY COUNCIL:**

"At their meeting, July 2, the Environmental Protection
Advisory Council reviewed and discussed this rule - there
were no substantive changes as a result of their discussion.
See attached minutes of that meeting."

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 2, 1997 - Office of Air Quality's Conference Room

The seventh meeting of the DEP Advisory Council was held July 2, 1997 in the Office of Air Quality's Conference Room in Charleston. The meeting was called to order at 1:00 p.m. by Chairman Jack Caffrey.

Attending:

Advisory Council Members:

Jack Caffrey, Chairman
Jacqueline Hallinan
Larry Harris
Martha Moore
William Raney
Rick Roberts
William Samples

DEP:

Mark Scott	John Johnston
Cap Smith	John Benedict
Mike Dorsey	Lucy Pontiveros
Russ Hunter	Karen Watson
Ted Streit	
Gene Coccari	

Discussion:

1. Review minutes of May 5, 1997 meeting.

The minutes of the May 5 meeting were approved without amendment.

2. Review Proposed DEP Rules.

In accordance with WV Code §22-1-3(c) which requires the Director of the Division of Environmental Protection to consult with the Advisory Council members prior to proposing any new rule (or amendments to a rule), the following rules were presented to the members. Mark Scott told the Council members that if they have comments concerning the amendments to the rules they will be made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office August 1. The Council members may also submit written comments to Carrie Chambers until the close of each respective public hearings. These will also be made part of the rule package when filed.

a) Office of Mining and Reclamation - 38CSR2 "Surface Mining Reclamation Rule":

Russ Hunter, Counsel for OMR, explained the proposed amendments to the Surface Mining Rule. He said the amendments mainly relate to four areas: 1) to allow for coal removal incidental to commercial development of real estate; 2) re-mining provisions; 3) special reclamation costs; and 4) ownership and control issues.

Gene Coccari, Manager of the Ownership and Control Unit in the Office of Mining and Reclamation, briefed Council members on amendments to that section of the rule. He explained that the proposed state rules appear to be more stringent than the interim federal rule currently in place in that the proposed rules allow DEP to link and block parent companies of permittee, which is not specifically addressed in the federal rule.

b) Office of Waste Management - 33CSR20 "Hazardous Waste Management Rule":

Mike Dorsey, Office of Waste Management, explained that the Hazardous Waste rule is updated annually to reflect changes in the federal regulations and were not substantive changes. He said there are two other amendments in the rule: 1) the appendix that currently contains a synopsis of the small quantity generator rule has been eliminated; and 2) a change in the groundwater monitoring requirements for hazardous waste permits (which is being done in conjunction with a change in the groundwater rule). Also, the rule is amended by clarifying what information is to be included in the administrative record of a permit.

In response to a question by Bill Raney, Mike explained that the proposed rule differs from existing federal requirements in three ways: 1) We require all generators of hazardous waste to notify of their activity, EPA does not require conditionally-exempt small quantity generators (CESQGS) to notify; 2) The EPA regulations say that CESQGS can put their wastes into municipal landfills if they are permitted to accept that waste. West Virginia's Solid Waste rule states that no hazardous waste may go into the state's landfills; therefore, none are permitted to accept the waste; and 3) In the permitting requirements, we have given the chief of Waste Management greater latitude in deciding what sampling parameters must be utilized and what frequently may be required at permitted facilities than the federal rule.

c) Office of Oil and Gas: 35CSR1 "Miscellaneous Water Pollution Control Rule"; 35CSR2 "Oil and Gas Operations - Solid Waste Rule"; 35CSR3 "Coalbed Methane Wells Rule"; 35CSR4 "Oil and

Gas Wells and Other Wells Rule"; 35CSR5 "Designation of Future Use and Inactive Status for Oil and Gas Wells Rule"; and 35CSR6 "Abandoned Wells Rule":

Ted Streit, Chief of the Office of Oil and Gas, stated that Series 1 through 6 of the Oil and Gas rules were not part of DEP's 1997 Technical Cleanup Bill. Therefore, they are being filed this session to update code references, provisions that are contrary to current law, office, names, titles, punctuation, etc. There are no substantive changes to these rules.

