



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 20, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Mike Zeto
DEP-Waste Management, Office of
1356 Hansford Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Standards for Beneficial Use of Materials Similar to Sewage Sludge, 33CSR8**

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

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

FILED

2002 NOV 13 A 10:13

Agency: WV Department of Environmental Protection
Subject: Standards for Beneficial Use of Materials Similar
to Sewage Sludge 33CSR8
Date: November 7, 2002
Counsel: Rita A. Pauley

WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment:	June 13, 2002
Public comment period ended:	July 17, 2002
Filed following public comment period:	July 23, 2002
Filed LRMRC:	July 23, 2002
Filed as emergency:	N/A
Fiscal Impact:	\$15,000

ABSTRACT

This rule is being proposed to effectuate House Bill 4551 passed last session. The rule establishes the permit mechanism and requirements for the 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.

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section.

2.4. "Beneficial Use" means the use of a non-hazardous material for a specific beneficial purpose 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.

2.15. "Sludge" means any solid, semi-solid, 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.

Section 3 establishes standards for beneficial use of sludge or other approved materials. This section provides that the Secretary may allow sludge materials to be used if it can be established that they have beneficial characteristics similar to sewage sludge. The criteria for determining "beneficial use" must, at a minimum, include an analysis of the material and other information demonstrating that it is, in fact, of a beneficial nature, 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 use. The determination of beneficial use must include an analysis of the nutrient content and the concentration of any heavy metal in the materials. In Table 1 of the rule a chart is provided for allowable limits of heavy metals. The beneficial characteristics of the sludge or other materials must be shown prior to mixing the sludge or materials with other additives such as fertilizer, organic matter, lime or other materials that would enhance the beneficial characteristics. There is a list of materials which are not eligible for consideration as appropriate land applications beneficial materials, including hazardous wastes, sludge generated from manufacturing or processing of metals, plastics, herbicides, pesticides, algacides, or fungicides, petroleum contaminated soils, sludge from drinking water treatment

plant, Wastes from saw milling or logging operations, and other such materials. Section 3 also provides several restrictions of land where sludge or other approved materials may not be land applied, including application to lands that are laying in a flood plain or snow-covered unless the applicant can demonstrate that application of the material will not cause runoff into streams or wetlands. Other restrictions include land that is within 50 feet of surface water, 200 feet of drinking water supply wells or other personal water supply, land within 200 feet of an occupied dwelling, land within 50 feet of a highway and land within 100 feet of an adjacent piece of property (unless the owner has given written permission for the land application adjacent to his property). Certain degrees of slope, water tables, soil coverage and permeability requirements also limit land applications.

Section 3 also provides that sludge or other approved material may not be land applied if it will result in exceeding the maximum soil concentration for several compounds listed in Table 2 of the rule. The Secretary may authorize variances to allow for land applications to areas where the background levels of metals in the soil exceed the maximum soil concentrations of metals listed in Table 2. Sludge or other material may not be land applied at a rate which exceeds the agronomic rate for that land or a rate of 15 dry tons per acre per year, whichever is less. An exception is granted for up to 25 dry tons per acre per year when used for reclamation of surface mine land. The rule also establishes special conditions for sludge or other materials which contain 10% or more total fats. Subsection 3.3 contains storage requirements for sludge or other materials which must meet the requirements for groundwater protection. The Secretary may require any storage or land application to cease if an odor control problem develops.

Section 4 provides that permits are required for any land application of sludge or other material prior any application to land.

Section 5 contains permit application requirements. This includes identifying information of the applicant, a description of the activities to be conducted, listing of other environmental permits held by the applicant or the owners or operators, a description of the specific source or sources of sludge or other material, a description of the process which generated the sludge or other material, how much sludge or other material is being

generated or proposed for beneficial land application, a description of the beneficial characteristics of the sludge or of the material, an explanation of the current method of disposal or other use of the material or sludge, a description of the method used to collect or control leachate and surface water runoff from any storage areas as well as a description of the existing and potential land-use of the area within one mile of the facility. An additional permit for the actual land application of sludge or other material requires soil analysis, information related to the nutrient content of the sludge or the other material to be applied to the land, a description of future and existing land uses, information about any past land applications of sludge or other materials, an agreement among the generator of the sludge or other material, the applicer and the owner of the land indicating each party's concurrence with the application of the material and a certification that each party will comply with this rule, information about any NPDES permit for the facility from which the material originated, as well as other information the Secretary may require.

