

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2006 JUL 27 A 10:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Department of Environmental Protection <sup>Waste Management</sup> / ~~Water and Waste~~ TITLE NUMBER: 33

CITE AUTHORITY: W. Va. Code § 22-15-23

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: 9

TITLE OF RULE BEING PROPOSED: Standards for Beneficial Use of Filtrate from Water  
Treatment Plants

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.

*Stephanie R. Timmerman*  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 27, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No )* Department of Environmental Protection, Division of Water  
and Waste Management  
601 57th Street SE  
Charleston, WV 25304  
(304) 926-0495

LEGISLATIVE RULE TITLE: Standards for Beneficial Use of Filtrate from Water Treatment  
Plants

1. Authorizing statute(s) citation West Virginia Code § 22-15-23

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 7, 2006

b. What other notice, including advertising, did you give of the hearing?  
Class 1 legal advertisement in the Charleston Newspapers

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 11, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X                          No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2006

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Lisa A. McClung, Director  
Department of Environmental Protection  
Division of Water and Waste Management  
601 57th Street, SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
FAX: (304) 926-0497  
lmcclung@wvdep.org

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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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

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b. Date of hearing or comment period:

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

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

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**FILED**

2006 JUN -7 P 12:52

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #1

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

AGENCY: West Virginia Department of Environmental Protection - DWWM TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §22-15-23

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: 9

TITLE OF RULE BEING PROPOSED: Standards for Beneficial use of Filtrate from Water Treatment Plants

DATE OF PUBLIC HEARING: July 11, 2006 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: WVDEP - Coopers Rock Training Room  
601 57th Street, SE.  
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL    , WRITTEN    , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Lisa A. McClung - Director  
Division of Water and Waste Management  
WV Dept. 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.

601 57th Street, SE  
Charleston, WV 25304

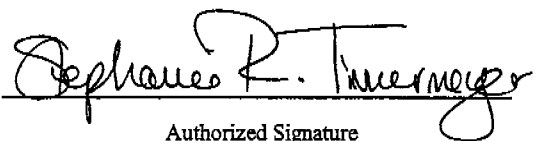
**Legislative Rule Making**

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

JUN 07 2006

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Review Committee**

  
Authorized Signature

**NOTICE OF PUBLIC HEARING**  
**STANDARDS FOR BENEFICIAL USE OF FILTRATE FROM WATER**  
**TREATMENT PLANTS**

The WV Department of Environmental Protection will hold a public hearing on a proposed rule 33CSR9, "Standards for Beneficial Use of Filtrate from Water Treatment Plants" on July 11, 2006, at 6:00 p.m. at its Charleston office, Cooper's Rock Training Room, 601 57<sup>th</sup> Street, SE, Charleston, WV. The agency will also accept any written comments received by the close of business on July 11, 2006. Written comments should be addressed to the following address:

Cliff Whyte, P. E., Assistant Director  
WV Department of Environmental Protection  
Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Copies of the proposed rule and briefing document explaining the rule can be obtained from the Secretary of State's office or the agency by contacting Pat Webb at [pwebb@wvdep.org](mailto:pwebb@wvdep.org) or (304) 926-0499, Extension 1001.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:**

**33 CSR 9, "Standards for Beneficial Use of Filtrate from Water Treatment Plants"**

**A. AUTHORITY:**

**West Virginia Code §22-15-23**

**B. SUMMARY OF RULE:**

**To make provision for the beneficial reuse of water treatment plant residuals in a manner that will protect the environment and human health. Overviews of the provisions are presented as follows.**

- **The rule provides a mechanism for determining beneficial use characteristics of filtrate**
- **The rule provides a mechanism for determining the pollutant content of filtrate to be beneficially used**
- **The rule provides a mechanism for determining that beneficial properties come from the filtrate as opposed to additives**
- **The rule provides for general location standards and other restrictions to insure protection of groundwater**
- **The rule includes restrictions on pollutant levels in the filtrate to be beneficially used**
- **The rule provides a permitting process for the long-term beneficial use of water treatment plant filtrate**
- **The rule establishes application, modification and renewal fees for beneficial use certifications and permits**
- **The rule provides analytical methods and storage requirements for filtrate to be beneficially used**

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

**Senate Bill No. 154, effective on July 6, 2005, required the Department to promulgate rules for the implementation of procedures that will provide for the beneficial use of water treatment plant filtrate in order to enhance the resource recovery and recycling goals of the Code.**

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

**There is no federal counterpart regulation, thus no determination of stringency is required.**

**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:**

**At its meeting on May 31, 2006, the Environmental Protection Advisory Council discussed this rule. (See attached minutes for Council's discussion.)**

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Wednesday - May 31, 2006

1:00 p.m. – 3:00 p.m.

601 57<sup>th</sup> Street, SE, Charleston, WV

West Virginia Room – 3<sup>rd</sup> Floor

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris

Jackie Hallinan

Rick Roberts

Bill Raney (via conference call)

Karen Price

**DEP:**

Stephanie R. Timmermeyer, Cabinet Secretary

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation

Heather A. Connolly, General Counsel

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Lalena Price, Acting Chief Communication Officer – WVDEP – Public Information Office

James Martin, Chief, WVDEP - Office of Oil & Gas

Jim Mason – WVDEP

Bill Brannon – WVDEP

Carroll Cather – WVDEP

Terrie Sangid – WVDEP

Scott Mandirola – WVDEP

Cliff Whyte – WVDEP

John Morgan – WVDEP

Gary Rogers – WVDEP

Mike Dorsey – WVDEP

Patrick Campbell – WVDEP

Ken Politan – WVDEP

Pam Nixon – WVDEP

**VISITORS:**

Don Garvin – WVEC  
Allan S. Tweddle – WVEC  
Adam Webster – WVRC  
Tim Mallan – Appalachian Power  
Steve Keen – Bright Enterprises  
Charlie Burd – IOGA – WV  
Tom Boggs – WV Chamber

Stephanie R. Timmermeyer, Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m. Secretary Timmermeyer apologized for short time period with some of the rules getting out to Council.

Proposed rules for the 2007 legislative session are as follows:

**60CSR5 – Antidegradation Implementation Procedures**

**SUMMARY**

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State’s waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection of State waters, Tiers 1,2,2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process.

**COMMENTS**

Secretary Timmermeyer - Procedural History – 444 Streams to 303 - 3.7% of total WV stream miles.

5.6.d. Are these absolute values (§5.6.d 1-4 of rule)?

*Yes*

Will there be another comment period after filing with Secretary of State’s Office?

*Yes*

Is this the final list?

*Yes*

So §6.2 is gone?

*Yes*

Legislature has to approve the Tier 2.5 list according to the law passed last session.

How do we appeal a stream's inclusion on Tier 2.5 list?

*9.6 – Not appealable to the board, delisting a stream would require a change by the legislature through a rule change.*

Since rulemaking authority has been taken from EQB how do you appeal?

*This is like any other rule, EQB has no appellate jurisdiction.*

When does it go into effect?

*If the Legislature passes the list, we send it to EPA for approval, then it would be effective for reissuance, modifications, and 1<sup>st</sup> time issuances.*

## **47CSR2 – Requirements Governing Water Quality Standards**

### **SUMMARY**

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

### **COMMENTS**

Secretary Timmermeyer – Overview of nutrients criteria, EPA approved old (46CSR1) Aluminum Standard. Also includes updated list of trout waters.

How were trout streams added?

*We relied on DNR's data to come up with the list.*

Was it a scientific study or did it include streams where trout are stocked?

*The stream must be able to allow trout to survive over time. This does sometimes include stocked streams.*

Has problem with some streams listed, believes they are not reproducing streams, simply stocked, wants to see method of gathering data for list

*The list is not final, DEP will continue to regulate facilities on such streams. DEP will add and subtract streams as data becomes available.*

*6 streams are being taken off in this rule because they cannot support trout over time.*

How recent are DNR's survey's?

*The surveys range from 1975 to present.*

*We have to maintain waters that "previously sustained trout."*

Where is Watershed at in definition?

*When permits are issued they are looked at on a case by case basis to assess impact on downstream waters within a watershed (downstream usage protection.)*

*There is no definition of "water body" in State Code, only "Waters."*

### **33CSR9 - Standards for Beneficial Use of Filtrate From Water Treatment Plants**

#### **SUMMARY**

This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

#### **COMMENTS**

Can we give an example?

*Such filtrate could have been considered Hazardous Waste in the past, this rule allows for certain applications.*

### **47CSR5A – Rules for Individual State Certification of Activities requiring a Federal Permit**

#### **SUMMARY**

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands

from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

## COMMENT

Does this apply to any other industry?

*No, it is only coal related.*

Wants to know if other industry has similar regs?

Seems contrary to what we submit to Army Corp. We want consistency across all forums. Is this different?

*No, it is information contained in other forms.*

4.2.f.a WV. Jobs creation

*Coal companies are already submitting this information to Coal Development. We use this information so we need to see it too.*

Is it on a timeframe? – Can coal meet with DEP?

Secretary Timmermeyer suggested we have another Advisory Council Meeting to give the council additional time to review certain rules.

Bill Raney agrees with Secretary Timmermeyer for the need for another meeting to address some of the rules.

The next Advisory Council Meeting will be scheduled before June 20, 2006.

## **58CSR5 – Recycling Assistance Grant Program**

### SUMMARY

Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clarifies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

### COMMENT

Someone worked really hard on putting this together - Really thinks they did a great job.

*The changes are a result of suggestions from grant recipients and the recycling community in general.*

## **45CSR6 – Control of Air Pollution from Combustion of Refuse**

### **SUMMARY**

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

### **COMMENT**

Rule is just reorganizing and streamlining.

Wholesale look at air rules. Four decades old rule. Needed to take a look at its federal counterparts. We separated them (fed) into Rule 18. Rule 6 covers state regs. Streamlined. Did not change any limits. Left open burning and DOH jobs the same.

Both rules compared old “prevent and control” new “control” why drop the term “prevent” from the rule?

*We don't prevent air pollution we control it. There is no other specific reason, DEP just cleaned up the title.*

*The federal government doesn't use the term “prevent” and we are trying to mirror their rules for consistency.*

Does it involve timbering operations?