Ted said two additional oil and gas rules - 38CSR16 "Certification of Gas Wells" and 38CSR14 "Dam Safety" are being repealed. 38CSR16 is being repealed because the underlying state and federal statute that required the agency to classify the wells no longer exists, and 38CSR14 is being repealed and a comparable rule in the Office of Water Resources (47CSR34 - "Dam Safety") enforces dam safety.

d) Office of Air Quality - 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage or Disposal Facilities"; 45CSR33 "Acid Rain Provisions and Permits"; 45CSR44 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"; 45CSR23 "To Prevent and Control Emissions From Municipal Solid Waste Landfills"; and 45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations:"

John Johnston, Chief of the Office of Air Quality, presented Air Quality's proposed rule amendments to the Council. He stated that 45CSR25, 45CSR33, and 45CSR34 were amended to incorporate by reference federal requirements that are necessary to keep the program up to date under Title 5, and that they do not contain any substantive changes.

John said the proposed new rule, 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills" will establish standards of performance and emission guidelines for municipal solid waste landfills. The standards will require facilities with municipal solid waste landfill emissions exceeding approximately 55 tons per year to install an air pollution control system within 2.5 years. These standards will also be adopted by reference. The advisory council inquired about the stringency of the rule, the difference between non-municipal and municipal solid wastes, and if the rule will impact landfills that are closed.

John said the agency filed 45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations" as an emergency rule on June 27 as authorized in HB 2333. This emergency rule will establish specific emissions performance

standards for pot and marble fiberglass operations, and will only affect one existing fiberglass production facility located in Vienna, Wood County. A counterpart, permanent rule effecting the same amendment, has also been filed.

After discussion of OAQ's rules, John Johnston asked John Benedict, Assistant OAQ Chief, to discuss the ongoing Ozone Transport Assessment Group (OTAG) issue and the outcome of meetings with EPA and other affected states.

The Council members inquired about the non-attainment situation in the Weirton area (and other areas in West Virginia). John Benedict briefly discussed the current status of that situation and the possible EPA-imposed sanctions within one year if West Virginia's SO² and PM¹⁰ SIP are deficient.

The Council members were then briefed by Earl Billingsley of the Air Quality Office on the application by Virginia Power for an opacity variance at their Mt. Storm Power plant.

3) Consideration of issues raised at May 5, 1997 meeting.

(1) Mr. Caffrey informed the Council that DEP will hold a training session for DEP staff on how to more effectively work with the Legislature.

(2) Mark explained that the list of policies and procedures requested by the Council members is in the process of being completed. He distributed a list of policies compiled to date. After a brief discussion, Council requested that Mark provide a list of DEP policies and procedures, the title, effective date, policy number, and the name of DEP's office contact for the Council's review.

(3) Mark updated the Council members on the pay equity issue raised in the last meeting and informed them that DEP's EEO coordinator would be undertaking a more detailed study later this year to clarify if DEP has a problem in this area.

(4) The Council members expressed concern over the TMDL issue and why there was such a change in the ranking of streams between the 1994 and 1996 303(d) lists provided to EPA. Council requested an update on this issue at a future meeting.

4) The following issues were discussed for upcoming meetings:

(1) Regulation of the timbering industry - Mark Scott suggested that Bill Maxey, Director of the Division of Forestry, be invited to attend a future Council meeting to discuss this issue;

- (2) The Legislative agenda for the 1998 Session;
- (3) Presentation by DEP's Manager of Information Services on DEP's one-stop grant and our vision of future computer capabilities;
- (4) Acid mine drainage;
- (5) Valley fills and mountain top removal practices at mining operations;
- (6) Industry's concerns about the Office of Oil and Gas as a regulatory agency;
- (7) Status of the Elkins landfill;
- (8) Corps of Engineers nationwide permits and conditions required by DEP in those permits;
- (9) An update of the Volunteer Remediation and Development program;
- (10) Regulation of chicken waste in the poultry industry in the eastern panhandle;
- (11) DEP's proposed consolidated building; and
- (12) Status of the coal mining mitigation, including council consideration of supporting studies funded by DEP's mitigation fund.

