

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

**FILED**

2003 MAR 17 P 1:58

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

AGENCY: WVDEP - Oil and Gas Conservation Commission TITLE NUMBER: 39

RULE TYPE: Procedural CITE AUTHORITY: 22C-9

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Procedural Rules of the Commission

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON April 18, 2003 AT 5:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:


Oil and Gas Conservation Commission

Attention: Brett Loflin

1356 Hansford Street

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**SCANNED**

84.00

State of West Virginia  
Department of Environmental Protection  
**OIL AND GAS CONSERVATION COMMISSION**

1356 Hansford Street  
Charleston, West Virginia 25301  
Telephone: (304) 558-6076  
Fax: (304) 558-6047

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Barry K. Lay, Chairman

Bob Wise, Governor

March 17, 2003

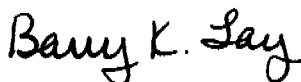
Joe Manchin  
Secretary of State's Office  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

RE: Rules of the Commission

Dear Secretary Manchin:

I hereby authorize the filing of the proposed Procedural Rules Title 39, Series 2, "Rules of the Commission" with the Secretary of States Office.

Sincerely,



Barry K. Lay  
Chairman

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OIL AND GAS CONSERVATION COMMISSION**

**BRIEFING DOCUMENT**

**Rule Title:** 39CSR2

**A. AUTHORITY:** WV Code 22C-9

**B. SUMMARY OF RULE:** The language in this procedural rule currently exists in Title 39, Series 1. Series 1 is a procedural rule that contains language of a legislative nature as well as procedural language. The procedural language has been taken out of Series 1 and is proposed in this rule. The existing procedural language was not changed. The remaining language in Series 1 has been amended and is being filed as a proposed legislative rule.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:** To separate the procedural language from the substantive legislative language.

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: TITLE 39, SERIES 2 RULES OF THE COMMISSION

Type of Rule:      Legislative      Interpretive   X   Procedural

Agency OIL AND GAS CONSERVATION COMMISSION

Address 1356 HANSFORD STREET

CHARLESTON, WV 25301

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	DECREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The proposed rules are of a strictly procedural nature. They are existing rules that are being renumbered as Series 2, Title 39. No changes to the existing language were made.

3. Objectives of these rules:

To separate the procedural rules from the legislative rules.

Rule Title: TITLE 39, SERIES 2 RULES OF THE COMMISSION

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

No economic impact on state government will occur as a result of this rule.

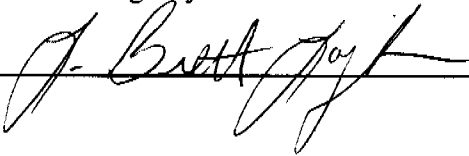
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: No economic impact will occur as a result of this rule.

C. Economic Impact on Citizens/Public at Large.

No economic impact will occur as a result of this rule.

Date: March 17, 2003

Signature of Agency Head or Authorized Representative:

A handwritten signature in black ink, appearing to read "J. Brett Jay", is written over a horizontal line.

**TITLE 39**

**FILED**

**PROCEDURAL RULES  
WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION**

2003 MAR 17 P 1:59

**SERIES 2  
RULES OF THE COMMISSION**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§39-2-1. General.**

1.1. Scope. -- All rules of a general nature are herein promulgated to set forth the rules of practice and procedure in all matters relating to the Oil and Gas Conservation Commission.

1.2. Authority. -- W.Va. Code §22C-9

1.3. Filing Date. --

1.4. Effective Date. --

**Rules of Practice and Procedure.**

2.1. Hearings -- The Commission Chairman shall preside over all hearings and meetings. In the event of the Chairman's absence, an appointed member of the Commission shall be elected by the members present to preside over the hearing or meeting.

2.2. Once a matter is heard by the Commission under the rules herein contained, the Commission will as soon as possible thereafter convene to deliberate the evidence and reach a conclusion as to the matters before the Commission. Upon consideration of the evidence, the Commission shall, by simple majority of the voting member present, vote and render a decision. The Commission will enter an order establishing its decision as soon thereafter as reasonable possible and issue an order defining its decision.

2.3. Conduct of attorneys before the Commission shall be the same as required of attorneys before the Circuit Courts of the State of West Virginia. Attorneys or persons representing themselves shall stand when addressing the Commission or a witness. Any person testifying in response to a subpoena or subpoena duces tecum issued by the Commission and any person testifying in support of an application, or in opposition thereto, shall be required to do so under oath or affirmation administered by the Commission. Witnesses shall be examined with courtesy and respect and their good faith shall be presumed.

2.4. Smoking shall not be permitted in the hearing room of the Commission, either during session or during recess. Taking photographs or broadcasting the proceedings in or from any hearing room or so closed thereto as to disturb the order and decorum thereof either while the hearing is in session or at recess is prohibited.

2.5. The conduct and demeanor of attorneys and persons when present during the proceedings shall be such as to reflect respect for the dignity and authority of the Commission and to maintain the proceedings as an objection search for the applicable facts and the correct principles of law.

2.6. The electronic recording of any session is prohibited except as may be required by the Commission for preserving a record thereof for the use of the Commission in connection with the matter being heard. A transcript of testimony shall be taken and preserved as part of the permanent record. Interested parties may examine the official transcript or purchase a copy from the Commission.

