

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

Form #1

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2002 JUN 13 A 10:15

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

*Waste Management*

AGENCY: WV Department of Environmental Protection TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: 22-15-22(b) (HB 4551)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

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

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Standards for Beneficial Use of Materials Similar to Sewage Sludge

DATE OF PUBLIC HEARING: July 17, 2002 TIME: 7:00 PM

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection  
1356 Hansford Street  
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL \_\_\_ , WRITTEN \_\_\_ , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Ann Howell  
Public Information Office  
WV Department of Environmental Protection

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

1356 Hansford Street  
Charleston, WV 25301

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

*Michael D. Colby*  
Authorized Signature

**SCANNED**

## **33 CSR 8**

### **STANDARDS FOR BENEFICIAL USE OF MATERIALS SIMILAR TO SEWAGE SLUDGE**

#### **Rule Summary**

This rule establishes a mechanism and requirements for the permitting and use of sludge or other materials that have beneficial properties similar to sewage sludge, i.e. fertilizer value. This rule applies to any person who seeks approval from the Secretary to beneficially reuse sludge or other non-hazardous material within the state. This rule does not apply to sewage sludge, products derived from sewage sludge, materials regulated as hazardous waste, drinking water plant sludge, sawdust, or industrial sludge generated from metals or chemical processing facilities.

#### **Statement of Circumstances Constituting an Emergency**

The statutory language in 22-15-22(b) authorizing promulgation of this rule directs that the rule be filed as an emergency rule to "enhance the resource recovery and recycling goals" of the Solid Waste Management Act and to "encourage the beneficial use" of certain materials.

This rule is necessary to protect the public interest by providing a mechanism to minimize the use of landfill space, continue the use of a suitable source of low cost fertilizers for local farmers, and develop criteria for an environmentally responsible recycling program. Specifically, this rule establishes both the authority to permit and the requirements to control land application of nutrient-rich materials that would otherwise have to be disposed in a landfill beginning November 2002.



**DIVISION OF ENVIRONMENTAL PROTECTION**

BOB WISE  
GOVERNOR

1356 Hansford Street  
Charleston, WV 25301-1401

MICHAEL O. CALLAGHAN  
SECRETARY

June 13, 2002

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** Standards for Beneficial Use of Materials Similar to Sewage Sludge

**A. AUTHORITY:** WV Code §§22-15-22(b)

**B. SUMMARY OF RULE:**

This rule establishes a mechanism and requirements for the permitting and use of sludge or other materials that have beneficial properties similar to sewage sludge, i.e. fertilizer value. This rule applies to any person who seeks approval from the Secretary to beneficially reuse sludge or other non-hazardous material within the state. This rule does not apply to sewage sludge, products derived from sewage sludge, materials regulated as hazardous waste, drinking water plant sludge, sawdust, or industrial sludge generated from metals or chemical processing facilities.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The proposed Legislative Rule is necessary to comply with House Bill 4551, which requires promulgation of this rule in Section 22-15-22(b).

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

There is no federal counterpart regulation to this proposed rule.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1a-1 and 3(c), the Secretary 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:**

After review of the proposed rule (33CSR8) at their June 5, 2002 meeting, the DEP Advisory Council recommended to the Secretary that this rule be filed as proposed. No further amendments were recommended.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standards for Beneficial Use of Materials Similar to Sewage Sludge

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV Department of Environmental Protection

Address: 1356 Hansford Street  
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$15,000	0	0	\$15,000	\$15,000/yr
<b>PERSONAL SERVICES</b>	\$12,000	0	0	\$12,000	\$12,000/yr
<b>CURRENT EXPENSE</b>	\$700	0	0	\$700	\$700/yr
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0		
<b>EQUIPMENT</b>	\$300	0	0	\$300	\$300/yr
<b>OTHER</b>	\$2,000	0	0	\$2,000	\$2,000/yr

2. Explanation of Above Estimates:

Personal Services - permit review and writing, review of sample results and other reports, compliance inspections, land application site evaluations, and compliance assistance; Current Expense - travel; Equipment - sampling and inspection equipment; Other - sample analyses and vehicle expenses. (Estimates are based on <5 applications.)

3. Objectives of These Rules:

This rule establishes a mechanism and requirements for the permitting and use of sludge or other materials that have beneficial properties similar to sewage sludge, i.e. fertilizer value.