*No.*

## **60CSR3 – Voluntary Remediation and Redevelopment Rule**

### **SUMMARY**

The Voluntary Remediation Program proposed rule amendments focus on two primary areas: 1. Incorporating the Uniform Environmental Covenant Act provisions, and 2. Updating the DeMinimis Standard to incorporate recent changes in toxicological profiles posted by EPA for several constituents.

## **COMMENT**

We're adopting Uniform Environmental Covenant Act. We'll have to adopt as they change. Same for DeMinimus Standards (developed by consultant in excel). We've updated the tox profiles.

No questions from Council.

## **45CSR25 – Control of Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities.**

### **SUMMARY**

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2006: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Resource Conservation and Recovery Act Burden Reduction Initiative, and Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB.

### **COMMENT**

Revisions to this rule are necessary to maintain consistency with current federal regulations.

Only federal changes this year except for one definition on pathological incinerators.

No further questions.

## **199CSR1 – Surface Mining Blasting Rule**

### **SUMMARY**

These changes are proposed for clarification of definitions, jurisdiction for underground shaft and slope development, and training/educational requirements for pre-blast surveyors and certified blasters. None of which should have any fiscal impact on the state or public above those currently experiencing. Some additional training will be required by those doing pre-blast surveys, but that training will be offered for free by Explosives and Blasting.

## COMMENT

Randy Huffman hit on highlight changes and cleanup for this rule:

3.2.c. 1000 ft requirement for seismograph

3.4. defines where DEP gives up regulatory authority as 40ft.

3.9 Pre blast surveyors training requirements.

Is this new or modified requirement?

*Modified – Now requiring additional criteria. DEP/OEB is the approving authority. We offer procedural training only at DEP 4.1.b. Case by case certification for qualifying experience for initial certification.*

Would that include the convicted felon requirements?

*The convicted felon exclusion remains. Felons can't get a fire marshal's license, or a license from ATF.*

Any provision for appeals on the convicted felon prohibition?

*Not at this time.*

4.5.d – Show cause why you should be allowed in West Virginia when suspended or revoked in other states.

4.9. – Allows blasting inspector to issue suspension order on site if unsafe conditions exist. 24 hour appeal process. Concerned about air blast and fly rock incidents.

Grammatical errors must be changed before we go out to public notice.

Concerns: New definition for “Other structures” and “habitable dwelling”  
Shaft and slope (40 ft)

*Other structures or “Protective structure” can house people – habitable dwelling one that can house people (snowbird example)- “shaft and slope” DEP worked with miner's health and safety to develop the distance criteria.*

We're (WVCA) probably fine with them.

Does OSM require it?

*No. Geology and blast record 3.5 Safety concerns pre-blast surveyors, they don't have to be geologists, but they do need to know what they are blasting.*

## **HOLD OVER FOR NEXT MEETING.**

### **38CSR2 – Surface Mining Reclamation Rule**

#### **SUMMARY**

38- 3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38- 5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. Changes in §38-14.15.c.2, 14.15.d.1 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in §38- 5.6 and 14.15 removes phase-in compliance schedules and the schedule in 14.15 has long past and the one in 5.6 is due to expire on June 19, 2006. §38-2-25 Coal Slurry Lines is new language and the term slurry as used in this subsection means any mixture of water and solids that are pumped to a disposal area. The purpose of this change is to minimize the potential and the impacts of slurry line spills by providing for secondary containment, monitoring etc.

#### **COMMENT**

Creates standards and requirements (§38-2-25) is a new section.

Public review period 3.2.g. – currently the public has no opportunity to comment on a completed application so this rule adds a 15 day comment period in certain circumstances.

Why delete the term “databases” specifically

*Some of those databases don't exist. We have our own database now.*

Has the current notification timeframe changed?

*No, it is the same as using the existing spill line.*

What about mining related spills?

*Inspectors call spill line within 24 hour period. Companies should call immediately upon discovering a spill.*

Is there anyway to sample water for slurry spills?

*Currently DEP Inspectors take stream water samples and that data is on file.*

Is there anything dangerous in the slurry to the public?

*Not usually. We can get you data on existing samples.*

Dialysis system are bothered by trace stuff in the water.

*Coal fines are usually what kill fish, not the trace chemicals.*

## **HOLD OVER FOR NEXT AC MEETING**

### **47CSR30 – WV/NPDES RULES FOR COAL MINING FACILITIES**

#### **SUMMARY**

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit.

#### **COMMENT**

Eliminates need to do a NPDES modification permit in certain instances when adding area to an existing permitted area. Reduce paperwork and manpower.

Secretary can override rule when circumstances dictate. Also, there is a provision for advanced approval of a transfer permit in certain circumstances. Consistent with SMCRA.

Why would a permit area be expanded if not to extract minerals?

*Haul roads, storage, etc.*

Does this do away with any existing public comment period?

*No. These small changes wouldn't require a hearing.*

## **HOLD FOR NEXT MEETING.**

### **35CSR3 – Coalbed Methane Wells Rule –**

## **HOLD FOR NEXT MEETING**

## **33CSR20 – Hazardous Waste Management**

**HOLD FOR NEXT MEETING**

## **45CSR8 – Ambient Air Quality Standards**

### **SUMMARY**

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

### **COMMENT**

This puts all NAAQS in one rule, acts to consolidate and streamline the rule.

Why do away with 2.2?

*It's now in 3.1 and adopts federal standards.*

Particulates are in this rule. Dr. Popper's (WVU) research shows that particulates damage kid's lungs developmentally and these standards are based on adults. Asthma on the increase and this might exacerbate our kids health.

*The federal EPA is currently reviewing fine particulate matter and we will change our standards accordingly based on their rule changes.*

## **45CSR16 – Standards of Performance for New Stationary Sources**

### **SUMMARY**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial- Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines.

#### **COMMENT**

Standard Update of fed requirements.

No Questions.

#### **45CSR34 – Emission Standards for Hazardous Air Pollutants**

#### **SUMMARY**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2006. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 “Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61” filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2006: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hazardous Waste Combustors, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing and General Provisions.

#### **COMMENT**

Standard update of fed requirements combining 45CSR\_\_\_ and 45CSR16 into this rule. Will replace Rule 15.

No Questions.

#### **45CSR39 – Control of Annual Nitrogen Oxides Emissions**

#### **SUMMARY**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO<sub>x</sub> Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO<sub>x</sub>).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are

known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind NO<sub>x</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW<sub>e</sub> generating capacity. The CAIR NO<sub>x</sub> Ozone Season Trading Program requirements are set forth in 45CSR40.

## COMMENT

Standard update of Fed requirements.

CAIR rules

Picking up EPA rules

Are all the cross-outs just picking up federal standards?

*Yes.*

No other questions.

## **45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions**

### SUMMARY

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO<sub>x</sub> Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO<sub>x</sub>).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of ozone season NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind ozone season NO<sub>x</sub> emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO<sub>x</sub> SIP Call trading program, existing NO<sub>x</sub> SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO<sub>x</sub> reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which

effectively “sunset” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW<sub>e</sub> generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO<sub>x</sub> SIP Call ozone season NO<sub>x</sub> emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO<sub>x</sub> Annual Trading Program requirements are set forth in 45CSR39.

## COMMENT

These changes have they resulted in any change in stringency?

*No we are simply streamlining the CAIR rules*

We haven't lost any ground?

*No.*

## 45CSR1 – Control of Annual Sulfur Dioxide Emissions

### SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO<sub>2</sub> Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO<sub>2</sub>).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO<sub>2</sub> reduce annual emissions based upon the implementation of retirement ratios for SO<sub>2</sub> allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO<sub>2</sub> emission reductions be implemented in two phases. The first phase of SO<sub>2</sub> reductions starts in 2010 and requires retiring SO<sub>2</sub> allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO<sub>2</sub> allowances at a 2.86:1 ratio, and continues thereafter. The SO<sub>2</sub> emissions reductions requirements are based on

controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO<sub>2</sub> emission allowances from or to other program participants. Reducing upwind SO<sub>2</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS). 45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW<sub>e</sub> generating capacity.

#### **COMMENT**

No questions.

#### **OTHER BUSINESS**

Appreciation to Trish White for her work on these rules.

Larry Harris wanted to know about Pocohantas Water Treatment Plant Status? Randy Huffman located Cliff Whyte from DWWM to give him the information.

Trish White will e-mail everyone with next meeting date....

Larry Harris moves we adjourn – Bill Raney seconds.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 33CSR9, "Standards for Beneficial Use of Filtrate from Water Treatment Plants"

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Department of Environmental Protection/DWWM

Address: 601 57th Street, SE  
Charleston, WV 25304

Phone Number: (304) 926-0495 Email: lmclung@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Although existing staff will be utilized, the agency anticipates additional staffing needs of 0.25 FTE and associated support in the amount of \$25,000, which costs will be reimbursed through permit and/or certification fees established in the rule.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	25,000.00	25,000.00
Personal Services	0.00	18,750.00	18,750.00
Current Expenses	0.00	6,250.00	6,250.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	25,000.00	25,000.00

Rule Title: \_\_\_\_\_

Rule Title: 33CSR9, "Standards for Beneficial Use of Filtrate from Water Treatment Plants"

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Staffing needs: 0.25 FTE X (Avg. salary & fringe used for planning purposes - \$75,000) + \$18,750  
Supplies, travel, computer support, etc. - \$6,250  
Total - \$25,000

Revenues: Permit and/or Certification fees at 112 facilities. For facilities requiring a permit, an initial application fee of \$1,000 is proposed with a renewal fee of \$500. It is estimated that most facilities will opt for certification at \$250 per application. A \$5 per ton land application fee will be applicable to permits and certifications. The \$25,000 in revenue is probably conservative depending on the number of facilities who choose to participate.

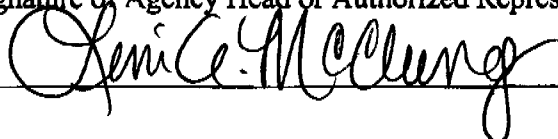
**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

See above.

Date: July 27, 2006

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

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

FILED

JUL 27 A 10:00

**SERIES 9  
STANDARDS FOR BENEFICIAL USE OF FILTRATE FROM  
WATER TREATMENT PLANTS**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE**§33-9-1. General.**

1.1. Scope. -- This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

1.2. Authority. -- W. Va. Code §22-15-23.

1.3. Filing Date. --

1.4. Effective Date. --

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

**§33-9-2. 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 filtrate 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 determination, permit or renewal permit and any person related to such person by virtue of common ownership, or common management.