2.7. In addition to any other notice required by law or this rule, any person who believes that he may be interested in any hearing before the Commission who has filed a request for notices, in writing, shall be entitled to receive a copy of the docket for the hearing mailed by the Commission not later than ten days before the date of the hearing. Upon request, such person will be furnished a copy of the application filed with the Commission.

2.8. In addition to any special hearings, which may be held, regularly scheduled meetings may be held by the Commission. Where circumstances permit, the Commission, after sounding the docket, may first call up and dispose of all noncontested matters and motions for continuance.

2.9. Any interested party may petition the Commission for the promulgation, amendment or repeal of any rule by filing a written petition setting forth such facts and arguments as support the petition. Upon receiving such petition, the Commission, as soon as practicable, shall either (a) deny the petition in writing (stating its reasons for denial), or (b) initiate rule-making proceedings pursuant to chapter twenty-nine-a, article three or other appropriate provisions of the Code of the State of West Virginia.

2.10. Any person who is bound by any order of the Commission shall have the right to compel a hearing on the matter if no such hearing has been held.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION****ADVISORY COUNCIL MEETING MINUTES****Wednesday, June 5, 2002****DMR Conference Room - 10 McJunkin Road, Nitro, WV****ATTENDEES:****Advisory Council Members:**

Larry Harris  
Bill Samples  
Rick Roberts  
Lisa Dooley  
Bill Raney

**DEP:**

Bill Adams	Ken Ellison
Lewis Halstead	Bill Brannon
James Martin	Mike Zeto
Brett Loflin	Greg Adolfsen
Allyn Turner	Jim Mason
Charles Sturey	Karen Watson

**Citizens:**

Rebecca Robertson, NiSource

The meeting was called to order at 9:00 a.m. by William E. Adams, Jr., General Counsel.

**Welcome/Opening Remarks - Bill Adams**

Bill Adams opened by informing everyone that in Secretary Callaghan's absence, he would chair the meeting. Bill further explained that Secretary Callaghan was preparing for his appearance before a Congressional Committee, he sends his regrets. Bill further announced that Director Ellison was present and later, Director Turner as well as Chief James Martin. There was an introduction of the Advisory Council members, an explanation of what group or interest each member represents.

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## **PRESENTATION OF PROPOSED RULES**

### **Division of Mining and Reclamation**

Charles Sturey presented rules 38CSR2 and 38CSR4 to the Council. Mr. Raney asked what the genesis of the coal dam safety rule was. Lewis Halstead explained that the changes were being made mostly due to recent flooding and DEP's experience with a large coal dam near Welch. Mr. Harris inquired generally whether the language in the rules that says DEP's goal is to "restore and protect the environment" should place "protect" as the first priority. This suggestion was taken under advisement.

### **Division of Water Resources**

Bill Brannon presented rule 47CSR26 to the Council. He stated that general stormwater fees would be \$300 rather than the \$700 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a \$300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

### **Office of Innovation**

Greg Adolfson announced that he was now employed at the Office of Innovation, but still worked on the Stream Partners program. He presented rule 60CSR4 to the Council dealing with the Stream Partners Program Grants. Mr. Adolfson also gave a brief history of the Office of Innovation and stated that the Office was directed toward more forward thinking instead of reaction oriented.

### **Division of Waste Management**

Ken Ellison presented rules 33CSR20 and 33CSR26 to the Council. Mr. Ellison explained that these two rules are now identical to the federal regulations.

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### **Environmental Enforcement**

Mike Zeto presented rule 33CSR8 to the Council.

Mr. Zeto explained that this was a new rule dealing with establishing a mechanism and requirements for the permitting and use of sludge (specifically not sewage sludge) or other materials that have beneficial properties similar to sewage sludge. Mr. Samples questioned whether the requirement that the sludge comprise at least 50% of the applicant's agricultural requirements was too stringent and whether the Secretary should be allowed to waive this requirement. Mr. Zeto responded in the negative and also stated that the sludge must be shown to have significant nutrient value before DEP would approve its use.

### **Office of Oil and Gas**

James Martin was introduced as the Chief of the Office of Oil and Gas.

Brett Loflin (Oil and Gas Conservation Commission) presented rules 39CSR1 and 39CSR2 to the Council. Mr. Loflin explained that 39CSR1 is currently a procedural rule but will be filed as a legislative rule because it contains substantive legal requirements.

### **Division of Air Quality**

Jim Mason presented rules 45CSR1, 16, 26 and 34 to the Council.

Karen Watson presented rules 45CSR13, 25, 30 and 33 to the Council.

Rick Roberts inquired as to whether there would be a budget hole created due to the reduction of fees in the presented rules. Ms. Watson explained that the calculations had not been done regarding this subject but that as soon as the figures were available, they would be presented to the Council. Mr. Adams noted that as with all rules, a fiscal note would be prepared containing this analysis.

### **OTHER BUSINESS**

Upon conclusion of the rules presentations, it was determined that the rules would need to be filed with the Secretary of State's office by June 12, 2002 to begin the thirty-day comment public comment/hearings period.

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The Council agreed that proposed rules should be submitted to the Council members via e-mail in the future so that they can be distributed to other interested parties prior to meetings. Moreover, the proposals should be sent more than 3 days before the Council meeting. Past practice apparently gave little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.

Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 p.m.