Rule Title: Standards for Beneficial Use of Materials Similar to Sewage Sludge

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

As written, these rules would cause a small increase in workload: permitting, compliance assistance and evaluation. The land application fee (\$5.00/dry ton) is proposed to fund these activities. Anticipated revenue estimates are approximately \$15,000 annually, based on a limited number of applications.

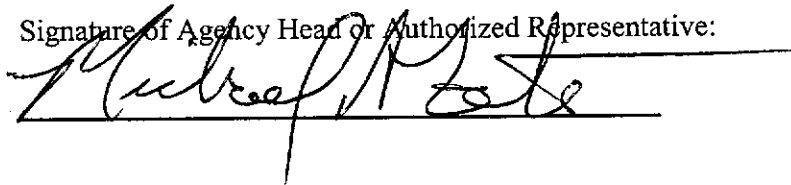
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: Coverage under this rule is voluntary and would generally provide a cost savings to specific industries that are granted coverage. The proposed land application fee is less than 5% of the cost to dispose the same material in a landfill. Local farmers who would also have access to a low cost fertilizer.

C. Economic Impact on Citizens/Public at Large.

None

Date: June 13, 2002

Signature of Agency Head or Authorized Representative:



**TITLE 33  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WASTE MANAGEMENT**

**FILED**

2002 JUN 13 A 10:15

**SERIES 8  
STANDARDS FOR BENEFICIAL USE OF MATERIALS SIMILAR TO SEWAGE SLUDGE**

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**§33-8-1. General.**

1.1. Scope. -- This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of sludge or other material that has beneficial properties similar to sewage sludge. This rule applies to any person who seeks approval from the Secretary to beneficially reuse sludge or other non-hazardous material within the state. This rule does not apply to sewage sludge, products derived from sewage sludge, or materials regulated as hazardous waste under W. Va. Code §22-18-1, et seq.

1.2. Authority. -- W. Va. Code §§22-15-22(b)

1.3. Filing Date. -- June 13, 2002

1.4. Effective Date. --

1.5. Incorporation by Reference.-- Whenever federal or state statutes or regulations are incorporated into this rule by reference, the reference is to the statute or regulation in effect on the effective date of this rule.

**§33-8-2. Definitions.**

The following definitions apply to this rule unless otherwise specified herein:

2.1. "Agricultural land" means land on which a food crop, feed crop, or fiber crop is grown. This includes, but is not limited to, range land and land used as pasture.

2.2. "Agronomic rate" means the application rate, by dry weight, designed: (1) To provide the amount of nutrients

needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and (2) To minimize the amount of nutrients in the sludge or other material that passes below the root zone of the crop or vegetation grown on the land to the ground water.

2.3. "Applicant" means the person applying for a beneficial reuse permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the Secretary may specify, including the following: spouses, parents, children and siblings.

2.4. "Beneficial Use" means the use of a non-hazardous material for a specific beneficial purpose where it is done in a manner that protects groundwater and surface water quality, soil quality, air quality, human health, and the environment. This may include use as a fertilizer substitute or other purpose approved by the Secretary.

2.5. "Department" means the Department of Environmental Protection.

2.6. "Domestic septage" means either liquid or solid material (septage) removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

2.7. "Land application site" means the location where sludge or other material is sprayed or spread onto the land surface, or incorporated into the soil

so that the sludge or other material can fertilize the crops or vegetation grown in the soil.

2.8. "Nutrient" or "nutrient content" means an element essential for plant growth, which for the purposes of this rule are nitrogen, phosphorous, potassium, calcium, and magnesium.

2.9. "Odor" means a sensation resulting from the stimulation of the human sense of smell.

2.10. "Person" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

2.11. "Plow Layer" means the layer of soil which is turned or mixed by plowing, tilling, disking, harrowing, or other similar activity.

2.12. "Producer" means any person producing sludge or other material approved for use in accordance with this rule.

2.13. "Secretary" means the Secretary of the Department of Environmental Protection or person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §22-1-6.

2.14. "Sewage sludge" means solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

2.15. "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

2.16. "Source water protection area" means the area delineated by the West Virginia Bureau for Public Health for a public water supply system or systems, whether the source is ground water or surface water or both, through which contaminants are reasonably likely to move toward and reach such public water supply system.