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, soil amendment, cover material, fill material, mulch or horticultural product, 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. "Filtrate or water treatment plant filtrate" means any sludge that results from the treatment of water at a water treatment plant.

2.8. "Long-term" means the application of filtrate to a site multiple times for a period of twelve months or more.

2.9. "Land Application site" means a location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil so that the filtrate can fertilize the crops or vegetation grown in the soil.

2.10. "Nutrient" or "nutrient content" means an element essential for plant growth, which for the purposes of this rule are nitrogen, phosphorous, potassium, calcium, magnesium, and micronutrients such as iron where applicable to a proposed beneficial use.

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

2.12. "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.

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

2.14. "Producer" means any person producing filtrate approved for use in

accordance with this rule.

2.15. "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.

2.16. "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.

2.17. "Short-term" means the application of filtrate to a site one or more times over a period of less than twelve months.

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

2.19. "Soil improvement site" means the location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil, so that the filtrate can improve the growing conditions for the crops or vegetation grown in the soil.

2.20. "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 a public water supply system.

2.21. "Water treatment plant" means any facility, equipment, unit or system used to improve the quality of water to make it more suitable for domestic, commercial, or industrial purposes or for any other beneficial use.

2.22. "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 a well or well field as delineated by the Bureau for Public Health.

### **33-9-3. Procedures for Obtaining a Beneficial Use Certification.**

3.1. Applicability. Persons may obtain a certification approving the beneficial use of filtrate for one-time or short-term applications of filtrate as set forth in this section.

3.1.a. No person may land apply or otherwise beneficially use filtrate subject to this rule without first obtaining either a permit or a written certification of such use from the Secretary.

3.1.a.1. The Secretary may require a permit for the long-term application of filtrate at a soil improvement site as set forth in section 4 of this rule.

3.1.a.2. The Secretary shall require a certification for a one-time or short-term beneficial use of filtrate as set forth in this subsection.

3.1.b. The generator or proposed user of filtrate for one-time or short-term uses of filtrate must request from the Secretary, in writing, a certification that the proposed use of filtrate is a beneficial use. The Secretary may consider a requested use on a case-specific basis or may consider a request for a set of similar uses.

3.1.c. The applicant must demonstrate that the use of the filtrate will not adversely affect human health, soil, air, surface water or groundwater.

#### 3.2 Basis for decision.

3.2.a. The Secretary shall consider the following in reviewing a request for a beneficial use certification:

3.2.a.1. Whether the filtrate, either proposed to be used as a mixture with other materials or alone, can be demonstrated to have benefit or usefulness as a raw material;

3.2.a.2. If the filtrate will be a constituent in another product, whether the resulting product, under its intended use, is not likely to adversely impact existing groundwater or surface water quality;

3.2.a.3. Whether the process of manufacturing the product using the filtrate will comply with all applicable permitting requirements;

3.2.a.4. Whether the filtrate may be beneficially used as an effective substitute to a commercially available product.

3.2.a.5. Whether there is an existing market for the filtrate or for the product made with the filtrate, or whether there is the probability of a market coming into existence after the approval of the case-specific beneficial use.

3.2.a.6. Whether the applicant has demonstrated that the filtrate will not need to be treated or otherwise chemically altered before use.

3.2.b. The Secretary shall determine in writing whether to grant the request for a beneficial use certification based on consideration of subsections 3.2.a.1 through 3.2.a.6, and a showing that the following criteria have been met:

3.2.b.1. The use proposed is a reuse, and not a disposal;

3.2.b.2. That where a product is being made with the filtrate there is an existing market for the filtrate or for the product made with the filtrate, or that there is the probability of a market coming into existence after the certification of the beneficial use;

3.2.b.3. That the use will conform to the standards for the beneficial use of filtrate as set forth in sections 5 and 6 of this rule, and

3.2.b.4. The use of the filtrate will not adversely affect human health, soil, air, surface water or groundwater.

**§33-9-4. Procedures for Obtaining a Permit.**

## 4.1. Applicability.

4.1.a. The Secretary may require that a person proposing to land apply filtrate subject to this rule obtain a land application permit. The Secretary may require a permit where:

4.1.a.1. The application is proposed to occur on an ongoing basis for more than 12 months; or

4.1.a.2. The Secretary deems a permit necessary based on other special circumstances not addressed in sections 5 and 6 of this rule.

4.2. Permit required. When a permit is required by the Secretary, the applicant must comply with sections 4.3, 4.4 or 4.5 of this rule.

4.3. For those facilities holding a WV/NPDES Permit required under W. Va. Code 22-11-1 et seq., the permit requirements of this rule may be incorporated as a modification of that facility's WV/NPDES permit.

4.4. Permits issued under section 4.3 of this rule are 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.

4.5. Other permits issued to a person seeking approval for beneficial use of filtrate in accordance with this rule shall be subject to the permit issuance, modification, reissuance, suspension and revocation procedures of section 7 through section 13 of this rule.

**§33-9-5. Standards for Beneficial Use of Filtrate.**

5.1. Beneficial uses of filtrate approved by a certification or permit must conform to the standards set forth in this subsection.

5.1.a. A beneficial use certification or permit issued by the Secretary pursuant to this rule shall be based on analysis of the filtrate and

other information demonstrating its beneficial use characteristics, an evaluation of the process that creates the filtrate, and an evaluation of potential adverse impacts to human health and the environment from the proposed use.

5.1.a.1. The concentration of any heavy metal in the filtrate shall not exceed the values determined to be appropriate for the specific application site as set forth in Tables 1 of this rule.

5.1.a.2. Residential soil concentrations in 60CSR3, and 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.

5.2. Filtrate may be used as a fill material, to contour grades, as daily cover at a landfill, and for other like uses.

5.3. The Secretary may approve the use of filtrate as fill material within fifty (50) feet of surface water upon submission of information sufficient to show that the fill material will have no significant impact on the quality of runoff reaching the surface water.

5.4. Filtrate may not be used as a fill material or otherwise placed on the land for a beneficial use where the Secretary determines, after investigation into the proposed use, that the use of filtrate would be inappropriate for any structural or environmental reason.

5.5. No person shall apply filtrate in a manner that will result in exceeding the maximum soil concentrations listed in Table 2 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 filtrate, soil analyses, and pollutant loss rates from erosion, leaching, and volatilization demonstrate that the beneficial use of the filtrate 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 for soil monitoring, if necessary, of each metal exceeding the Table 2 value.

5.6. The Secretary may not issue a beneficial use certification unless he or she has determined the suitability of the filtrate for use in compliance with this rule.

5.7. General Location Standards and Restrictions.

5.7.a. Land surface. Filtrate shall not be applied to land that meets any of the following conditions unless approved by the Secretary:

5.7.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 result in runoff into streams or wetlands.

5.7.a.2. Land within fifty (50) feet of surface water to include streams, springs, ponds, wetlands, or other collection points for surface water unless the water in the collection point will be treated before being released into a surface water, including but not limited to ponds, ditches, and cells used to treat surface runoff from surface mines or as a phosphorous control material on agricultural sites.

5.7.a.2.a. To qualify for the use as a phosphorous control agent, the applicant must have the use approved as part of a nutrient management plan developed consistent with West Virginia Conservation Agency or Natural Resources Conservation Agency guidelines.

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

5.7.a.4. Land within fifty (50) feet of an occupied dwelling.

5.7.a.4. Land within twenty (20) feet of a federal or state highway unless the beneficial use includes soil improvement for plantings on West Virginia Department of Transportation or federal highway rights of way and is applied with permission of the applicable state or federal highway authority or fill or

grading material on West Virginia Department of Transportation or federal highway rights of way with permission of the applicable state or federal highway authority.

5.7.a.5. Land from which drainage leads into a sinkhole.

5.7.a.7. Land that has a slope greater than 15%.

5.7.a.8. Land that has a seasonal high groundwater table less than 3 feet from the surface.

5.7.a.9. Land where the application of filtrate is likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat.

5.7.a.10. Other land determined by the Secretary to be unsuitable for land application.

5.7.a.11. Land where there has been a precipitation event measured at more than 0.25 inches in the previous 24 hours or where there is the expectation that a precipitation event of a like magnitude will occur within 24 hours after application.

5.7.b. Land subsurface. Filtrate shall not be applied to land subsurface that meets any of the following conditions unless approved by the Secretary:

5.7.b.1. Land within two hundred (200) feet of drinking water supply wells or other private water supply.

5.7.b.2. Land from which drainage leads into a sinkhole.

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

5.7.b.4. Land where the application of filtrate is likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat.

5.7.b.5. Other land determined by the Secretary to be unsuitable for land application.

5.7.c. In addition to the requirements of 5.7.b, any filtrate applied to the land subsurface for the maintenance and construction of utility distribution and collection systems shall be covered by a minimum of six inches of non-filtrate fill material.

5.8. Land application site location standards and restrictions.

5.8.a. In addition to the general location standards and restrictions in subsection 5.7. of this rule, land application site must conform to the standards and restrictions in this section.

5.8.b. Beneficial characteristics. Beneficial characteristics that may be considered under this subsection include nutrient content and, where applicable, alkaline properties.

5.8.c. The concentration of any heavy metal in the filtrate shall not exceed the values listed in Table 1 of this rule.

5.8.d. 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.

5.8.e. The Secretary may not issue a permit for a land application site unless he or she has evaluated the proposed land application site to determine its suitability for use and compliance with this rule.

5.8.f. The following materials may not be land applied at a land application site:

5.8.f.1. Any filtrate that is a listed or characteristic hazardous waste referenced in 33CSR20.

5.8.g. Any filtrate proposed for use at a land application site having a nutrient concentration that will not provide at least fifty

percent of the established crop nutrient need for either nitrogen, phosphorous, or potassium unless the Secretary determines that the proposed land application will provide value for agricultural or land improvement purposes, including but not limited to land application of filtrate to improve soil pH levels or soil alkalinity or for micronutrient value.

5.8.h. Filtrate shall not be applied to land that meets any of the following conditions without specific permission from the Secretary:

5.8.h.1. Land within one hundred (100) feet of an adjacent property owner's property line, unless written permission is given by the adjacent property owner.

