

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: WV Division Environmental Protection
Office of Oil & Gas TITLE NUMBER: 35

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Miscellaneous Water Pollution
Control Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 765

SECTION 64-11-1, PASSED ON March 21, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1991

Carrie J. Chambers
Authorized Signature

4.01



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

CECIL H. UNDERWOOD
GOVERNOR

May 4, 1998

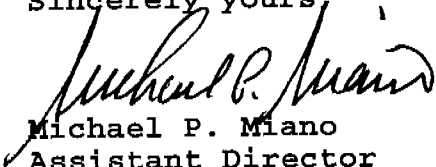
Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

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 with your office as a final rule authorized by SB 765, signed by Governor Underwood March 21, 1998.

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,

Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Ted Streit, O&G

RULE PROMULGATION HISTORY ABSTRACT

**TITLE 35 -- SERIES 1
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS**

MISCELLANEOUS WATER POLLUTION CONTROL RULE

| | |
|-------------------------|--|
| June 19, 1997 | Notice of Public Hearing Filed with Secretary of State |
| July 22, 1997 | Public Hearing Held |
| July 31, 1997 | Agency Adopted Rule Filed with Secretary of State and Legislative Rulemaking Review Committee |
| December 9, 1997 | Modified Rule Filed with Secretary of State and Legislative Rulemaking Review Committee |
| March 10, 1998 | SB 765 Passed Legislature |
| March 21, 1998 | SB 765 Signed by Governor |
| May 15, 1998 | Final Filed with Secretary of State |

TITLE 35
LEGISLATIVE RULES
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

SERIES 1
MISCELLANEOUS WATER POLLUTION CONTROL RULES

§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. -- 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. April 8, 1991

1.4. Effective Date. June 1, 1991.

§35-1-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions set forth in 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 4 of the office's rules.

§35-1-3. Discharge notification and response.

3.1. The owner or operator or person in charge of a facility subject to this rule from which a reportable discharge as described in subsection 3.3 occurs shall notify the Office of Oil and Gas by calling 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 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 office may request at the time of notification. A written verification of such notification shall be submitted upon request of the office.

3.3. The following discharges from a facility subject to 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.

§35-1-4. Waste load allocations.

4.1 Sewage Discharges - Waste load allocations for sewage dischargers are to be issued by the Chief to potential applicants for a Water Pollution Control Permit (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 chief requiring submission of necessary information and data by the applicant to enable the 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 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 Chief, Office of Oil and Gas, 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 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.

§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 this rule.

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.

§35-1-6. Outlet markers.

6.1. In accordance with W. Va. Code §22-6-7 and §22-11 each holder of a Water Pollution Control Permit for a facility subject to this rule 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.

§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.

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 the 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.

§35-1-9. Submittal of Spill Prevention Plans.

9.1. Notwithstanding compliance with any office 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 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 chief may reasonably require pertinent to the Plan or spill event.

9.2. The 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.

LSH

35-1

H. B. 4157

1 Bill-DEP

(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

2

3

[Introduced January 30, 1998; referred to the

4

Committee on the Judiciary.]

5

6

7

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9

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to miscellaneous water pollution control.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**

22 **PROMULGATE LEGISLATIVE RULES.**

23 **§64-3-1. Division of environmental protection.**

4157

1 (a) The legislative rule filed in the state register
2 on the thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section four, article five, chapter twenty-two of this
11 code, relating to the division of environmental protection
12 (standards of performance for new stationary sources
13 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register
15 on the twenty-ninth day of August, one thousand nine
16 hundred ninety-six, authorized under the authority of
17 section four, article five, chapter twenty-two of this
18 code, relating to the division of environmental protection
19 (emission standards for hazardous air pollutants pursuant
20 to 40 CFR Part 63, 45 CSR 34), is authorized.

21 (d) The legislative rule filed in the state register
22 on the twenty-eighth day of August, one thousand nine
23 hundred ninety-six, authorized under the authority of

1 section six, article seventeen, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 twenty-second day of October, one thousand nine hundred
6 ninety-six, relating to the division of environmental
7 protection (underground storage tank insurance trust fund,
8 33 CSR 32), is authorized.