2.17. "Total fats" mean fats, oils, and greases of animal or vegetable origin that may be determined quantitatively based on their common solubility in an organic extracting solvent and recovery from that solvent, but does not include petroleum compounds.

2.18. "Wellhead protection area" means the surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such well or well field, as delineated by the Bureau for Public Health.

### **§33-8-3. Standards for Beneficial Use of Sludge or Other Approved Materials.**

3.1 Beneficial Use Determination. -- Materials determined by the Secretary to have beneficial characteristics similar to sewage sludge may be beneficially used in a manner approved by the Secretary in accordance with this rule.

3.1.a. Any beneficial use determinations made by the Secretary shall be based, at a minimum, on analysis of the material and other information demonstrating its beneficial use characteristics, an evaluation of the sources contributing to the waste stream from which the material originates, an evaluation of the pollutant levels contained in the material, and an evaluation of the potential impact to human health and the environment from the proposed method of use.

3.1.a.1. Beneficial characteristics that may be considered under this rule must include nutrient content.

3.1.a.2. The concentration of any heavy metal in the material shall not exceed the values listed in Table 1 of this rule.

3.1.a.3. Background concentrations at land application sites, residential soil concentrations in 60CSR3, and any other applicable information may be used by the Secretary as a guide to establish limits for pollutant loading rates when maximum soil concentrations are not established in Table 2 of this rule.

3.1.b. The beneficial characteristics of the sludge or other material must be demonstrated prior to mixing the sludge or other material with any additives, such as fertilizer, sewage sludge, organic matter, lime, or other materials that would enhance the beneficial characteristics of the sludge or other material.

3.1.c. No permit shall be issued under this rule for land application of any material unless the land application site has been evaluated by the Secretary to ensure its suitability for use and compliance with this rule.

3.1.d. Materials determined by the Secretary for any reason not to be suitable for use in accordance with this rule shall not be given approval for a permit under this rule.

3.1.d.1. The following materials shall not be eligible for coverage under this rule:

3.1.d.1.A. Any sludge or other material that is a listed or characteristic hazardous waste as defined in 40CFR261;

3.1.d.1.B. Sludge generated from any manufacturing or processing of metals, plastics, herbicides, pesticides, algacides, or fungicides;

3.1.d.1.C. Petroleum contaminated soils;

3.1.d.1.D. Sludge generated from a drinking water treatment plant;

3.1.d.1.E. Wastes from saw milling or logging operations; or

3.1.d.1.F. Any sludge or other material having a nutrient concentration that will not provide at least fifty percent of the established crop nutrient need for either nitrogen, phosphorous, or potassium.

3.2. Land Application Location Standards and Restrictions.

3.2.a. Sludge or other approved materials shall not be applied to land that meets any of the following conditions:

3.2.a.1. Land that is frozen, snow-covered, or known to be flooded on a regular basis unless the applicant can demonstrate to the Secretary that the land application will not cause runoff into streams or wetlands.

3.2.a.2. Land within fifty (50) feet of surface water to include streams, springs, ponds, wetlands, or other collection points for surface water.

3.2.a.3. Land within two hundred (200) feet of drinking water supply wells or other personal water supply.

3.2.a.4. Land within two hundred (200) feet of an occupied dwelling.

3.2.a.5. Land within fifty (50) feet of a federal or state highway.

3.2.a.6. Land within one hundred (100) feet of an adjacent property owner's property line, unless written permission is given by the adjacent property owner.

3.2.a.7. Land from which drainage leads into a sinkhole.

3.2.a.8. Land that has been tested and determined to have a pH of less than 6.2, unless

the pH is adjusted to 6.2 or greater.

3.2.a.9. Land that has a slope greater than 15%.

3.2.a.10. Land that has a seasonal high groundwater table less than 3 feet from the surface.

3.2.a.11. Land that has less than 6 inches of soil over bedrock or an impervious pan.

3.2.a.12. Land containing soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

3.2.a.13. Land that is within 100 feet of a vertical rock outcrop.

3.2.a.13. Land where the application of sludge or other material is likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat.

3.2.a.14. Other land determined by the Secretary to be unsuitable for land application.