A brief discussion was held concerning date and place of the next Council meeting. Bill Raney suggested incorporating the next meeting with the national AML Conference scheduled at Canaan Valley August 17-20.

The meeting concluded at 4:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 35CSR1 - Miscellaneous Water Pollution Control Rules

Type of Rule: Legislative Interpretive Procedural

Agency: WV Division of Environmental Protection - Office of Oil & Gas

Address: #10 McJunkin Road
Nitro, West Virginia 25143-2506

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
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:

N/A

3. Objectives of these rules:

Technical clean-up to update Code references, punctuation, etc. for existing rules.

Rule Title: 35CSR1 - Miscellaneous Water Pollution Control Rules

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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


N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: 7/14/97

Signature of Agency Head or Authorized Representative



**TECHNICAL CLEANUP
OFFICE OF OIL AND GAS**

35CSR1

PREVIOUSLY 38CSR11

The paragraph numbering, punctuation, etc., in this rule has been modified to conform to the Secretary of State's legislative rule, 153CSR6.

RECEIVED

97 JUL 31 AM 9:27

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 38
LEGISLATIVE RULES
BUREAU OF ENVIRONMENT
~~DIVISION OF ENERGY~~ DIVISION OF ENVIRONMENTAL
PROTECTION
SECTION OFFICE OF OIL AND GAS

SERIES 41 1
MISCELLANEOUS WATER POLLUTION CONTROL RULES

~~§38-11-~~ 35-1. 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.V. Code §§22-1-13, 22-1-15, 22-1-16, 22B-1-2, 22B-1-7 and 20-5A-1 through 24, WV Code §§22-1-3, 22-1-10, 22-1-11, 22-6-2, 22-6-7, and 22-11-1 through 27.~~

1.3. Filing Date.

1.4. Effective Date. ~~June 1, 1991.~~

1.5. ~~Former Rule Superseded.~~ -- ~~This legislative rule supersedes West Virginia Legislative Rule, Water Resources Board, Chapter 20-5 and 20-5A [22-6-7 and 22-11], 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 the Department of Energy [Division of Environmental Protection] to the extent that they pertained to the provisions of the West Virginia Energy Act.~~

~~§38-11-2.~~ 35-1-2. 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 W. Va. Code §22-11-3, §22-6-1 and §22-1-2~~ shall apply to this rule in addition to the definitions set forth in Series ~~17 and 18~~ 4 of the ~~Division's~~ office's rules.

~~§38-11-3.~~ 35-1-3. Discharge notification and response.

3.1. The owner or operator or person in charge of a facility subject to these ~~regulations~~ rules from which a reportable discharge as described in subsection 3.3 occurs shall notify the ~~Division Office~~ of Oil and Gas by calling ~~1-800-354-3312~~ 1-800-642-3074 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 office~~ pursuant to subsection 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 office~~ may request at the time of notification. A written verification of such notification shall be submitted upon request of the ~~Division office~~.

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

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

3.3.c. 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.~~ 35-1-4. Waste load allocations.

4.1 Sewage Discharges - Waste load allocations for sewage dischargers are to be issued by the ~~Director~~ Chief to potential applicants for a Water Pollution Control Permit (~~West Virginia 22B-1-7~~ W. Va. Code §22-6-7) 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 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.a. Application forms may be prescribed by the ~~Director~~ chief requiring submission of necessary information and data by the applicant to enable the ~~Division-Office~~ 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~~ chief. Reapplication 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.b. Waste load allocations shall prescribe the concentration and quality of significant wastewater substances and physical, chemical, or biological conditions of 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 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.c. 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-Chief, Section Office~~ of Oil and Gas, ~~Division of Energy, Division of Environmental Protection~~.