9 (e) The legislative rule filed in the state register
10 on the twenty-ninth day of August, one thousand nine
11 hundred ninety-six, authorized under the authority of
12 section three, article one, chapter twenty-two of this
13 code, modified by the division of environmental protection
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twentieth day of December, one thousand nine hundred
17 ninety-six, relating to the division of environmental
18 protection (WV/NPDES regulations for coal mining
19 facilities, 47 CSR 30), is authorized.

20 (f) The legislative rule filed in the state register
21 on the thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section four,
23 article three, chapter twenty-two of this code, modified by

1 the division of environmental protection to meet the
2 objections of the legislative rule-making review committee
3 and refiled in the state register on the twenty-first day
4 of February, one thousand nine hundred ninety-seven,
5 relating to the division of environmental protection
6 (surface mining and reclamation regulations, 38 CSR 2), is
7 authorized, with the following amendments:

8 "On page three, subsection 2.4, by striking out the
9 words "Coal seams commonly associated with such minerals
10 may include, but are not limited to Waynesburg, Washington,
11 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
12 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
13 Stockton Lewiston";

14 On page three, subsection 2.4, line eight, by striking
15 out the words "these seams are", and inserting in lieu
16 thereof the words "the seam is";

17 On page nine, subsection 2.43, line two, after the
18 word "highwall", by inserting the words "except in
19 operations where the entire upper horizon above the lowest
20 coal seam is proposed to be partly or entirely removed";

21 On page sixteen, subsection 2.95, line seven after
22 the "any", by inserting the word "substantial";

23 On page eighteen, subsection 2.108, line two, after

1 the word "stream." by adding the following: Examples
2 include wildlife ponds, settling basins and all ponds and
3 facilities or structures used for water treatment.;

4 On page nineteen, subsection 2.120, line three, by
5 striking the word "or" and inserting in lieu thereof the
6 word "and";

7 On page twenty-nine, subsection 3.2.e., after the word
8 "period" by striking the remainder of the subdivision
9 3.2.e.;

10 On page forty-nine, subsection 3.14.b.7., by striking
11 the entire paragraph;

12 On page forty-nine, subsection 3.14.b.8., by striking
13 the entire paragraph;

14 On page forty-nine, by renumbering the remaining
15 paragraphs;

16 On page fifty-one, subparagraph 3.14.b.14E, line one,
17 before the word "A", by inserting the words "If requested
18 by the Director";

19 On page fifty-one, subsection 3.14.b.15.B., by
20 striking the entire subparagraph, and inserting in lieu
21 thereof the following: 3.14.b.15.B. Surface water must be
22 diverted around or over the material by properly designed
23 and stabilized diversion channels which have been designed

1 using the best current technology to provide protection to
2 the environment or the health, welfare and safety of the
3 public. The channel shall be designed and constructed to
4 ensure stability of the remaining material, control
5 erosion, and minimize water infiltration into the remaining
6 material.;

7 On page seventy-two, subdivision 3.29.a, line five
8 after the word "IBR", by inserting the words "or where it
9 has been demonstrated to the satisfaction of the Director
10 that limited coal removal on areas immediately adjacent to
11 the existing permit is the only practical alternative to
12 recovery of unanticipated reserves or necessary to enhance
13 reclamation efforts or environmental protection";

14 On page eighty-six, by inserting a new subsection 3.35
15 to read as follows: 3.35. All grade measurements and
16 linear measurements in this rule shall be subject to a
17 tolerance of two percent (2%). All angles in this rule
18 shall be measured from the horizontal and shall be subject
19 to a tolerance of five percent (5%): *Provided, however,*
20 this allowable deviation from the approved plan does not
21 affect storage capacity and/or performance standards.

22 On page one hundred eight, subdivision 5.5.c., line
23 two, after the word "landowner", by striking the remainder

1 of the paragraph and inserting in lieu thereof the words
2 "requesting the permanent structures be left for
3 recreational or wildlife propagation purposes or for any
4 beneficial uses to the landowner";

5 On page one hundred twelve, subdivision 6.5.a., line
6 five, after the word "Sunday." by adding the following:
7 *Provided, however,* the Director may grant approval of a
8 request for Sunday blasting if the operator demonstrates to
9 the satisfaction of the Director that the blasting is
10 necessary and there has been an opportunity for a public
11 hearing.;