3.2.b. No person or entity shall apply sludge or other approved material to land in a manner that will result in exceeding the maximum soil concentration for arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, or zinc, as listed in Table 2 of this rule and the soil testing requirements of this rule. The Secretary is authorized to issue variances to this subdivision to allow land application to soils where the background levels of metals in the soil exceed the maximum soil concentrations of metals listed in Table 2: Provided, that the analyses of the material, soil analyses, and pollutant loss rates from erosion, leaching, and volatilization demonstrate that the land application of the material, at a loading rate prescribed by the Secretary, will not cause additional net accumulation of any metal in the soil already exceeding the maximum soil concentration listed in Table 2. Any such variance issued by the Secretary shall contain a requirement to annually monitor the soil concentration of each metal

exceeding the Table 2 limit for as long as the site is utilized for the land application.

3.2.b.1. The Secretary shall assign an individual and lifetime loading rate for each land application site for which a permit is required pursuant to 4.1.c of this rule by considering background soil concentrations and maximum allowable pollutant concentrations as per Table 1 and per Table 2 of this rule. New soil analyses for those metals listed in Table 2 shall be required at each land application site whenever fifty percent of the assigned lifetime loading rate for the site has been achieved.

3.2.c. No person shall land apply so much sludge or other material as to exceed the agronomic rate for that land or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land.

3.2.d. No person shall apply sludge or other approved material to land in a manner that will result in exceeding the groundwater standards established in 46CSR12. Results from a toxicity characteristic leaching procedure analysis of a material may be considered when making an evaluation of the potential to impact groundwater quality.

3.2.e. No person shall store sludge or other material at a land application site for a period longer than one week; except storage shall be allowed for no longer than three months where provisions, approved by the Secretary, have been made to prevent leachate runoff into surface or groundwater.

3.2.f. No person shall apply sludge or other approved material to land in a manner that diminishes soil productivity, seed germination, or plant health.

3.2.g. No person shall land apply sludge except during daylight hours.

3.2.h. Persons applying sludge or other materials containing 10 percent or more total fats

shall comply with the following requirements:

3.2.h.1. If the sludge or other material is incorporated into the soil within 20 days of application to the soil, the annual loading rate of total fats to the soil shall not exceed one percent of soil mass of the plow layer.

3.2.h.2. If the sludge or other material is not incorporated into the soil within 20 days of application to the soil, the annual loading rate of total fats to the soil shall not exceed 2 tons/acre/year.

3.2.h.3. If the total fat content of the sludge or other material exceeds one percent, no surface application of liquids shall occur on existing stands of grass or other forage crop.

### 3.3. Storage Requirements.

3.3.a Areas used for processing, curing and storage of raw materials, intermediate and final products, loading and unloading areas, impoundments, pipelines, ditches, pumps and drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Storage of finished products from the facility shall be limited to one year.

3.3.b The storage area must be designed and operated to control vectors and odors.

3.3.c The storage area must not be operated or constructed within the one hundred year flood plain unless provisions have been made to prevent the encroachment of flood waters upon the storage area.

3.3.d. All land storage areas must be protected in accordance with the Groundwater Protection Act, W. Va. Code §22-12-1 et seq., and the rules promulgated thereunder, including 46CSR12, 47CSR58, 47CSR59, and 47CSR60.

3.4. Odor Control. When an odor is determined to be objectionable and repetitious by the Secretary, the Secretary may require the activity to cease and/or require the facility to

conduct related studies within a specified time period. These studies may include, but are not limited to, sampling and analysis to identify the specific chemical compound(s) which are causing the objectionable odor, analysis of samples by odor panels, air dispersion modeling studies, and evaluation of applicable odor control devices and odor control programs.

### 3.5. Sample Analysis.

3.5.a. Analytical methods in SW-846 shall be used to analyze all samples required by this rule: Provided, That the Secretary may allow other approved standard methods of analyses appropriate to certain materials.

3.5.b. All samples required by this rule shall be analyzed by a laboratory certified in accordance with W. Va. Code §22-1-15 and the rules promulgated thereunder.

### §33-8-4. Permits Required.

#### 4.1. Applicability.

4.1.a. No person may land apply sludge or other material subject to this rule without first obtaining a land application permit.

4.1.a.1. For those facilities holding a WV/NPDES Permit required under W. Va. Code §22-11-1 et seq., the land application permit requirements may be incorporated into a modification of that facility's WV/NPDES permit.