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.a. 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~~ Chief 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. 35-1-5.~~ 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~~ rules.

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 of 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 Waste Pollution Control Permit has been issued for such facilities.

~~§38-11-6.~~ 35-1-6. Outlet markers.

6.1. In accordance with ~~West Virginia Code 22B-1-7~~ W. Va. Code §22-6-7 and 20-5A-5-§22-11 each holder of a Water Pollution Control Permit for a facility subject to these ~~regulations~~ rules 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.a. A marker shall be ported on the stream bank at each surface water outlet covered by the permit.

6.1.b. 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.c. 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.~~ 35-1-7. 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 shall 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.a. Dikes, berms, or retaining wall sufficiently impervious to contain spilled oil or other pollutants;

7.1.b. Curbing;

7.1.c. Culverting, gutters or other drainage system;

7.1.d. Weirs, booms or other barriers;

7.1.e. Spill diversion ponds;

7.1.f. Retention ponds; or

7.1.g. Sorbent materials.

7.2. At tank batteries central treatment stations, the dikes or equivalent required under subsection 7.1 shall have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area shall be inspected as provided in subsections 7.3, 7.6, and 7.8 of this section. Accumulated oil on the rainwater shall 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 shall be picked up and returned to storage or disposed of in accordance with approved methods.

7.4. No tank shall 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 shall 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 subsection 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 shall 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 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. At a minimum an owner or operator should have one or more of the following:

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

7.7.b. Overflow equalizing line between tanks so that a full tank can overflow to an adjacent tank;

7.7.c. Adequate vacuum protection to prevent tank collapse during a pipeline run; or

7.7.d. 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, shall 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.

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

7.10. Production facilities shall 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. 35-1-8. 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 shall 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. 35-1-9. Submittal of Spill Prevention Plans.

9.1. Notwithstanding compliance with any ~~division office regulation rule~~ 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~~ chief the following:

9.1.a. Name of the facility;

9.1.b. Name(s) of the owner or operator of the facility;

9.1.c. Location of the facility;

9.1.d. Date and year of initial facility operation;

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

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

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

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

9.1.j. Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

9.1.k. Such other information as the ~~Director~~ chief may reasonably require pertinent to the Plan or spill event.

9.2. The ~~Director~~ chief 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.

Report of the Public Hearing on Oil and Gas Regulations on July 22, 1997

- 35CSR1** **Miscellaneous Water Pollution**
- 35CSR2** **Oil and Gas Operations - Solid Waste Rule**
- 35CSR3** **Coalbed Methane**
- 35CSR4** **Oil and Gas Wells and other Wells**
- 35CSR5** **Designation of Future Use and Inactive Status**
- 35CSR6** **Abandoned Wells**

and the repeal of

- 38CSR14** **Dam Control**
- 38CSR16** **Certification of Gas Wells**

The hearing was opened at 6:00 PM on July 22, 1997 at DEP Nitro headquarters. No comment was given at the hearing and no one attended. One person offered written comments and those are enclosed.

DAVID B. McMAHON • ATTORNEY AT LAW**922 Quarrier St., Suite 525, Charleston, West Virginia 25314****Phone 304-344-3144 • Fax 344-3145****e-mail wvdavid@access.mountain.net**

July 22, 1997

Theodore Streit
WV Division of Environmental Protection
#10 McJunkin Road
Nitro, WV 25143-2506

Re: Public Comment on
Amended and Redesignated Rules
35 C.S.R. 1, 2, 3, 4, 5, and 6, and
and Repealed Rules 38 C.S.R. 14 and 16.

Dear Mr. Streit,

I represent two classes of small surface owners. One is surface owners who do not own the minerals or whose predecessors have leased the minerals. These surface owners either do, or may in the future, have oil or gas wells on their lands over which they have no control and from which they receive little if any benefit. The other class of surface owners I represent own land close enough to existing and potential oil and gas wells that the beneficial use of their property may be impaired and their ground and surface water is exposed to adverse effects from problem oil and gas well drilling on neighboring lands.