12 On page one hundred twenty-six, paragraph 9.2.i.2,
13 after the word "achieved" by inserting: An alternate
14 maximum or minimum soil pH may be approved based on the
15 optimum pH for the revegetation species.;

16 On page one hundred thirty, line one, paragraph
17 9.3.h.1., by striking out the paragraph in its entirety,
18 and inserting in lieu thereof: 9.3.h.1. The minimum
19 stocking rate of commercial tree species shall be in
20 accordance with the approved forest management plan
21 prepared by a registered professional forester. In no case
22 may the rate be less than four hundred fifty (450) stems
23 per acre of commercial tree species;

1 On page one hundred thirty, paragraph 9.3.h.2., by
2 striking out the paragraph in its entirety, and by
3 renumbering the subsequent paragraphs;

4 On page one hundred thirty, in renumbered paragraph
5 9.3.h.2., after the word "than", by striking out the words
6 "four hundred fifty (450)", and inserting in lieu thereof
7 "three hundred (300);" On page one hundred thirty, in
8 renumbered paragraph 9.3.h.2., after the word "acre", by
9 inserting the words "or the rate specified in the forest
10 management plan, whichever is greater,";

11 On page two hundred twenty-two, subdivision 14.11.e,
12 line 6, by striking out the word "operable" and by
13 inserting in lieu thereof "such condition that operations
14 could be resumed within sixty (60) days";

15 On page two hundred twenty-three, subdivision
16 14.11.f., line four, by striking out the word "operative",
17 and by inserting in lieu thereof the words "such condition
18 that the operations could be resumed within sixty (60)
19 days";

20 On page two hundred twenty-three, subdivision
21 14.11.f., line four, after the word "is", by inserting the
22 words "protected from unauthorized entry";

23 On page two hundred thirty-eight, subparagraph

1 14.15.b.6.A., line five, after the word "exceed", by
2 striking out the words "fifty (50) percent of the total
3 permit acreage, or four hundred (400) acres, whichever is
4 less, on operations which consist of at least three spreads
5 of equipment", and inserting in lieu thereof the words
6 "five hundred (500) acres on operations which consist of
7 multiple spreads of equipment";

8 On page two hundred thirty-nine, subsection 14.15.c.,
9 line three, after the word "regraded", by inserting the
10 words "and stabilized";

11 On page two hundred thirty-nine, subsection 14.15.c.,
12 line four, after the word "plan", by striking out the
13 "comma" and the remainder of the subparagraph, and
14 inserting in lieu thereof the words: The following shall
15 not be included in the calculation of disturbed area.;

16 On page two hundred forty, paragraph 14.15.c.2., line
17 seven, after the word "benches", by inserting the words
18 "without regard to like thickness";

19 On page two hundred forty, paragraph 14.15.c.5, line
20 two, after the word "graded", by inserting the words "with
21 material placed in a stable, controlled manner which will
22 not subsequently be moved".

23 (g) The legislative rule filed in the state register

1 on the twenty-ninth day of August, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section ten, article five, chapter twenty-two of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-
7 sixth day of November, one thousand nine hundred
8 ninety-six, relating to the division of environmental
9 protection (confidential information, 45 CSR 31), is
10 authorized.

11 (h) The legislative rule filed in the state register
12 on the twenty-ninth day of August, one thousand nine
13 hundred ninety-six, authorized under the authority of
14 section four, article five, chapter twenty-two of this
15 code, modified by the division of environmental protection
16 to meet the objections of the legislative rule-making
17 review committee and refiled in the state register on the
18 sixteenth day of January, one thousand nine hundred
19 ninety-seven, relating to the division of environmental
20 protection (to prevent and control air pollution from
21 hazardous waste treatment, storage or disposal facilities,
22 45 CSR 25), is authorized.

23 (i) The legislative rule filed in the state register

1 on the fifth day of February, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 three, article twenty-two, chapter twenty-two of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-
7 fifth day of February, one thousand nine hundred
8 ninety-seven, relating to the division of environmental
9 protection (voluntary remediation and redevelopment, 60 CSR
10 3), is authorized.