Section 6 contains draft permit and public comment requirements. Once the Secretary receives a complete application, he or she may tentatively issue a draft permit. The draft permit must contain all of the permit information required by the rule and be put out for public notice and comment in accordance with the rule. Public notice of a draft permit must allow a minimum of 30 days for public comment. This period may be extended by an additional 30 days. During the public comment period, anyone interested in the proposed permit application may submit written comments on the draft permit and request a public hearing. In addition to a commentor's request for a public hearing, the Secretary may, in his or her discretion, hold a public hearing if the Secretary believes it would be helpful to the process. During the course of a public hearing, oral and written statements will be accepted. In addition, the written comment period will be extended for 10 days after the close of the public hearing. The Secretary may revise any condition of a permit based on information submitted during the public comment period or public hearing which would raise substantial new questions concerning a permit. Should a condition of permit be revised, the Secretary may issue a modified permit or reopen or extend the comment period. If the permit is modified, the applicant must once again meet all notice, public comment and public hearing requirements. After the close of the

public comment period on a draft permit, the Secretary must issue a final permit decision to issue, deny, modify, revoke, reissue or terminate a permit.

Section 7 contains the requirement for modification, revocation, reissuance, suspension and revocation of permits. The Secretary may take any of these actions on a permit either on his or her initiative or at the request of an interested person. If the Secretary tentatively decides to modify or revoke or reissue a permit, the public notice and hearing procedures of section 6 must be met. If a permit modification is requested, only those conditions to be modified are reopened when a new draft permit is prepared. All other existing conditions will remain in effect for the duration of the permit. If a permit is to be reissued under this rule, the entire permit is reopened.

A permit may be suspended or revoked if the permit conditions are not being complied with, if it is discovered that the permittee was dishonest or failed to fully disclose all relevant facts or circumstances required in the permit application, if it is determined that the permitted activity endangers human health or the environment, or a change in any condition which would require a temporary or permanent reduction or elimination of the permitted activity. The Secretary may make minor modifications to a permit with the consent of the permittee. Minor modifications would be to make corrections or allowance for changes in the permitted activity.

Section 8 contains permit contents and requirements. In general, all permits issued pursuant to this rule must contain such things as limitations on the concentrations of pollutants and pathogens in the sludge or other material, monitor requirements, fee requirement as set forth in the rule, proper storm runoff control, record retention requirements, monitoring and monthly reporting requirements as well as practices to prevent contamination of ground surface and surface waters and protection for air quality. Additional requirements are provided in this section for actual land application permits. This includes such things as listing the sites for which land application of this material has been approved, limitation on the maximum amount of sludge or other material allowed to be land applied, siting restrictions, crop restrictions and, if necessary, restrictions on grazing and public access to the site.

Section 9 contains fee requirements. Producers, processors and transporters of sludge or other material for land application will be assessed a fee calculated on \$5.00 per actual ton of sludge or other material times the proportion of solids in the sludge. This fee will be used to fund site evaluations, inspections, investigations and other related activities. Applicants for land application permits will be subject to the permit fee requirements in 47CSR26. Permit application fees for applicants without NPDES permits are set forth in Appendix B. A new permit would cost \$5,000, reissuance \$1,000, minor permit modification \$100, other permit modification \$500. Fees for land application permits will be used to fund issuance of permits and other activities necessary for compliance with the rule.

Section 10 contains bonding requirements. The Secretary may require a 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.

AUTHORITY

Statutory authority: W.Va. Code, §22-15-22(b), which provides, in part, as follows:

(b) In order to enhance the resource recovery and recycling goals of this act and to encourage the beneficial use of sludge or other materials, the secretary shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to effectuate the purposes of this section. The secretary shall at a minimum include the following in the proposed rules:

(1) A mechanism to determine beneficial use characteristics;

(2) A method to determine pollutant content of the material proposed for beneficial use;

(3) A method to determine that the beneficial properties of the material are derived from the raw material rather than additives;

(4) Buffer zones or other criteria necessary to adequately protect ground and surface water;

(5) Necessary restrictions of pollutant levels in the material;

(6) Analytical methods, loading rates and storage requirements for the material;

(7) Permit requirements; and

(8) Appropriate fees.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.