Please consider this one document as comments upon each of the Rule changes proposed.

Most of the changes are substantively benign, merely doing "clean-up" of cross references and so on. This is beneficial to the users of the rules. I have a comment or two on the small substantive changes.

The changes to Series 1 through 6 are stated to be, and appear to be, technical clean-up for references to changed code and so on. In that regard this change is good government and the Division of Environmental Protection should be praised for updating these rules to promote ease of use by those in the industry and the members of the general public. In addition, when the issues are complex or important enough, those in the industry and the general public may call upon lawyers for assistance. The easier these Rules are to use, the less lawyer time is needed to understand them, and the more likely it is that lawyers who do not specialize in the area can understand and use them.

38 C.S.R. 16 was the product of the federal National Gas Policy Act which no longer exists. So the repeal of this Rule is a similarly applaudable clarification.

I understand that the repeal of 38 C.S.R. 14 flows from the second reorganization of the environmental protection structure of state government. I understand that the provisions of this rule are identical to other rules that are enforceable by other branches of state government and that there is no substantive change in the protections of the citizens from hazardous dams and impoundments. This clarification of the law is also therefore welcome.

There are a few substantive changes that are stated to have the effect of conforming the Rule to the statute. I would like to comment on a few of those.

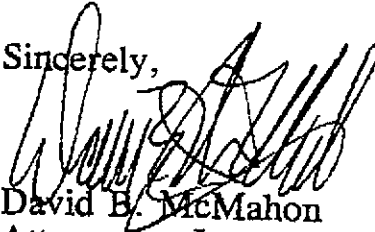
Series 3, "Coal Bed Methane Wells" makes a change at new 8.2.a which limits the ability of the Office of Oil and Gas to allow variances from the cement content requirements. It is my recollection that this variance was permitted when the head of the Office of Oil and Gas was required to have an engineering degree. That requirement has been removed. The head may also have had civil service protection. That is no longer true. At the time such variances were placed into the law I had no objection. Variances would encourage the evolution of newer and better materials and procedures. In addition the professional requirements of the head of the Office of Oil and Gas, and his civil service status, protected the process somewhat from political influence. Despite the benefits of allowing variances, I now heartily approve removing variance authority because of the removal of civil service protection and professional requirements.

Series 4, "Oil and Gas Wells and other Wells", makes a change at 5.2.1.5 regarding fees which is consistent with the statute. The Office of Oil and Gas is grossly under-funded with less than 20 inspectors for tens of thousands of wells. Any increase in revenues to improve funding the for Office of Oil and gas is laudable.

Series 6, "Abandoned Wells" makes a change at 6.3.c that conforms the rule to the statute. All oil and gas wells and their internal structures will eventually deteriorate. Once things have deteriorated, then many of those wells will cause pollution problems. All wells should therefore be properly plugged as soon as funds can be made available. The statute so requires. Therefore it is proper to delete the provision of the rule which approves the non-plugging of wells for "an indefinite period."

Thank you for your consideration of these comments. If comments from others raise points to which I feel the need to respond, I ask that I be allowed to do so.

Sincerely,



David B. McMahon
Attorney at Law

DBM/dbm

Response to comments.

- 35CSR1** **Miscellaneous Water Pollution**
- 35CSR2** **Oil and Gas Operations - Solid Waste Rule**
- 35CSR3** **Coalbed Methane**
- 35CSR4** **Oil and Gas Wells and other Wells**
- 35CSR5** **Designation of Future Use and Inactive Status**
- 35CSR6** **Abandoned Wells**

and the repeal of

- 38CSR14** **Dam Control**
- 38CSR16** **Certification of Gas Wells**

The Division received one comment to the proposed changes to the above listed regulations. These comments were in support of the proposed changes and other issues that were not part of the regulations. No changes were made to the proposed regulations.