11 (j) That title sixty, series one of the code of state
12 rules be amended by deleting the current interpretative
13 rule for the office of environmental advocate and inserting
14 in lieu thereof the following legislative rule, to read as
15 follows:

16 **"§61-10-1. General.**

17 1.1. **Scope.** - This legislative rule governs and
18 controls the appointment and qualifications of the position
19 of Environmental Advocate within the Division of
20 Environmental Protection.

21 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,
22 22-20.

23 1.3. **Filing Date** -

1 1.4. **Effective Date** - July 1, 1997.

2 §61-10-2. **Appointment, Salary and Qualifications.**

3 2.1. **Appointment.** - The position of Environmental
4 Advocate will be a full-time position, will be appointed by
5 the Director, and will serve at the will and pleasure of
6 the Director of the Division of Environmental Protection in
7 accordance with the West Virginia Code §22-20-1.

8 2.2. **Salary.** - The salary of the position of
9 Environmental Advocate will be set by the Director and is
10 subject to future adjustments at the discretion of the
11 Director.

12 2.3. **Qualifications.** - The Director will receive or
13 solicit applications for the position of Environmental
14 Advocate from persons having the following minimum
15 qualifications:

16 2.3.a. A citizen and resident of the State of West
17 Virginia.

18 2.3.b. A graduate from an accredited college or
19 university with a four-year degree in a field of study
20 directly related to the qualifications, powers, and duties
21 of the position as set forth by the director.

22 2.3.c. A minimum of two years full-time or cumulative

1 experience in work directly related to environmental
2 protection, or other public service work or experience
3 which demonstrates the ability to carry out the powers and
4 duties of the position as set forth by the director.

5 2.3.d. A working familiarity with some of the legal
6 requirements and programmatic functions of the Division of
7 Environmental Protection.

8 2.3.e. A demonstrated ability to skillfully verbally
9 and by writing communicate in a public forum.

10 2.3.f. A demonstrated ability to use word processing
11 software for a computer and other necessary computer
12 skills as determined by the director.

13 2.3.g. A valid West Virginia driver's license.

14 **§61-10-3. Powers and Limitations -**

15 The Environmental Advocate will carry out the duties
16 of the position as set forth in this rule, and as
17 prescribed by the Director in accordance with the
18 following:

19 3.1. The Environmental Advocate will be guided in all
20 actions by the policy statement and the nine purposes set
21 forth in West Virginia Code §22-1-1 (b).

22 3.2. The Environmental Advocate may not in any
23 official capacity represent any person in, or file on

1 behalf of any person, legal or quasi-legal actions, either
2 in support of or opposed to the Division of Environmental
3 Protection without the expressed approval of the Director,
4 and under supervision of the Division of Environmental
5 Protection's General Counsel.

6 **3.3.** The Environmental Advocate may not in any
7 official capacity organize public campaigns in support of,
8 or in opposition to official positions taken by the
9 Division of Environmental Protection on environmental
10 matters, and will not in any official capacity actively
11 participate in any such organized campaign."

12 (k) The director of the division of environmental
13 protection is hereby authorized to propose for promulgation
14 an emergency rule to amend a current legislative rule
15 relating to monitoring of air quality (to prevent and
16 control particulate air pollution from manufacturing
17 process operation, 45 CSR 7).

18 (l) The legislative rule filed in the state register
19 on the eighteenth day of March, one thousand nine hundred
20 ninety-seven, relating to the division of environmental
21 protection (yard waste composting, 47 CSR 38E) is
22 authorized.

23 (m) The legislative rule filed in the state register

1 on the thirty-first day of July, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 two, article six, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the ninth
7 day of December, one thousand nine hundred ninety-seven,
8 relating to the division of environmental protection
9 (miscellaneous water pollution control, 35 CSR 1), is
10 authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 Division of Environmental Protection to promulgate a
14 legislative rule relating to Miscellaneous Water Pollution
15 Control.

16

17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.

Senate Bill No. 288

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to miscellaneous water pollution control.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

1 (a) The legislative rule filed in the state register
2 on the thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section four, article five, chapter twenty-two of this
11 code, relating to the division of environmental protection
12 (standards of performance for new stationary sources
13 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register
15 on the twenty-ninth day of August, one thousand nine
16 hundred ninety-six, authorized under the authority of
17 section four, article five, chapter twenty-two of this
18 code, relating to the division of environmental protection
19 (emission standards for hazardous air pollutants pursuant
20 to 40 CFR Part 63, 45 CSR 34), is authorized.