4.1.b. Permits issued under paragraph 4.1.a.1. of this rule shall be subject to the permit issuance procedures, procedures for permit modifications, suspension and revocation, procedures for transfer of permits, and the procedures for permit appeals of 47CSR10.

4.1.c. Other permits issued to a person seeking approval for beneficial use of sludge or other materials in accordance with this rule shall be subject to the permit issuance, modification, reissuance, suspension and revocation procedures of section 6 through section 7 of this rule.

### §33-8-5. Permit Application Requirements.

5.1. Permit Application Forms. -- Persons required to obtain a permit pursuant to this rule must provide the following information, in the form and manner prescribed by the Secretary. The form may require information in addition to that required by this subsection.

5.2. Permit Application Requirements. -- All applicants must provide the following information:

5.2.a. The name, address, and location of the facility generating the sludge or other material;

5.2.b. A description of the activities conducted or to be conducted by the applicant;

5.2.c. The operator's and owner's name, address, telephone number, ownership status, and status as a federal, state, private, public or other entity;

5.2.d. Other environmental permits issued by any local, state or federal agency;

5.2.e. A description of the specific source(s) of sludge or other material;

5.2.f. A description of the process used to generate the sludge or other material including, but not limited to, raw materials used, contributing waste streams, and other by-products produced;

5.2.g. The amount of sludge or other material generated, processed, or proposed for beneficial use;

5.2.h. A description of the beneficial characteristics of the sludge or other material;

5.2.i. A description of the current method of disposal or use for the sludge or other material;

5.2.j. A physical description of the material, including moisture content expressed as

the percent solids, odor, particle size, and appearance;

5.2.k. The content of heavy metals, pathogens, and other pollutants present in the sludge or other material;

5.2.l. A hazardous waste determination, including a toxicity characteristic leaching procedure analysis: Provided, That a toxicity characteristic leaching procedure analysis need not be performed if a total analysis of the material demonstrates that individual analytes are not present in the waste or that they are present at such low concentrations that the appropriate regulatory levels could not be exceeded;

5.2.m. A description of the method used to collect or control leachate and surface water runoff from any storage areas;

5.2.n. A description of existing and potential land-use of the area within one mile of the facility; and

5.2.o. A certified copy of any municipal or county zoning restrictions, if applicable.

5.3. Land Application Permit Application Requirement. -- Persons proposing to perform land application of sludge or other materials must submit the following information to the Secretary in addition to that required under subsection 5.2 of this rule:

5.3.a. Soil analysis for all land application sites including but not limited to pH, potassium, phosphorus, nitrogen, all metals listed in Table 1 of this rule and any additional chemical analysis requested by the Secretary;

5.3.b. Information relative to the nutrient content of the sludge(s) or other material to be land applied;

5.3.c. A description of all soil types present on the site, including a soil profile description and a soils map with application sites clearly defined;

5.3.d. An agreement between the preparer of sludge or other material, the applier, and the owner of the land application site indicating each party's concurrence with the application, and certifying that each will comply with applicable requirements of this rule;

5.3.e. A description of existing and future uses of the land application site;

5.3.f. Information relative to past application(s) of sludge, sewage sludge, material(s) derived from sewage sludge, fertilizers, pesticides, and herbicides to each land application site;

5.3.g. In addition to the chemical analyses required in subdivision 4.2.a of this rule, any additional chemical analyses of the sludge or other material requested by the Secretary;

5.3.h. A description of the methods to be used for land application;

5.3.i. A description of the methods for transportation of sludge or other material to the site;

5.3.j. A copy of the NPDES permit for the facility from which the sludge or other material originated;

5.3.k. A description of the methods by which pathogen control and vector attraction reduction are being achieved, if applicable;

5.3.l. A description of the methods to be utilized to inhibit the mobility of metals added to the soil by the land application of sludge or other material, should such land application cause an increase in the concentration of metals in the soil at a land application site;

5.3.m. Information on the type of crop(s) to be grown on the site and the proposed use of the harvested crop(s);

5.3.n. A determination on whether the site is located within a delineated wellhead protection area or source water protection area; and

5.3.o. Any additional information required by the Secretary.

### **§33-8-6. Draft Permits and Public Comment.**

#### **6.1. Administration.**

6.1.a. Once an application is complete, the Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

6.1.b. If the Secretary tentatively decides to issue a permit, he or she shall prepare a draft permit containing the information required under section 8 of this rule.