5.8.h.2. 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, and provided that the adjustment of pH to 6.2 or greater can be accomplished by the addition of a higher pH filtrate.

5.8.h.3. Land that is within 100 feet of a vertical rock outcrop, unless it is shown that the land application will not adversely affect groundwater.

5.8.i. No person shall apply filtrate to a land application site in a manner that will result in exceeding the maximum soil concentrations listed in Table 2 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 filtrate, soil analyses, and pollutant loss rates from erosion, leaching, and volatilization demonstrate that the land application of the filtrate, 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 for a land application site 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.

5.8.j. Filtrate shall not be applied in a manner that diminishes soil productivity, seed germination, or plant health.

5.8.k. No person shall land apply filtrate except during daylight hours.

### **§33-9-6. Storage and Other General Requirements.**

#### **6.1. Storage requirements.**

6.1.a. Areas used for storing, mixing, processing, and curing of filtrate, including filtrate loading and unloading areas, impoundments, pipelines, ditches, pumps, drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Outdoor storage of finished products which have been processed or cured shall be limited to one year; Provided, that a permanently constructed area for the storage, mixing, processing, or curing of filtrate where filtrate is removed from and added to the area on an ongoing basis shall not be prohibited by this provision so long as the permanent storage area is constructed and operated to prevent the release of contaminants to groundwater or surface water.

6.1.b. All storage areas must be designed and operated to control vectors and odors.

6.1.c. Storage areas 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.

6.1.d. All land application site storage areas must protect groundwater 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 47CSR 60.

6.1.e. Filtrate may not be stored at a land application site prior to land application for a period of more than one week: Provided, That the Secretary may authorize storage for up to

three months where acceptable provisions have been made to prevent leachate runoff into surface or groundwater.

#### **6.2. General requirements.**

6.2.a. The Secretary shall assign an individual and lifetime loading rate for each land application site for which a permit or beneficial use certification is required 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.

6.2.b. No person shall land apply filtrate, which exceeds the agronomic rate for that land application site or a rate of fifteen dry tons per acre per year, whichever is less.

6.2.c. Twenty-five dry tons per acre per year, agronomic rate, of filtrate may be applied in the reclamation of surface mine land or as cover at a landfill, unless the Secretary determines that based on specific site factors either more or less filtrate can be applied each year.

6.2.d. If filtrate is mixed with sewage sludge, then the rule governing the beneficial use of materials similar to sewage sludge (33 C.S.R. 8) shall govern the resulting mixture. The provisions of 33 CSR 8, Section 3.1.d.a.D. will not be a prohibition to the applicability of the use of the resultant mixture.

6.2.e. If the beneficial use of filtrate is as fill material then the Secretary will exercise best professional judgment in establishing the maximum amount of filtrate that can be used under various site conditions.

6.2.f. If the proposed beneficial use includes application on a reclaimed surface mine or on an active mine then the Secretary may approve the use upon determining that the filtrate or other approved material will not adversely affect the pH in surface or ground waters.

6.2.g. If the filtrate or other approved material is going to be used as a liming agent to raise pH, the original pH of the soil shall be used to determine the amount of filtrate to apply.

6.2.h. No person shall apply filtrate 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.

6.2.i. 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) 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.

### 6.3. Sample Analysis.

6.3.a. U.S. Environmental Protection Agency analytical procedure SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, 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.

6.3.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.

### §33-9-7. Permit Application and Certification Requirements.

7.1. 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.

7.2. Permit Application and Certification Requirements. -- All applicants for a permit or certification must provide the following information:

7.2.a. The name, address, and location of the facility generating the filtrate;

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

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

7.2.d. Other environmental permits issued by any local, state or federal agency previously held or currently in effect;

7.2.e. A description of the filtrate to be beneficially used, including:

7.2.e.1. The specific source(s) of filtrate;

7.2.e.2. A description of the process used to generate the filtrate;

7.2.e.3. A physical description of the filtrate, including moisture content expressed as the percent solids, odor, particle size, and appearance; and

7.2.e.4. The content of heavy metals in the filtrate as set forth in Table 1 of this rule.

7.2.f. The amount of filtrate generated, processed, or proposed for beneficial use;

7.2.g. A description of the beneficial characteristics of the filtrate;

7.2.h. A description of the current method of disposal or use for the filtrate;

7.2.i. The following information, where necessary and applicable:

7.2.i.1. 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;

7.2.i.2. A description of the method used to collect or control leachate and surface water runoff from any storage areas;

7.2.i.3. A description of existing land uses adjacent to the proposed land application site or beneficial use area; and

7.2.i.4. A certified copy of any municipal or county zoning restrictions.

### 7.3. Permit Application Requirements.

7.3.a. Persons required by the Secretary to apply for a permit for the long term application or beneficial use of filtrate must submit the following information to the Secretary in addition to that required under subsection 7.2 of this rule, where applicable:

7.3.b. 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;

7.3.c. Information relative to the nutrient content of filtrate to be land applied;

7.3.d. A description of all soil types present on the site proposed for land application, including a soil profile description and a soil map with application sites clearly defined;

7.3.e. An agreement between the preparer of filtrate, the applier, and the owner of a land application site indicating each party's concurrence with the application, and certifying that each will comply with applicable requirements of this rule;

7.3.f. A description of existing and future uses of the land application site;

7.3.g. Information relative to past application of filtrate, sewage filtrate, material

derived from sewage filtrate, fertilizers, pesticides, and herbicides to each land application site;

7.3.h. In addition to the chemical analyses required in subdivision 7.2 of this rule, any additional chemical analyses of the filtrate requested by the Secretary;

7.3.i. A description of the methods to be used for land application;

7.3.j. A description of the methods for transportation of filtrate to the land application or beneficial use site;

7.3.k. A copy of the NPDES or other permit for the facility from which the filtrate originated;

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

7.3.m. A description of the methods to be utilized to inhibit the mobility of metals added to the soil by the land application of filtrate, should such land application cause an increase in the concentration of metals in the soil at a land application site;

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

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

7.3.p. Any additional information required by the Secretary.

### **§33-9-8. Draft Certifications, Draft Permits, and Public Comment.**

#### 8.1. Administration.

8.1.a. Once a permit or certification has been made, the Secretary shall decide whether to prepare a draft permit or draft certification use approval letter or to deny the request.

8.1.b. If the Secretary decides to issue a draft permit or certification letter, it must contain the agency's basis for approval.

8.1.c. A draft permit or certification letter shall be provided to the applicant and shall be publicly noticed and available for public comment in accordance with subsection 8.2.

## 8.2. Public notice.

8.2.a. Public notice of the preparation of a draft permit pursuant to this rule must provide at least thirty (30) days for public comment. Public notice of the preparation of a draft certification letter pursuant to this rule must provide at least fifteen (15) days for public comment. The public comment period may be extended by the Secretary, but in no case may the extension exceed an additional thirty (30) days.

8.2.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.

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

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

8.2.c.2. By publishing the public notice as a Class I legal advertisement in a qualified newspaper with the largest circulation for the county where the generator of filtrate and the location of the proposed beneficial use pursuant to W. Va. Code §59-3-1 et seq. 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; and

8.2.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.

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

8.2.d.1. Name and address of the division processing the permit or certification for which notice is being given;

8.2.d.2. Name and address of the applicant;

8.2.d.3. A brief description of the activity described in the permit or certification request or in the draft permit or approval letter;

8.2.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 approval letter, and the permit application or certification; and

8.2.d.5. A brief description of the comment procedures required by subsections 8.3 and 8.4 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 agency decision.

8.2.e. In addition to the requirements of subdivision 8.2.d. of this rule, public notice of a hearing shall contain the following information:

8.2.e.1. Reference to the date of the public notice relating to the draft permit or approval letter;

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

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

8.3. Public comments and requests for public hearings. -- During the public comment period provided under subsection 8.2, any interested person may submit written comments on the draft permit or certification letter and may request a public hearing. If a public hearing has

already been scheduled additional requests do not require additional hearings. 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 agency decision and shall be responded to as provided subsection 8.6.

#### 8.4. Public hearings.

8.4.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 or certification letter. The Secretary also may hold a public hearing at his or her discretion, when, for instance, a hearing might clarify one (1) or more issues involved in the agency's decision.

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

8.4.c. The submission of statements in writing under subdivision 8.3 shall automatically be extended to ten (10) days after the close of any public hearings conducted under this section.

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

8.5. Reopening of the public comment period.

8.5.a. If any information or arguments submitted during the public comment period raise substantial new questions concerning a draft permit or certification letter, or if as a result of comments submitted by someone other than the applicant, the Secretary decides to revise any condition of the draft permit or certification letter that had been sent to initial public notice, the Secretary may:

8.5.a.1. Prepare a new draft permit or certification letter, appropriately modified, under section 7 of this rule; or

8.5.a.2. Reopen or extend the

comment period to give interested persons an opportunity to comment on the revision to the draft permit or certification letter.

8.5.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.

#### 8.6. Response to comments.

8.6.a. The Secretary shall issue a response to comments received on the draft permit or certification letter prior to issuing the final permit or certification. This response shall:

8.6.a.1. Specify which provisions, if any, of the draft permit or certification letter have been changed in the final permit or certification, and the reasons for the change; and

8.6.a.2. Briefly describe and respond to comments on the draft permit or certification letter raised during the public comment period, or during any hearing.

8.6.b. The response to comments shall be mailed to any person who commented or any person who requests a response.

8.7. Issuance and effective date of permit or certification.

8.7.a. After the close of the public comment period on a draft permit or certification letter, the Secretary shall issue a final decision. The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final decision. This notice shall advise that anyone aggrieved by the decision may make an appeal to the Environmental Quality Board by filing a Notice of Appeal with the Board within thirty days after the final decision is made. For the purposes of this section, a final permit or certification means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit or certification.

**§33-9-9. Modification, Revocation and Reissuance, Suspension and Revocation.**

9.1 Actions by the Secretary.

9.1.a. Permits or certification may be modified, revoked and reissued, suspended or revoked either at the request of any interested person or upon the Secretary's initiative. Permits or certification may only be modified, revoked and reissued, suspended or revoked for the reasons specified in this section. All requests for action on a permit or certification 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 application or request. A new permit application is required for a permit reissuance under subsection 9.3.