21 (d) The legislative rule filed in the state register
22 on the twenty-eighth day of August, one thousand nine
23 hundred ninety-six, authorized under the authority of

1 section six, article seventeen, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 twenty-second day of October, one thousand nine hundred
6 ninety-six, relating to the division of environmental
7 protection (underground storage tank insurance trust fund,
8 33 CSR 32), is authorized.

9 (e) The legislative rule filed in the state register
10 on the twenty-ninth day of August, one thousand nine
11 hundred ninety-six, authorized under the authority of
12 section three, article one, chapter twenty-two of this
13 code, modified by the division of environmental protection
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twentieth day of December, one thousand nine hundred
17 ninety-six, relating to the division of environmental
18 protection (WV/NPDES regulations for coal mining
19 facilities, 47 CSR 30), is authorized.

20 (f) The legislative rule filed in the state register
21 on the thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section four,
23 article three, chapter twenty-two of this code, modified by

1 the division of environmental protection to meet the
2 objections of the legislative rule-making review committee
3 and refiled in the state register on the twenty-first day
4 of February, one thousand nine hundred ninety-seven,
5 relating to the division of environmental protection
6 (surface mining and reclamation regulations, 38 CSR 2), is
7 authorized, with the following amendments:

8 "On page three, subsection 2.4, by striking out the
9 words "Coal seams commonly associated with such minerals
10 may include, but are not limited to Waynesburg, Washington,
11 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
12 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
13 Stockton Lewiston";

14 On page three, subsection 2.4, line eight, by striking
15 out the words "these seams are", and inserting in lieu
16 thereof the words "the seam is";

17 On page nine, subsection 2.43, line two, after the
18 word "highwall", by inserting the words "except in
19 operations where the entire upper horizon above the lowest
20 coal seam is proposed to be partly or entirely removed";

21 On page sixteen, subsection 2.95, line seven after
22 the "any", by inserting the word "substantial";

23 On page eighteen, subsection 2.108, line two, after

1 the word "stream." by adding the following: Examples
2 include wildlife ponds, settling basins and all ponds and
3 facilities or structures used for water treatment.;

4 On page nineteen, subsection 2.120, line three, by
5 striking the word "or" and inserting in lieu thereof the
6 word "and";

7 On page twenty-nine, subsection 3.2.e., after the word
8 "period" by striking the remainder of the subdivision
9 3.2.e.;

10 On page forty-nine, subsection 3.14.b.7., by striking
11 the entire paragraph;

12 On page forty-nine, subsection 3.14.b.8., by striking
13 the entire paragraph;

14 On page forty-nine, by renumbering the remaining
15 paragraphs;

16 On page fifty-one, subparagraph 3.14.b.14E, line one,
17 before the word "A", by inserting the words "If requested
18 by the Director";

19 On page fifty-one, subsection 3.14.b.15.B., by
20 striking the entire subparagraph, and inserting in lieu
21 thereof the following: 3.14.b.15.B. Surface water must be
22 diverted around or over the material by properly designed
23 and stabilized diversion channels which have been designed

1 using the best current technology to provide protection to
2 the environment or the health, welfare and safety of the
3 public. The channel shall be designed and constructed to
4 ensure stability of the remaining material, control
5 erosion, and minimize water infiltration into the remaining
6 material.;

7 On page seventy-two, subdivision 3.29.a, line five
8 after the word "IBR", by inserting the words "or where it
9 has been demonstrated to the satisfaction of the Director
10 that limited coal removal on areas immediately adjacent to
11 the existing permit is the only practical alternative to
12 recovery of unanticipated reserves or necessary to enhance
13 reclamation efforts or environmental protection";

14 On page eighty-six, by inserting a new subsection 3.35
15 to read as follows: 3.35. All grade measurements and
16 linear measurements in this rule shall be subject to a
17 tolerance of two percent (2%). All angles in this rule
18 shall be measured from the horizontal and shall be subject
19 to a tolerance of five percent (5%): *Provided, however,*
20 this allowable deviation from the approved plan does not
21 affect storage capacity and/or performance standards.