6.1.c. All draft permits shall be provided to permittees and shall be publicly noticed and available for public comment in accordance with subsection 6.2

#### **6.2. Public notice.**

6.2.a. Public notice of the preparation of a draft permit shall allow at least thirty (30) days for public comment. Upon request of the permittee, the public comment period may be extended for an additional thirty (30) days. Other extension of the comment period may be granted by the Secretary for good cause shown, but in no case may the extension exceed an additional thirty (30) days.

6.2.b. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

6.2.c. Methods. Public notice shall be given by the following methods:

6.2.c.1. By mailing a copy of a notice to the applicant;

6.2.c.2. By the Secretary publishing the public notice as a Class I legal advertisement in a qualified newspaper with the largest circulation for the county where the

generator and/or the proposed land application site is located. The cost of the publication will be born by the applicant who must send a certificate of publication to the Department within twenty (20) days after publication;

6.2.c.3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases, mailing lists or any other forum or medium to elicit public participation.

6.2.d. Draft permit public notice contents. -- All public notices issued under this part shall contain the following minimum information:

6.2.d.1. Name and address of the division processing the permit action for which notice is being given;

6.2.d.2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

6.2.d.3. A brief description of the activity described in the permit application or in the draft permit, when there is no application;

6.2.d.4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application; and

6.2.d.5. A brief description of the comment procedures required by subsections 6.3 and 6.4 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

6.2.e. In addition to the requirements of subdivision 6.2.d. of this rule, public notice of a hearing shall contain the following information:

6.2.e.1. Reference to the date of the public notice relating to the permit;

6.2.e.2. Date, time, and place of the hearing; and

6.2.e.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

6.3. Public comments and requests for public hearings. -- During the public comment period provided under subsection 6.2, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final permitting decision and shall be answered as provided subsection 6.6.

6.4. Public hearings.

6.4.a. The Secretary shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to a draft permit. The Secretary also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

6.4.b. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements.

6.4.c. The submission of statements in writing under subdivision 6.3 shall automatically be extended to ten (10) days after the close of any public hearings conducted under this section.

6.4.d. A tape recording or written transcript of the hearing shall be made available to the public, upon request.

6.5. Reopening of the public comment period.

6.5.a. If any information or arguments submitted during the public comment period raise substantial new questions concerning a permit, or if as a result of comments submitted by someone other than the permittee, the Secretary determines to revise any condition of the permit that had been sent to initial public notice, the Secretary shall take one (1) or more of the following actions:

6.5.a.1. Prepare a new draft permit, appropriately modified, under section 7 of this rule;

6.5.a.2. Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

6.5.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

#### 6.6. Response to comments.

6.6.a. At the time that any final permit is issued, the Secretary shall issue a response to comments. This response shall:

6.6.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

6.6.a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

6.6.b. The response to comments shall be delivered to any person who commented or any person who requests the same.

#### 6.7. Issuance and effective date of permit.

6.7.a. After the close of the public comment period on a draft permit, the Secretary shall issue a final permit decision. The Secretary

shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing the decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

6.7.b. A final permit decision shall become effective not less than thirty (30) days after the date of notice of the decision under subdivision 6.7.a of this section.

### **§33-8-7. Modification, Revocation and Reissuance, Suspension and Revocation of Permits.**

#### 7.1 Actions by the Secretary.

7.1.a. Permits may be modified, revoked and reissued, suspended or revoked either at the request of any interested person or upon the Secretary's initiative. Permits may only be modified, revoked and reissued, suspended or revoked for the reasons specified in this section. All requests under this section shall be in writing submitted to the Secretary citing facts or reasons supporting the request. The Secretary may require additional information, and in the case of a major modification, may require submission of a new permit application. For a reissuance under subsection 7.3, the Secretary shall require submission of a new permit application.

7.1.b. If the Secretary decides the request is not justified, he or she shall send the requestor a brief written response given the reasons for the decision. Denials of such requests are not subject to public notice, comment, or hearings.

7.1.c. If the Secretary tentatively decides to modify or revoke and reissue a permit and the modification is not made under subsection 7.5, he or she shall prepare a draft permit and follow the public notice procedures in section 6. The Secretary may request additional information and, in the case of a modified permit, may

require the submission of an updated permit application. In the case of revoked and reissued permits, the Secretary shall require the submission of a new application.