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

9.1.c. If the Secretary decides to modify or revoke and reissue a permit and the modification is not made under subsection 9.5, he or she shall prepare a draft permit and follow the public notice procedures in section 8. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. The Secretary shall require the submission of a new application if the permit is revoked or reissued.

9.1.d. For a modification of a permit or certification under this section, only those conditions to be modified are reopened when a new draft is prepared. All other conditions of the existing permit or certification shall remain in effect.

9.1.e. 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 permit is issued.

9.2. Causes for modification or permittee requested reissuance.

9.2.a. Modifications. The following are causes for modification, and requires the preparation of a draft permit or certification letter and the public notice procedures of section 8. The Secretary may determine the following causes may also be reason for a permit reissuance under section 9.3.

9.2.a.1. Alterations. Material and substantial alterations to the authorized activity which change the content of the waste stream from which filtrate is generated.

9.2.a.2. Information. New information becomes known and would be cause for different permit or certification conditions.

9.2.a.3. New rules. The standards or rules on which the authorization was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit or certification was issued.

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

9.2.a.5. When the authorized person 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 application or request.

9.2.a.6. A determination that the authorized activity endangers human health or the environment, which can be reduced to acceptable levels by a permit or certification modification.

9.2.a.7. For permit, any of the reasons cited in subsection 9.4.

9.2.a.8. To correct technical mistakes, such as errors in calculation, or

mistaken interpretations of law made in establishing authorized conditions.

9.3. Reissuance. When a permit is reissued under this subsection, the entire permit is reopened. Reissuance requires a draft permit and the public notice procedures of section 8. Processing of a reissuance application does not exempt the permittee from compliance with any permit term or condition while the application is pending.

9.4. Suspension and revocation of permits or certification.

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

9.4.a.1. Noncompliance by the authorized person with any condition of the permit or certification; or

9.4.a.2. The applicant's failure in the application or request or during the issuance or determination process to disclose fully all relevant facts, or the misrepresentation of any relevant facts at any time; or

9.4.a.3. A determination that the authorized activity endangers human health or the environment which can only be reduced to acceptable levels by modification or revocation of the permit or certification; or

9.4.a.4. A change in any condition that requires either a temporary or a permanent reduction or elimination of any filtrate being beneficially used under this rule.

9.4.b. The Secretary may suspend or revoke a permit pursuant to W. Va. Code §22-15-15.

9.5. Minor modifications. Upon the consent of the authorized person, the Secretary may modify a permit or certification to make corrections or allowances for changes in the authorized activity listed in this section without following the procedures of section 8. Minor modifications may:

9.5.a. Correct typographical errors;

9.5.b. Require more frequent monitoring or reporting;

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

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

### **§33-9-10. Permit Contents and Requirements.**

10.1. General Requirements. -- All permits issued pursuant to this rule shall contain applicable requirements of this rule, including but not limited to the following:

10.1.a. Limitations on the concentrations of pollutants and pathogens in the filtrate;

10.1.b. Requirements to monitor the filtrate, 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 Secretary: Provided, that the frequency of monitoring shall be as described in Appendix A of this rule;

10.1.c. Requirement to pay fees as identified in section 12 of this rule;

10.1.d. Requirements for the proper control of storm water runoff for the protection of groundwater, surface waters, and potable waters in the area;

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

10.1.f. Requirements to monitor and report to the Secretary the quantity of filtrate generated, stored, and used;

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

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

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

10.1.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.

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

10.1.l. Limitations on the maximum amount of filtrate allowed to be land applied;

10.1.m. Requirements implementing the general location standards of section 5 of this rule;

10.1.n. Any necessary restrictions on the types of crops that may be grown on land used for application of filtrate and the time between such application and the harvesting of crops;

10.1.o. Any necessary restrictions on animal grazing and public access on a land application site; and

10.1.p. Vector attraction reduction requirements, if applicable;

10.1.r. Permits shall be effective for a fixed term not to exceed five (5) years.

### § 33-9-11. General permits.

11.1. Coverage. The Secretary may issue a general permit in accordance with the

following:

11.1.a. Area. The general permit shall be written to cover a category of filtrate uses described in the permit within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

11.1.a.1. Watersheds using the eight-digit HUC or hydrologic unit code, or other some other defined watershed or watersheds;

11.1.a.2. Sewer districts or sewer authorities;

11.1.a.3. City, County, or State political boundaries;

11.1.a.4. State highway systems;

11.1.a.5. Standard metropolitan statistical areas as defined by the United States Office of Management and Budget; and

11.1.a.6. Any other appropriate division or combination of boundaries.

11.1.b. Sources. The general permit may be written to regulate, within the area described in paragraph 11.1.a.1 of this section, either:

11.1.b.1. A category of filtrate uses; or

11.1.b.2. The same or substantially similar types of operations; or

11.1.b.3. Filtrate uses, in the opinion of the Secretary, are more appropriately controlled under a general permit than under individual permits.

### 11.2. Administration:

11.2.a. In general. General permits may be modified, revoked and reissued, suspended, or revoked in accordance with the applicable requirements of section 9 of this series.

11.2.b. Requiring an individual permit:

11.2.b.1. The Secretary may

require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Secretary to take action under this subparagraph. Cases where an individual permit may be required include the following:

11.2.b.1.A. The filtrate user is not in compliance with the conditions of the general permit;

11.2.b.1.B. The filtrate use is long-term and determined to need an individual permit;

11.2.b.2. The Secretary may require any owner or operator authorized by a general permit to apply for an individual permit as provided in subparagraph 11.2.b.1 of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the individual permittee shall automatically terminate. The Secretary may grant additional time upon request of the applicant.

11.2.b.3. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under section 7, with reasons supporting the request, to the chief no later than ninety (90) days after the general permit notice in accordance with subsection 11.2.b.4.

11.2.b.4. Upon issuance of a general permit, the Secretary shall cause to be published a notice of issuance as a Class I legal advertisement in a qualified daily or weekly newspaper within the geographical area affected by the subject of the permit, and by any other means reasonably calculated to give notice of issuance to the persons affected by it.

### **§33-9-12. Fees.**

12.1. Applicability. -- Filtrate that is approved for use and requires a permit or beneficial use certification in accordance with this rule shall be subject to fees, as described herein, which shall be paid by the producer, processor, or transporter of filtrate approved for beneficial use in accordance with this rule and shall be used to administer the requirements of this rule.

12.2. Water Quality Management Fund. -- Fees required by subsection 12.3 of this rule shall be assessed on forms prescribed by the Secretary 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.

### **12.3. Fee Assessments.**

12.3.a. Permits and certifications issued under this rule shall be subject to the fees established in Appendix B of this rule. These fees shall be used to fund permitting activities and other activities to determine compliance with this rule.

12.3.b. Producers, processors, or transporters of filtrate or other material disposed of under this rule shall be assessed a fee calculated as \$5.00 per actual ton of filtrate or other material multiplied by the proportion of solids in the filtrate. This fee shall be used to fund site evaluations, compliance inspections, complaint investigations, sampling, and related activities to determine compliance with this rule.

### **§33-9-13. Bonding Requirements.**

13.1. 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 filtrate. Bonding will be required upon notification by the Secretary when he or she determines environmental conditions warrant remediation and that the financial status of the producer, processor, or transporter of filtrate is insufficient to fully address the cost of remedial actions.

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 .....	\$1,000
Permit Reissuance.....	\$500
Minor Permit Modification.....	\$100
Other Permit Modification .....	\$500
Beneficial Use Certification .....	\$250

**TABLE 1**  
**MAXIMUM CONCENTRATION OF METALS IN FILTRATE**  
**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 30 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.

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BEFORE THE WEST VIRGINIA

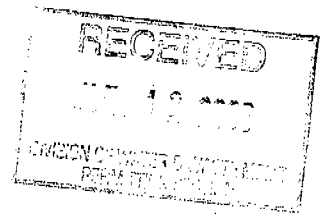
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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ORIGINAL

IN THE MATTER OF:

Public Hearing For Proposed Rule  
Title 33 Series 9, Standards For  
Beneficial Use of Filtrate From  
Water Treatment Plants



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Transcript of proceedings had at a hearing held in the aforementioned matter on Tuesday, July 11, 2006, beginning at 6:15 p.m. at the West Virginia Department of Environmental Protection, Coopers Rock Training Room, 601 - 57th Street, S.E., Charleston, Kanawha County, West Virginia, pursuant to notice.

APPEARING ON BEHALF OF WV DEP:

MR. RICH CARTER, Presiding Officer

MR. JOHN MORGAN, Permit Writer

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MR. CARTER: Thanks for coming. I appreciate everyone for coming out this evening, and see you next time.

(The public hearing was concluded at 6:16 p.m.)

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STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Basil J. Ferrebee, Certified Court Reporter, Registered Professional Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter, as reported by me in stenographic characters and transcribed into the English language.

Given under my hand this 11th day of July, 2006.

*Basil J. Ferrebee*

Basil J. Ferrebee, CCR, RPR

July 11, 2006 at 6PM - Public Hearing for proposed rule Title 33 Series 9, Standards for Beneficial use of Filtrate from Water Treatment Plants.

Do you wish to speak?	NAME	ADDRESS	PHONE #
NO	Sammy Gray	1600 Pennsylvania Ave, Charleston WV 25302	(304) 340-2005
NO	Carla Suszkowski	300 Galley Rd McMurray, PA 15317	724-743-3111
NO	Randy Fankiewicz	"	724-873-3651
	John Morgan	601 57th St. Charleston, WV	926-0499 Ext. 1029
No	Allyn Turner	300 Kanawha Blvd E, Chas.	340-3856

**John D. Morgan - Comments on 33-9**

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**From:** <Sammy.Gray@amwater.com>  
**To:** <jdmorgan@wvdep.org>  
**Date:** Friday, July 07, 2006 1:51 PM  
**Subject:** Comments on 33-9

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Attached are comments by West Virginia American Water on the proposed Standards for Beneficial use of Filtrate from Water Treatment Plants (33-9) rule. Please contact me if I can be of further assistance in this matter.

Sammy Gray  
Government and Regulatory Affairs Manager  
VA & WV American Water  
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**West Virginia American Water  
Comments Regarding Proposed Regulations  
Title 33  
Legislative Rule  
Series 9**

**Standards for Beneficial Use of Filtrate from Water Treatment Plants**

**§33-9-2. Definitions**

§33-9-2.2 “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 filtrate that passes below the root zone of the crop or vegetation grown on the land to the ground water.