22 On page one hundred eight, subdivision 5.5.c., line
23 two, after the word "landowner", by striking the remainder

1 of the paragraph and inserting in lieu thereof the words
2 "requesting the permanent structures be left for
3 recreational or wildlife propagation purposes or for any
4 beneficial uses to the landowner";

5 On page one hundred twelve, subdivision 6.5.a., line
6 five, after the word "Sunday." by adding the following:
7 *Provided, however,* the Director may grant approval of a
8 request for Sunday blasting if the operator demonstrates to
9 the satisfaction of the Director that the blasting is
10 necessary and there has been an opportunity for a public
11 hearing.;

12 On page one hundred twenty-six, paragraph 9.2.i.2,
13 after the word "achieved" by inserting: An alternate
14 maximum or minimum soil pH may be approved based on the
15 optimum pH for the revegetation species.;

16 On page one hundred thirty, line one, paragraph
17 9.3.h.1., by striking out the paragraph in its entirety,
18 and inserting in lieu thereof: 9.3.h.1. The minimum
19 stocking rate of commercial tree species shall be in
20 accordance with the approved forest management plan
21 prepared by a registered professional forester. In no case
22 may the rate be less than four hundred fifty (450) stems
23 per acre of commercial tree species;

1 On page one hundred thirty, paragraph 9.3.h.2., by
2 striking out the paragraph in its entirety, and by
3 renumbering the subsequent paragraphs;

4 On page one hundred thirty, in renumbered paragraph
5 9.3.h.2., after the word "than", by striking out the words
6 "four hundred fifty (450)", and inserting in lieu thereof
7 "three hundred (300);" On page one hundred thirty, in
8 renumbered paragraph 9.3.h.2., after the word "acre", by
9 inserting the words "or the rate specified in the forest
10 management plan, whichever is greater,";

11 On page two hundred twenty-two, subdivision 14.11.e,
12 line 6, by striking out the word "operable" and by
13 inserting in lieu thereof "such condition that operations
14 could be resumed within sixty (60) days";

15 On page two hundred twenty-three, subdivision
16 14.11.f., line four, by striking out the word "operative",
17 and by inserting in lieu thereof the words "such condition
18 that the operations could be resumed within sixty (60)
19 days";

20 On page two hundred twenty-three, subdivision
21 14.11.f., line four, after the word "is", by inserting the
22 words "protected from unauthorized entry";

23 On page two hundred thirty-eight, subparagraph

1 14.15.b.6.A., line five, after the word "exceed", by
2 striking out the words "fifty (50) percent of the total
3 permit acreage, or four hundred (400) acres, whichever is
4 less, on operations which consist of at least three spreads
5 of equipment", and inserting in lieu thereof the words
6 "five hundred (500) acres on operations which consist of
7 multiple spreads of equipment";

8 On page two hundred thirty-nine, subsection 14.15.c.,
9 line three, after the word "regraded", by inserting the
10 words "and stabilized";

11 On page two hundred thirty-nine, subsection 14.15.c.,
12 line four, after the word "plan", by striking out the
13 "comma" and the remainder of the subparagraph, and
14 inserting in lieu thereof the words: The following shall
15 not be included in the calculation of disturbed area.;

16 On page two hundred forty, paragraph 14.15.c.2., line
17 seven, after the word "benches", by inserting the words
18 "without regard to like thickness";

19 On page two hundred forty, paragraph 14.15.c.5, line
20 two, after the word "graded", by inserting the words "with
21 material placed in a stable, controlled manner which will
22 not subsequently be moved".

23 (g) The legislative rule filed in the state register

1 on the twenty-ninth day of August, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section ten, article five, chapter twenty-two of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-
7 sixth day of November, one thousand nine hundred
8 ninety-six, relating to the division of environmental
9 protection (confidential information, 45 CSR 31), is
10 authorized.

11 (h) The legislative rule filed in the state register
12 on the twenty-ninth day of August, one thousand nine
13 hundred ninety-six, authorized under the authority of
14 section four, article five, chapter twenty-two of this
15 code, modified by the division of environmental protection
16 to meet the objections of the legislative rule-making
17 review committee and refiled in the state register on the
18 sixteenth day of January, one thousand nine hundred
19 ninety-seven, relating to the division of environmental
20 protection (to prevent and control air pollution from
21 hazardous waste treatment, storage or disposal facilities,
22 45 CSR 25), is authorized.