7.1.d. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other conditions of the existing permit is prepared. All other conditions of the existing permit shall remain in effect for the duration of the permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

7.2. Causes for modification or permittee requested reissuance of permits.

7.2.a. Modifications. The following are causes for modification, but not reissuance of a permit unless the permittee requests or agrees, and require the preparation of a draft permit and the public notice procedures of section 6. If the permittee requests or agrees, then the following cause can be reason for a permit reissuance that will open the entire permit for comment and change.

7.2.a.1. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which justify the application of permit conditions that are different or absent in the existing permit, including the alteration in the process or wastestream from which a sludge or other material is generated.

7.2.a.2. Information. Permits may be modified during their terms for this cause only if information was not available at the time of permit issuance (other than revised rules, guidance, or test methods) which would have justified the application of different permit conditions at the time of issuance.

7.2.a.3. New rules. The

standards or rules on which the permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued.

7.2.a.4. For judicial decision, when a court of competent jurisdiction has remanded and stayed State or Federal promulgated rules, if the remand and stay concern that portion of the rules on which the permit condition was based.

7.2.a.5. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application.

7.2.a.6. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a permit modification.

7.2.a.7. Any of the reasons cited in subsection 7.4.

7.2.a.8. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

7.3. Reissuance. When a permit is reissued under this subsection, the entire permit is reopened, just as if the permit has expired. Reissuance requires a draft permit and the public notice procedures of section 6. Processing of a reissuance application does not exempt the permittee from compliance with any permit term or condition.

7.4. Suspension and revocation of permits.

7.4.a. The following are causes for revocation or suspension of a permit or for denying a permit renewal application:

7.4.a.1. Noncompliance by the permittee with any condition of the permit; or

7.4.a.2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

7.4.a.3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation; or

7.4.a.4. A change in any condition that requires either a temporary or a permanent reduction or elimination of any sludge or other material being beneficially reused under this rule.

7.4.b. If the Secretary tentatively decides to suspend or revoke a permit he or she shall issue a notice of intent to suspend or revoke. A notice of intent to suspend or revoke a permit is a type of draft permit which follows the same procedures as any draft prepared under section 6, including the requirements of public notice.

7.5. Minor modifications of permits. Upon the consent of the permittee, the Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section without preparing a draft permit or following the procedures of section 6. Minor modifications may only:

7.5.a. Correct typographical errors;

7.5.b. Require more frequent monitoring or reporting by the permittee;

7.5.c. Add acreage to a land application site that is already identified in the permit;

7.5.d. Amend the loading rate contained in the permit due to a change in nutrient requirements at a land application site.

### §33-8-8. Permit Contents and Requirements.

8.1. General Requirements. -- All permits

issued pursuant to this rule shall contain applicable requirements of this rule, including but not limited to the following:

8.1.a. Limitations on the concentrations of pollutants and pathogens in the sludge or other material;

8.1.b. Requirements to monitor the sludge or other material, and report the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorus, calcium, magnesium, total nitrogen, ammonia nitrogen, pathogen test results, vector attraction reduction verification, all heavy metals listed in Table 1 of this rule, and any other analyses required by the director: Provided, That the frequency of monitoring shall be as described in Appendix A of this rule;

8.1.c. Requirement to pay fees as identified in section 9 of this rule;

8.1.d. Requirements for the proper control of stormwater runoff for the protection of groundwater, surface waters, and potable waters in the area;

8.1.e. Requirements to retain records for the facility for at least five years;

8.1.f. Requirements to monitor and report monthly to the Secretary the quantity of sludge or other material generated, stored, and used;

8.1.g. Requirements to provide copies of monthly reports to the county or regional solid waste authority in which the facility or land application site(s) is located;

8.1.h. Requirements for the implementation of practices to prevent the contamination of ground and surface waters, including liners if necessary;

8.1.i. Requirements for the implementation of practices to protect air quality in and around the facility and any land application sites; and

8.1.j. Any other requirements, including

additional monitoring, determined to be necessary by the Secretary to ensure compliance with any state and federal laws, regulations, rules, or requirements, or to protect human health or the environment.