*Comment: How is it to be determined the “amount of nutrients in the filtrate that passes below the root zone of the crop or vegetation grown on the land to the ground water?” Will the DEP determine this? Most nutrients will not pass below the root zone. West Virginia American Water (WVAW) believes that this portion of the regulation should be removed from the regulations.*

§33-9-2.9 “Land application site” means a location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil so that the filtrate can fertilize or improve the growing conditions for the crops or vegetation grown in the soil.

*Comment: This definition is not consistent with the definition of “beneficial use” provided in §33-9-2.4, which includes use as a cover material, fill material, mulch or horticultural product, or other purpose approved by the Secretary. Does this mean that these sites are not “land application sites” or have they inadvertently been eliminated from the definition of a land application site? WVAW believes that this definition should be clarified by the DEP.*

§33-9-2.18 “Sludge” means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial, or industrial water supply treatment plant or any other waste having similar origin.

*Comment: WVAW believes that this definition should be clarified to state that the sludge must be created during/from the water treatment process.*

**§33-9-5. Standards for Beneficial Use of Filtrate**

§33-9-5.1.a.2 Residential soil concentrations in 60CSR3, and other applicable information may be used by the Secretary as a guide to establish limits for

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pollutant loading rates when maximum soil concentrations are not established in Table 2 of this rule.

Comment: *Why should residential soil concentrations be met on non-residential or industrial sites? WVAW feels that the regulation should be revised to read:*

*Residential soil concentrations in 60 CSR3 or other applicable soil concentrations in accordance with the use of the property, and 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.*

§33-9-5.7.a Land Surface. Filtrate shall not be applied to land that meets any of the following conditions unless approved by the Secretary:

§33-9-5.7.a.2 Land within fifty (50) feet of surface water to include streams, springs, ponds, wetlands, or other collection points for surface water unless the water in the collection point will be treated before being released into a surface water, including by not limited to ponds, ditches, and cells used to treat surface runoff from surface mines or as a phosphorous control material on agricultural sites.

Comment: *Chemical analysis shows that the water treatment residual material from West Virginia American Water does not leach any of the constituents found in the material. If proper erosion and sedimentation controls are installed around the area where land application is being conducted, application within 50 feet of surface water is not an issue.*

*Further, how are we to provide for wetland determinations? Are we to investigate and determine based on readily available mapping provided by the U.S. Army Corps of Engineers or are we to perform detailed field evaluations prior to land application in an area?*

*WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

§33-9-5.7.a.3 Land within two hundred (200) feet of drinking water supply wells or other private water supply.

Comment: *Chemical analysis shows that the water treatment residual material from West Virginia American Water does not leach*

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*any of the constituents found in the material. Therefore, location to a drinking water supply well or other private water supply well is not an issue.*

*Additionally, are we to do a detailed investigation as to the location of all water supply wells prior to submitting an application for certification or a permit for land application or will the West Virginia Department of Environmental Protection (DEP) provide that information to us in association with the application?*

*This exclusionary criteria should be eliminated from the regulations.*

§33-9-5.7.a.4 Land within fifty (50) feet of an occupied dwelling.

*Comment:* *The material to be land applied under these regulations is an inert material that, based on previous analysis of West Virginia American Water's residual material, presents no threat to human health or the environment. Therefore, the restriction of no land application within 50 feet of an occupied dwelling should be eliminated.*

*What is the definition of an occupied dwelling? Is this also industrial facilities and offices? Areas may exist where water treatment residuals could be used as fill material within 50 feet of an industrial building, warehouse, or office building and this area should not be excluded by regulation.*

*WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

§33-9-5.7.a.8 Land that has a seasonal high groundwater table less than 3 feet from the surface.

*Comment:* *Chemical analysis shows that the material does not leach any of the constituents found in the material. The material is an inert material that, based on the analysis, presents no threat to human health or the environment.*

*Further, how is the seasonal high groundwater table to be determined? Will the DEP provide mapping illustrating the general elevation of the seasonal high groundwater table or are we to drill piezometers on a site and monitor the*

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*groundwater table for 6 months prior to submission of an application to the DEP?*

*WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

§33-9-5.7.a.9 Land where the application of filtrate is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

Comment: *The material is an inert material that, based on the analysis, presents no threat to human health or the environment. WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

§33-9-5.7.c Any filtrate applied to the land subsurface for the maintenance and construction of utility distribution and collection systems shall be covered by a minimum of six inches of non-filtrate fill material.

Comment: *Does material that is used in the maintenance and construction of utility distribution and collection systems need to meet the additional exclusionary criteria for subsurface application that is detailed in §33-9-5.7.b.1 through §33-9-5.7.b.5? WVAW believes that the DEP should clarify this in the regulations.*

§33-9-5.8 Land Application site location standards and restrictions

§33-9-5.8.b Beneficial characteristics. Beneficial characteristics that may be considered under this subsection include nutrient content and, where applicable, alkaline properties.

Comment: *The DEP has identified other benefits of land application in other portions of the regulations (i.e. §33-9-2.4) in addition to nutrient content and alkaline properties. Additionally, beneficial characteristics are not a site location standard restriction. WVAW believes that this requirement should be eliminated from the regulations.*

§33-9-5.8.h Filtrate shall not be applied to land that meets any of the following conditions without specific permission from the Secretary:

§33-9-5.8.h.1 Land within one hundred (100) feet of an adjacent property owner's property line, unless written permission is given by the adjacent property owner.

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Comment: *This material is an inert material that, based on analysis, presents no threat to human health or the environment. In addition, this material generally has little to no odor. WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

§33-9-5.8.h.2 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, and provided that the adjustment of pH to 6.2 or greater can be accomplished by the addition of a higher pH filtrate.

Comment: *Why limit the land application of water treatment residuals to soil with a pH of 6.2 or higher? Additionally, why limit the land application of the water treatment residuals in a way such that application of the residuals must raise the pH of the soil to 6.2? The application of water treatment residuals may raise the pH of a low pH soil, but may not raise it to 6.2. This would still be a benefit to the soil. WVAW believes that this section should be eliminated from the regulations.*

**§33-9-6. Storage and Other General Requirements**

§33-9-6.1 Storage requirements.

§33-9-6.1.a Areas used for storing, mixing, processing, and curing of filtrate, including filtrate loading and unloading areas, impoundments, pipelines, ditches, pumps, drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Outdoor storage of finished products which have been processed or cured shall be limited to one year; Provided, that a permanently constructed area for the storage, mixing, processing, or curing of filtrate where filtrate is removed from and added to the area on an ongoing basis shall not be prohibited by this provision so long as the permanent storage area is constructed and operated to prevent the release of contaminants to groundwater or surface water.

Comment: *Does this include storage, mixing, processing, and curing areas at the location where the material is generated (the water treatment plant) or only storage areas at the land application site? Some water treatment plants do not generate a large enough volume of residuals to allow for the economic removal of residuals on an annual basis. WVAW believes that the reference to storage of finished product*

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*being limited to one year should be eliminated from the regulation.*

*Additionally, WVAW believes that the DEP should clarify what is meant by impoundments, etc. must be designed, constructed, and operated to prevent release of contaminants to the groundwater. Analysis on the water treatment residuals generated by WVAW has indicated that the material does not leach constituents found in the residuals. The potential for groundwater contamination, based on the fact that TCLP analysis indicates no leaching of constituents, is insignificant.*

§33-9-6.1.b All storage areas must be designed and operated to control vectors and odors.

*Comment:* *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals, vector control and odor control are not an issue. WVAW believes that this should be eliminated from the regulations.*

§33-9-6.1.c 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.

*Comment:* *Does this include storage areas at the location where the material is generated (the water treatment plant) or only storage areas at the land application site?*

*Is this applicable to water treatment residuals holding tanks at the water treatment plant? Is this applicable to drying beds and lagoons at the water treatment plant? WVAW believes that the intent of this statement should be clarified by the DEP.*

§33-9-6.1.d All land application site storage areas must protect groundwater 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.

*Comment:* *Analysis on the water treatment residuals generated by WVAW has indicated that the material does not leach constituents found in the residuals. The potential for groundwater contamination, based on the fact that TCLP analysis indicates no leaching of constituents, is insignificant.*

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*Does the DEP expect that facilities where land application occurs will need to have groundwater monitoring wells installed? WVAW believes that this criteria should be removed from the regulations.*

§33-9-6.2.e If the beneficial use of filtrate is as fill material then the Secretary will exercise best professional judgment in establishing the maximum amount of filtrate that can be used under various site conditions.

Comment: *How will it be determined what is the maximum amount of filtrate that can be used under various site conditions? Will drawings of the area prior to fill placement and drawings of the area as it is to be final graded after fill placement be required by the DEP? WVAW believes that the DEP should clarify this statement.*

§33-9-6.3 Sample Analysis

§33-9-6.3.a US Environmental Protection Agency analytical procedure SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, shall be used to analyze all samples required by this rule: Provided, that the Secretary may allow other approved standard method of analyses appropriate to certain materials.

Comment: *In some instances the analytical procedures detailed in SW-846 are not the best method for analysis of the water treatment residuals. For example, there may be interference when using certain SW-846 procedures for analysis. Will the DEP allow other methods, such as Standard Methods, for analysis where SW-846 methods are not appropriate? How will it be determined by the Secretary what other approved standard method of analyses will be allowed? WVAW believes that the DEP should clarify this regulation by eliminating the reference to SW-846 or including other analytical methods that will be allowed.*

§33-9-6.3.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.

Comment: *Will the DEP allow laboratories that are certified under NELAP to perform the analysis or will they only allow West Virginia certified laboratories perform the analysis? WVAW believes that the DEP should allow laboratories certified*

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*under the national program to perform the analyses of the water treatment residuals.*

**§33-9-7. Permit Application and Certification Requirements**

§33-9-7.2 Permit Application and Certification Requirements – All applicants for a permit or certification must provide the following information:

§33-9-7.2.e A description of the filtrate to be beneficially used, including:

§33-9-7.2.e.3 A physical description of the filtrate, including moisture content expressed as percent solids, odor, particle size, and appearance;

*Comment: How is the odor of the filtrate to be determined and expressed? Does the DEP anticipate just a physical description such as “the sample has no odor?” Additionally, does the DEP anticipate laboratory particle size analysis on the material to be included with the permit application or just a physical description of the material? The water treatment residuals are a fairly consistent material, with mostly clay and silt size particles. A laboratory analysis for grain size distribution seems to be unnecessary for the type of material. WVAW believes that the DEP should clarify this regulation.*

§33-9-7.2.i The following information, where applicable:

§33-9-7.2.i.2 A description of the method used to collect or control leachate and surface water runoff from any storage areas.

