

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: WV Division of Environmental Protection -Oil & Gas 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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

\$3.60



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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

State Capitol - Room MB-49  
Charleston, West Virginia 25305  
(304) 347-4840

Senator: Mike Ross, Co-Chairman  
Delegate: Mark Hunt, Co-Chairman  
Counsel: Debra A. Graham

November 18, 1997

Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Audrey R. Ross, Admin. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Theodore M. Streit, Chief  
WV Div. of Env. Protection  
Office of Oil & Gas  
#10 McJunkin Road  
Nitro, WV 25143-2506

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Miscellaneous Water Pollution Control Rules (35CSRL)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.



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

CECIL H. UNDERWOOD  
GOVERNOR

JOHN E. CAFFREY  
COMMISSIONER

December 2, 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 that I am giving approval to file the above-referenced rule as notice of rule modification with your office and Legislative Rule-Making Review Committee.

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,

A handwritten signature in cursive script, appearing to read "John E. Caffrey".

John E. Caffrey  
Commissioner

JEC:cc

Attachment

**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.

TITLE 38 35  
LEGISLATIVE RULES  
BUREAU OF ENVIRONMENT  
~~DIVISION OF ENERGY~~ DIVISION OF ENVIRONMENTAL PROTECTION  
SECTION OFFICE OF OIL AND GAS

SERIES ~~11~~ 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.~~ 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~~ this 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~~ this 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~~ this 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~~ this 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.