

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Environmental Protection
AGENCY: Office of Oil and Gas TITLE NUMBER: 35*

CITE AUTHORITY WV Code 22-1-3, 22-1-10, 22-1-11, 22-6-3 and 22-15-1 through 8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2*

TITLE OF RULE BEING AMENDED: Oil and Gas Operations - Solid Waste Rule

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

TITLE OF RULE BEING PROPOSED: _____

*Previously 38CSR12

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

6.20



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

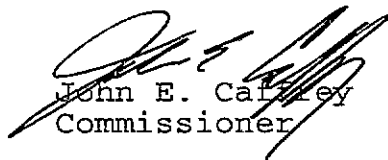
RE: 35CSR2 - Oil and Gas Operations
Solid Waste Rule

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: Oil and Gas Operations - Solid Waste Rule

1. Authorizing statute(s) citation WV Code 22-1-3, 22-1-10, 22-1-11, 22-1-11, 22-6-3 and 22-15-1 through 8.

2. a. Date filed in State Register with Notice of Hearing
June 19, 1998

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 _____ No comments received X

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, West Virginia 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: 35CSR2 - Oil and Gas Operations - Solid Waste Rule

A. AUTHORITY: WV Code WV Code 22-1-3, 22-1-10, 22-1-11, 22-6-3,
and 22-15-1 through 8

B. SUMMARY OF RULE:

Rule provides a solid waste permit by rule for certain solid waste facilities and provides for issuance of other solid waste permits pertaining to 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:

There is no counterpart regulation.

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 discusison.
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) reining 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: 35CSR2 - Oil and Gas Operations -Solid Waste Rule

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: 35CSR2 - Oil and Gas Operations - Solid Waste Rule

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.

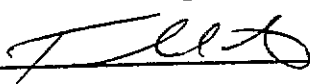
N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: 6/14/97

Signature of Agency Head or Authorized Representative



**TECHNICAL CLEANUP
OFFICE OF OIL AND GAS**

35CSR2

PREVIOUSLY 38CSR12

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 9:28

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 38 35

LEGISLATIVE RULES
DEPARTMENT OF ENERGY
BUREAU OF ENVIRONMENT
DIVISION OF OIL AND GAS
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

SERIES 12 2

SOLID WASTE OIL AND GAS OPERATIONS - SOLID WASTE RULE

§38-12-1. 35-2-1. General.

1.1. Scope. -- This rule provides a solid waste permit by rule for certain solid waste facilities and provides for the issuance of other solid waste permits pertaining to the exploration, development, production, storage and recovery of oil and gas and related mineral resources in this state.

1.2. Authority and Related Code Citations(s). -- W.Va. Code §22-1-13, 22-1-15, 22-1-16, 22B-1-3 and 20-5F-1 through 8 22-1-3, 22-1-10, 22-1-11, 22-6-3, and 22-15-1 through 8.

1.3. Filing Date. -- June 12, 1987 _____

1.4. Effective Date. -- June 12, 1987 _____

1.5. Former Rule Superseded. -- This legislative rule supersedes West Virginia Legislative Rule "Department of Natural Resources, Chapter 20-5F W. Va. Code §22-15, in effect on June 12, 1987, to the extent that such rule pertains to the exploration, development, production, storage and recovery of oil and gas, and related mineral resources in this state. Such rule was continued in effect pursuant to West Virginia Code §22-1-15 W. Va. Code §22-1-10 for the benefit of the Department of Energy Division of Environmental Protection to the extent that it pertained to the provisions of The West Virginia Energy Act.

§38-12-2. 35-2-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions set forth in West Virginia Code §20-5F-2 W. Va. Code §22-15-2 and in Section 2 of West Virginia Legislative Rule "Department of Natural Resources, Chapter 20-5F, Series 38, 33CSR1, "Solid Waste Management Regulations Rules" in effect on July 11, 1985, shall apply to these regulations, rules except that for the purposes of this rule, "Department" shall mean the Department of Energy of Oil and Gas, and "Director" Chief

shall mean the ~~Director~~ Chief of the ~~Division~~ Office of Oil and Gas of the ~~Department of Energy~~ Division of Environmental Protection.

~~§38-12-3.~~ 35-2-3. Permits.

A permit shall be obtained from the ~~Department of Energy~~ Division of Environmental Protection, ~~Division~~ Office of Oil and Gas, prior to the installation, establishment, construction, modification, operation or abandonment of any solid waste facility that is within the scope of subsection 1.1 of this rule. Such a permit shall satisfy the requirements of ~~West Virginia Code §20-5F-1~~ W. Va. Code §22-15-1 through 8 and contain such reasonable terms and conditions as may be prescribed by the ~~Director~~ Chief of the ~~Department of Energy~~ Division of Environmental Protection, ~~Division~~ Office of Oil and Gas.

~~§38-12-4.~~ 35-2-4. Permit by rule.

A solid waste facility shall be deemed to have a solid waste permit for that facility, if that facility complies with the regulatory and permitting requirements set forth in Series 18 of the rules of the ~~Department of Energy~~, Division of Environmental Protection ~~Division~~ Office of Oil and Gas. Nothing in this section shall relieve an owner or operator of such a well of any obligation to apply for and receive appropriate authorizations from other agencies for such a facility, if the facility received waste from sources other than those associated with the exploration, development, production, storage and recovery of oil and gas and related mineral resources in this state.

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.

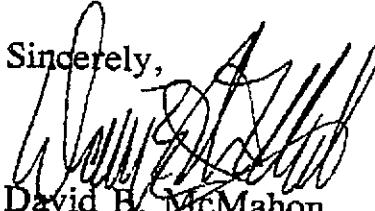
Series 3, "Coal Bed Methane Wells" makes a change at new 8.2.a which limits the ability of the Office of Oil and Gas to allow variances from the cement content requirements. It is my recollection that this variance was permitted when the head of the Office of Oil and Gas was required to have an engineering 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.