*Comment: The only liquid that is anticipated to be found in storage areas would be surface water runoff. The material is not a waste that leaches constituents and results in leachate. The term leachate implies that this material is a municipal waste material and should be removed from the regulation. WVAW believes that the regulation should read:*

*A description of the method used to collect or control surface water runoff from any storage areas.*

§33-9-7.2.i.3 A description of the existing land uses adjacent to the proposed land application site or beneficial use area.

*Comment: Water treatment residuals are an inert material that, based on analysis, presents no threat to human health or the environment. Additionally, the material does not leach*

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*constituents. Therefore, the land application of water treatment residuals on a property will have no affect on the adjacent properties. WVAW believes that this criteria should be removed from the regulations.*

§33-9-7.3 Permit Application Requirements

§33-9-7.3.a Persons required by the Secretary to apply for a permit for the long term application or beneficial use of filtrate must submit the following information to the Secretary in addition to that required under subsection 7.2 of this rule, where applicable:

§33-9-7.3.b Soil analysis for all land application sites including but not limited to pH, potassium, phosphorous, nitrogen, all metals listed in Table 1 of this rule and any additional chemical analysis requested by the Secretary.

*Comment:* *In some instances the material to be used on a land application site will be used for fill material and WVAW believes that these sites should not be required to perform soil analysis in conjunction with a permit application.*

§33-9-7.3.c Information relative to the nutrient content of filtrate to be land applied.

*Comment:* *The nutrient content of the filtrate is not of concern when the filtrate is to be used as fill material. This regulation should be clarified to exclude the need for nutrient content testing for residuals to be used as fill material. WVAW believes that the regulation should be revised to read:*

*Information relative to the nutrient content of filtrate to be land applied when the filtrate is not being land applied as fill material.*

§33-9-7.3.f A description of existing and future uses of the land application site.

*Comment:* *Water treatment residuals are an inert material that, based on analysis, presents no threat to human health or the environment. Additionally, the material does not leach constituents. The future land uses of a site cannot always be determined at the time of land application, especially in the case of land that is currently farmed. Therefore, the land application of water treatment residuals on a property will have little or no affect on the future land use of the property. WVAW believes that this criteria should be removed from the regulations.*

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§33-9-7.3.g Information relative to past application of filtrate, sewage filtrate, material derived from sewage filtrate, fertilizers, pesticides, and herbicides to each land application site.

Comment: *In most instances, water treatment residuals will be land applied to agricultural lands for crops or they will be used as fill material on non-residential or industrial properties. While records are kept of sewage filtrate that may have been applied to the land prior to the application for a permit to apply water treatment residuals, it is unlikely that either agricultural lands or industrial and non-residential properties will have any record of the types of fertilizers, pesticides, and herbicides that have historically been applied to the land. WVAW believes that this criteria should be revised to read:*

*Information relative to past application of filtrate, sewage filtrate, and material derived from sewage filtrate to each land application site.*

§33-9-7.3.l A description of the methods by which pathogen control and vector attraction reduction are being achieved

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals, pathogen control and vector attraction reduction are not appropriate for the residuals. WVAW believes that this criteria should be removed from the regulations.*

**§33-9-8. Draft Certifications, Draft Permits, and Public Comments.**

§33-9-8.2 Public Notice.

§33-9-8.2.a Public notice of the preparation of a draft permit pursuant to this rule must provide at least thirty (30) days for public comment. Public notice of the preparation of a draft certification letter pursuant to this rule must provide at least fifteen (15) days for public comment.

Comment: *The residuals are water treatment plant residuals, not bio-solids. They are an inert material that presents no threat to human health or the environment. WVAW believes that the public comment period should be shortened to 15 days.*

§33-9-8.2.b Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

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Comment: *The residuals are water treatment plant residuals, not bio-solids. They are an inert material that presents no threat to human health or the environment. The need for a public hearing with respect to the land application of water treatment residuals should not be necessary. WVAW believes that public hearings should be removed from the regulations.*

**§33-9-10 Permit Conditions and Requirements**

§33-9-10.1 General requirements – All permits issued pursuant to this rule shall contain applicable requirements of this rule, including but not limited to the following:

§33-9-10.1.a Limitations on the concentrations of pollutants and pathogens in the filtrate;

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals, pathogen will not be present in the material. Therefore, the statement regarding limitations on concentrations of pathogens should be removed from the regulations. WVAW believes that the regulation should read:*

*Limitations on concentrations of pollutants in the filtrate;*

§33-9-10.1.b Requirements to monitor the filtrate, and report the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorous, calcium, magnesium, total nitrogen, ammonia nitrogen, pathogen test results, vector attraction reduction verification, all heavy metals listed in Table I of this rule, and any other analyses required by the Secretary: Provided that the frequency of monitoring shall be as described in Appendix A of this rule;

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals pathogen test results and vector attraction reduction verification cannot be performed on the material, as pathogens are not present in the material.*

*Additionally, the frequency of monitoring proposed in Appendix A is too frequent in the case of water treatment residuals. Water treatment is a process that does not frequently change and the chemicals used do not frequently change. The frequency of analysis required by Appendix A*

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*could preclude companies from beneficial use based on the cost of the analysis alone. At an average cost of \$700/sample, the annual cost to analyze at the once per month frequency is \$8,400. This same material could be disposed in a landfill and only require annual analysis at the cost of \$700. If analysis on material disposed in a landfill is only required 1 time per year, only annual analysis should be required by the DEP on the water treatment residuals, which are an inert material that presents no threat to human health or the environment. WVAW believes that the regulation should require annual analysis, unless the treatment process is modified during that time period and Appendix A should be removed from the regulations.*

*WVAW believes that the regulation should be revised to read:*

*Requirements to monitor the filtrate, and report the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorous, calcium, magnesium, total nitrogen, ammonia nitrogen, all heavy metals listed in Table I of this rule, and any other analyses required by the Secretary: Provided that the frequency of monitoring shall be annually, unless there is a change in the treatment process producing the filtrate;*

§33-9-10.1.h Requirements for the implementation of practices to prevent the contamination of ground and surface waters, including liners if necessary;

*Comment:* *Analysis on the water treatment residuals has indicated that the material does not leach constituents found in the residuals. The potential for groundwater contamination, based on the fact that TCLP analysis indicates no leaching of constituents, is insignificant. Additionally, if proper erosion and sedimentation controls are installed around land application areas, the potential for contamination of surface water is insignificant. Is the DEP indicating that a geosynthetic liner system, similar to that associated with municipal solid waste landfills could be required on some land application sites? This would make it difficult to grow crops in soil where land application has taken place. WVAW believes that the DEP should clarify the intent of this statement or remove it from the regulations.*

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**§33-9-12            Fees**

§33-9-12.1            Applicability. Filtrate that are approved for use and require a permit in accordance with this rule shall be subject to fees, as described herein, which shall be paid by the producer, processor, or transporter of filtrate approved for beneficial use in accordance with this rule and shall be used to administer the requirements of this rule.

*Comment: Are these fees also applicable to filtrate that are approved for use and require a beneficial use certification? WVAW believes that the DEP should clarify this regulation.*

§33-9-12.3            Fee Assessments.

§33-9-12.3.b            Producers, processors, or transporters of filtrate or other material disposed of under this rule shall be assessed a fee calculated as \$5.00 per actual ton of filtrate or other material multiplied by the proportion of solids in the filtrate. This fee shall be used to fund site evaluations, compliance inspections, complaint investigations, sampling, and related activities to determine compliance with this rule.

*Comment: The implementation of a "tax" such as this \$5.00 per dry ton fee could discourage the beneficial use of water treatment residuals in some instances. In many cases, the cost of hauling and beneficial use coupled with this fee could lead the generator to determine that it is just as cost effective to dispose of the material at a landfill and there is less hassle involved with landfill disposal. WVAW believes that this fee should be removed from the regulations.*

**Appendix A            Frequency of Monitoring**

*Comment: Due to the nature of water treatment residuals, the frequency proposed in Appendix A for monitoring is too frequent. Analysis of water treatment residuals during the last 10 to 20 years has indicated that, absent a treatment modification, the analytical components of the residuals do not change.*

*The frequency of analysis required by Appendix A could preclude companies from beneficial use based on the cost of the analysis alone. At an average cost of \$700/sample, the annual cost to analyze at the once per month frequency is \$8,400. This same material could be disposed in a landfill and only require annual analysis at the cost of \$700. If analysis on material disposed in a landfill is only required 1*

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*time per year, only annual analysis should be required by the DEP on the water treatment residuals, which are an inert material that presents no threat to human health or the environment. WVAW believes that, therefore, the frequency of monitoring of the residuals should be modified to annual, unless the treatment process is changed during this time period and Appendix A should be eliminated from the regulations.*

**Table 1                    Maximum Concentration of Metals in Filtrate for Land Application**

Arsenic                    20 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for arsenic? It is the belief of WVAW that this level should be raised to 41 mg/kg.*

Chromium                1000 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for chromium? It is the belief of WVAW that this level should be raised to 1200 mg/kg.*

Lead                        250 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for lead? It is the belief of WVAW that this level should be raised to 300 mg/kg.*

Mercury                 10 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for mercury? It is the belief of WVAW that this level should be raised to 17 mg/kg.*

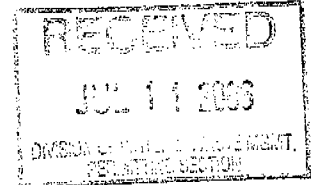
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Nickel                      200 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for nickel? It is the belief of WVAW that this level should be raised to 420 mg/kg.*

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING  
STANDARDS FOR BENEFICIAL USE OF FILTRATE  
33 C.S.R. 9**

July 11, 2006



**I. Introduction**

The West Virginia Manufacturers Association (WVMA) is a trade group composed of manufacturers and related businesses that are dedicated to the advancement of manufacturing activities in West Virginia. The WVMA regularly comments on rules of interest to its members. It is particularly concerned about the effect of new rules on West Virginia businesses, and offers the following comments on the West Virginia Department of Environmental Protection's (DEP) proposed *Standards for Beneficial Use of Filtrate from Water Treatment Plants* rule.