8.2. Land Application Permit Requirements. -  
- In addition to the requirements of subsection 8.1 of this rule, any land application permit issued pursuant to this rule shall contain the following:

8.2.a. A listing of the site(s) for which land application is approved;

8.2.b. Limitations on the maximum amount of sludge or other material allowed to be land applied;

8.2.c. Requirements implementing the siting restrictions and location standards of subsection 3.3 of this rule;

8.2.d. Any necessary restrictions on the types of crops that may be grown on land used for application of sludge or other material and the time between such application and the harvesting of crops;

8.2.e. Any necessary restrictions on animal grazing and public access on the land application site;

8.2.f. Vector attraction reduction requirements, if applicable; and

8.2.g. Pathogen reduction requirements, if applicable.

#### **§33-8-9. Fees.**

9.1. Applicability. -- Sludge or other materials that are approved for use in accordance with this rule shall be subject to non-refundable fees, as described herein, which shall be paid by the producer, processor, or transporter of sludge or other material approved for use in accordance with

this rule and shall be used to administer the requirements of this rule.

9.2. Water Quality Management Fund. -- Fees required by subsection 9.3. of this rule shall be assessed on forms prescribed by the Director of the Division of Water Resources of the Department and shall be deposited in the special revenue fund designated the "Water Quality Management Fund" established under the provisions of W. Va. Code §22-11-10.

#### **9.3. Fee Assessments.**

9.3.a. Producers, processors, or transporters of sludge or other material for land application shall be assessed a fee calculated as \$5.00 per actual ton of sludge times the proportion of solids in the sludge. This fee shall be used to fund site evaluations, compliance inspections, complaint investigations, sampling, and related activities to determine compliance with this rule.

9.3.b. Permits issued under paragraph 4.1.a.1. of this rule shall be subject to the permit fees established in 47CSR26. These fees shall be used to fund issuance of permits and permit modifications, and other activities to determine compliance with this rule.

9.4.c. Permits issued under subdivision 4.1.c. of this rule shall be subject to the permit application fees established in Appendix B of this rule. These fees shall be used to fund issuance of permits and permit modifications, and other activities to determine compliance with this rule.

#### **§33-8-10. Bonding Requirements.**

10.1. Bonding. -- The Secretary may require a surety bond, deposit or similar instrument in an amount sufficient to cover the cost of future environmental remediation from producers, processors, or transporters of sludge or other materials.

**APPENDIX A**

**FREQUENCY OF MONITORING**

AMOUNT OF MATERIAL GENERATED or PROCESSED (dry tons per 365 day period)	FREQUENCY OF MONITORING
Greater than zero but less than 290 .....	once every 6 months
Equal to or greater than 290 but less than 1,500 .....	once per quarter (4 times per year)
Equal to or greater than 1,500 but less than 15,000 .....	once per month (12 times per year)
Equal to or greater than 15,000 .....	once per week

**APPENDIX B**

**PERMIT APPLICATION FEES (Non-WV/NPDES)**

New Permit .....	\$5,000
Permit Reissuance .....	\$1,000
Minor Permit Modification .....	\$100
Other Permit Modification .....	\$500

**TABLE 1**

**MAXIMUM CONCENTRATION OF METALS IN SLUDGE  
OR OTHER MATERIAL FOR LAND APPLICATION**

Metal	Concentration (mg/kg)
Arsenic.....	20
Cadmium .....	39
Chromium.....	1000
Copper .....	1500
Lead .....	250
Mercury .....	10
Molybdenum.....	18
Nickel .....	200
Selenium .....	36
Zinc.....	2800

**TABLE 2**

**MAXIMUM ALLOWABLE SOIL CONCENTRATIONS**

Metal	Concentration (mg/kg)
Arsenic.....	13.0
Cadmium .....	2.4
Chromium.....	290
Copper .....	92
Lead .....	85
Mercury .....	2.4
Molybdenum.....	4.6
Nickel .....	83*
Selenium .....	10
Zinc.....	290**

\* For sandy to silt loam soils with a permeability greater than 2.0 inches per hour, the maximum allowable soil concentration for nickel is 50 mg/kg.

\*\* For those sites with greater than 30% legume species, the maximum allowable soil concentration for zinc is 130 mg/kg for sandy to silt loam soils with permeability greater than 2.0 inches per hour and 200 mg/kg for other soil types.