23 (i) The legislative rule filed in the state register

1 on the fifth day of February, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 three, article twenty-two, chapter twenty-two of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-
7 fifth day of February, one thousand nine hundred
8 ninety-seven, relating to the division of environmental
9 protection (voluntary remediation and redevelopment, 60 CSR
10 3), is authorized.

11 (j) That title sixty, series one of the code of state
12 rules be amended by deleting the current interpretative
13 rule for the office of environmental advocate and inserting
14 in lieu thereof the following legislative rule, to read as
15 follows:

16 **"§61-10-1. General.**

17 1.1. **Scope.** - This legislative rule governs and
18 controls the appointment and qualifications of the position
19 of Environmental Advocate within the Division of
20 Environmental Protection.

21 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,
22 22-20.

23 1.3. **Filing Date** -

1 1.4. Effective Date - July 1, 1997.

2 §61-10-2. Appointment, Salary and Qualifications.

3 2.1. Appointment. - The position of Environmental
4 Advocate will be a full-time position, will be appointed by
5 the Director, and will serve at the will and pleasure of
6 the Director of the Division of Environmental Protection in
7 accordance with the West Virginia Code §22-20-1.

8 2.2. Salary. - The salary of the position of
9 Environmental Advocate will be set by the Director and is
10 subject to future adjustments at the discretion of the
11 Director.

12 2.3. Qualifications. - The Director will receive or
13 solicit applications for the position of Environmental
14 Advocate from persons having the following minimum
15 qualifications:

16 2.3.a. A citizen and resident of the State of West
17 Virginia.

18 2.3.b. A graduate from an accredited college or
19 university with a four-year degree in a field of study
20 directly related to the qualifications, powers, and duties
21 of the position as set forth by the director.

22 2.3.c. A minimum of two years full-time or cumulative

1 experience in work directly related to environmental
2 protection, or other public service work or experience
3 which demonstrates the ability to carry out the powers and
4 duties of the position as set forth by the director.

5 **2.3.d.** A working familiarity with some of the legal
6 requirements and programmatic functions of the Division of
7 Environmental Protection.

8 **2.3.e.** A demonstrated ability to skillfully verbally
9 and by writing communicate in a public forum.

10 **2.3.f.** A demonstrated ability to use word processing
11 software for a computer and other necessary computer
12 skills as determined by the director.

13 **2.3.g.** A valid West Virginia driver's license.

14 **§61-10-3. Powers and Limitations -**

15 The Environmental Advocate will carry out the duties
16 of the position as set forth in this rule, and as
17 prescribed by the Director in accordance with the
18 following:

19 **3.1.** The Environmental Advocate will be guided in all
20 actions by the policy statement and the nine purposes set
21 forth in West Virginia Code §22-1-1 (b).

22 **3.2.** The Environmental Advocate may not in any
23 official capacity represent any person in, or file on

1 behalf of any person, legal or quasi-legal actions, either
2 in support of or opposed to the Division of Environmental
3 Protection without the expressed approval of the Director,
4 and under supervision of the Division of Environmental
5 Protection's General Counsel.

6 3.3. The Environmental Advocate may not in any
7 official capacity organize public campaigns in support of,
8 or in opposition to official positions taken by the
9 Division of Environmental Protection on environmental
10 matters, and will not in any official capacity actively
11 participate in any such organized campaign."

12 (k) The director of the division of environmental
13 protection is hereby authorized to propose for promulgation
14 an emergency rule to amend a current legislative rule
15 relating to monitoring of air quality (to prevent and
16 control particulate air pollution from manufacturing
17 process operation, 45 CSR 7).

18 (l) The legislative rule filed in the state register
19 on the eighteenth day of March, one thousand nine hundred
20 ninety-seven, relating to the division of environmental
21 protection (yard waste composting, 47 CSR 38E) is
22 authorized.

23 (m) The legislative rule filed in the state register

1 on the thirty-first day of July, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 two, article six, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the ninth
7 day of December, one thousand nine hundred ninety-seven,
8 relating to the division of environmental protection
9 (miscellaneous water pollution control, 35 CSR 1), is
10 authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 Division of Environmental Protection to promulgate a
14 legislative rule relating to Miscellaneous Water Pollution
15 Control.

16

17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.