**II. Comments**

**A. General comment.**

The WVMA supports the development of a rule implementing the beneficial use of water treatment plant filtrate. This rule will help West Virginia businesses find cost-effective ways of recycling filtrate in an environmentally responsible and efficient manner. Currently, businesses often incur the cost of disposing filtrate at landfills, which is inefficient in terms of cost to business and waste of landfill space.

**B. Fee Assessment per Ton of Filtrate**

In addition to a permit application fee, the DEP proposes a fee of \$5 per ton of filtrate or other material, multiplied by the proportion of solids in the filtrate. See Section 33-9-12.3.b. The combination of a tonnage fee and permit/certification fee is excessive for

several reasons. First, the fiscal note indicates the DEP needs only an additional \$25,000 to implement this program. It is commendable that the DEP is working efficiently with existing resources. However, assuming an average solids proportion of 50%, the DEP will recoup its costs if as few as 10,000 tons of filtrate and other material are land applied in the state. That is before any consideration is given to permit fees. As we believe much more than this will be land applied, we urge the DEP to greatly reduce or eliminate this fee. By imposing both permitting fees and a significant tonnage fee, some businesses may be discouraged from finding beneficial uses for filtrate.

Moreover, if the DEP seeks to assess fees based upon environmental risk factors of the filtrate use, this contingency is already addressed in the ability of the Secretary to require a surety bond or deposit. If the DEP is worried that owners of certain land application sites may not be able to pay for remedial actions in the event of a violation or environmental hazard, bonds may be required. If over the course of the next few years, filtrate users are not acting with enough responsibility, the DEP can amend the rule to require more stringent environmental safeguards during the permitting and certification process. We don't believe that will be the case.

The tonnage fees are too burdensome and they are not needed to allow the DEP to recover the cost of its program. We urge that they be eliminated.

### **C. Definition of "Beneficial Use"**

The definition of beneficial use (Section 33-9-2.4) includes the term "non-hazardous material," which is undefined, and which we interpret to mean filtrate. If this is an incorrect interpretation of the phrase, clarification is necessary. If it is a correct interpretation, we urge the DEP to use the term "filtrate" in its stead.

**D. Definition of "Long-term"**

The definition of "long-term" (Section 33-9-2.8) states that the term means application of filtrate to a site *one* or more times for a period of twelve months or more. It is unclear how one application could last for twelve months or more. For clarity, this section should be revised or explained. We suggest that "long term" refer to multiple applications that occur over a period of 12 months or greater, and that "short term" refer to one or more applications occurring over less than a twelve month period.

**E. Definitions of "Land Application site" and "Soil Improvement site"**

The definitions of both "land application site" (Section 33-9-2.9) and "soil improvement site" (Section 33-9-2.19) seem to be identical. To avoid confusion, it would be helpful if the DEP would explain how they should be applied differently.

**F. Filtrate's effect on groundwater.**

One of the factors that the Secretary must consider in reviewing a request for a beneficial use certification is whether the filtrate is not likely to adversely impact existing groundwater (Section 33-9-3.2.a.2). This section needs clarification to make it clear that a de minimis increase in groundwater levels is not an adverse impact. This will allow regulated persons to better anticipate what uses of filtrate will be approved. We believe the statement in Section 6.2.h that no filtrate application is allowed if it would cause a violation of groundwater quality standards in 46 C.S.R. 12 is the better way to express this restriction.

**G. Consideration as to whether a proposed use is disposal**

One of the factors that the Secretary must consider in reviewing a request for a beneficial use certification is whether the proposed use is not a disposal (Section 33-9-

3.2.b.1). (This does not seem to be a requirement for filtrate that is used pursuant to a permit.) It is not clear whether disposal will disqualify filtrate from a beneficial use certification and, if so, how an applicant may show that the use is not a disposal. (Note that section 12.3.b sets fees on filtrate and other material that is "disposed," suggesting that disposal is an acceptable motivation for the filtrate producer.) If disposal is a prohibited motive, as suggested by section 3.2.b.1, we are concerned that this will require the filtrate producer to prove that the filtrate has economic value in the form of a market for its sale. (See section 3.2.a.5, which refers to the probability of a market coming into existence for the filtrate use for which certification is requested.) That might be difficult to do, even though the filtrate has valuable properties.

We suggest the DEP eliminate any inquiry into the issue of whether the proposed use is a disposal. *W. Va. Code* § 22-15-23 declares that filtrate can be beneficially used, and there is no reason that the issue of whether a beneficial use exists should be determined by whether the filtrate generator has no options for use of the filtrate other than the uses described in this rule.

#### **H. Duplication of standards in Sections 33-9-5 and 33-9-6**

Sections 33-9-5.1.a.1 and 33-9-1.a.2 seem to impose essentially the same standard as sections 33-9-5.8.c and 33-9-5.8.d. Are the standards for certification only those found in section 33-9-5.1, while the standards for permits are found in Section 33-9-5.8? It is not clear why these requirements are separately stated. Sections 33-9-5.5 and 33-9-5.8.i also seem to impose almost identical requirements. Furthermore, it appears that some general requirements are included in Section 5 of the rule, and some in Section 6.

If there is a reason for having the general standards for beneficial use set out in this fashion, we suggest that be explained in the rationale for the rule. If not, we would urge the DEP to consider restructuring the rule to put general requirements in one section, and specific requirements for particular land applications in another section or subsection, and storage requirements in yet another section or subsection.

### **I. Monitoring frequency**

Section 10.1.b. requires monitoring in compliance with the schedule described in Appendix A; for some sites, that will be once per week, or once per month where as little as 1500 tons per year are land applied. Absent some reasonable basis for believing that the constituents of the filtrate have changed significantly, monitoring the filtrate should not be required more than once or twice per year. Appendix A should be changed to greatly reduce monitoring frequency, or Section 10.1.b should be amended to allow the Secretary to vary the monitoring requirements for good cause shown.

### **III. Conclusion**

We appreciate the opportunity to provide comments on the proposed changes to the *Standards for Beneficial Use of Filtrate from Water Treatment Plants* rule. We hope that they will be given careful consideration.

**Karen S. Price, President**

**West Virginia Manufacturers Association**

**John D. Morgan - Solid Waste Management Act**

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**From:** Rocky Bragg <rockybragg@yahoo.com>  
**To:** <jgreathouse@wvdep.org>  
**Date:** Monday, July 10, 2006 11:50 AM  
**Subject:** Solid Waste Management Act

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Dear Sirs,

My name is Rocky Bragg, and I am the Chief Operator at the Weirton Area Water Board. My Director, A.D. Mastrantoni, has asked me to contact you and make a formal complaint against the \$5.00 tipping fee included in the Solid Waste Management Act Chapter 22, Article 15 of the West Virginia Code.

It is of our opinion that this should not be included with the changes of this act. Thank you for your time.

Sincerely,

Rocky Bragg  
Chief Operator  
Weirton Area Water Board

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west virginia department of environmental protection

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

RESPONSE TO COMMENTS

LEGISLATIVE RULE TITLE 33, SERIES 9

“STANDARDS FOR BENEFICIAL USE OF FILTRATE FROM WATER TREATMENT PLANTS”  
PROMULGATED UNDER THE WEST VIRGINIA CODE §22-15-23

JULY 27, 2006

The Department of Environmental Protection’s (DEP) Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those organizations and/or individuals who submitted written comments as well who attended the public hearing on the proposed Legislative Rule, Title 33, Series 9, “Standards for Beneficial Use of Filtrate from Water Treatment Plants.”

DWWM submitted the Notice of a Public Hearing on a Proposed Rule to the Office of the Secretary of State, on June 7, 2006, and, concurrently, to the Legislative Rule Making Review Committee. The Secretary of State published the notification in the West Virginia Register, Volume XXIII, Issue 23, dated June 9, 2006. Also, the agency simultaneously published a Class I legal advertisement in the “Charleston Gazette” newspaper announcing the agency’s intent. The public notice announced the date of the public hearing along with notification that written comments would also be accepted. A public hearing was held at the DEP’s Charleston office in the Coopers Rock Training Room, on July 11, 2006.

During the public hearing, oral comments were not presented. Written comments were previously received from West Virginia American Water, the West Virginia Manufacturers Association, and the Weirton Area Water Board. A Response to Comments has been prepared to highlight the issues and concerns that were identified in the written comments received during the comment period. In some cases multiple comments were provided on specific sections or issues, and both the comments and the responses have been summarized to the extent possible.

Comments will appear first noting the commenter, section of the rule or comment heading, the comment, and then the agency’s response following in bold.

**I. COMMENTER - West Virginia American Water**

§33-9-2. Definitions

§33-9-2.2 "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 filtrate that passes below the root zone of the crop or vegetation grown on the land to the ground water.

Comment: *How is it to be determined the "amount of nutrients in the filtrate that passes below the root zone of the crop or vegetation grown on the land to the ground water?" Will the DEP determine this? Most nutrients will not pass below the root zone. West Virginia American Water (WVAW) believes that this portion of the regulation should be removed from the regulations.*

Response: **The DEP will establish a loading rate for the filtrate that is to be protective of the pass through. It is necessary to utilize this definition in order to maintain consistency with other land application programs.**

§33-9-2.9 "Land application site" means a location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil so that the filtrate can fertilize or improve the growing conditions for the crops or vegetation grown in the soil.

Comment: *This definition is not consistent with the definition of "beneficial use" provided in §33-9-2.4, which includes use as a cover material, fill material, mulch or horticultural product, or other purpose approved by the Secretary. Does this mean that these sites are not "land application sites" or have they inadvertently been eliminated from the definition of a land application site? WVAW believes that this definition should be clarified by the DEP.*

Response: **This definition is intended for the actual land application of the filtrate. It is necessary to utilize this definition in order to maintain consistency with other land application programs.**

§33-9-2.18 "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial, or industrial water supply treatment plant or any other waste having similar origin.

Comment: *WVAW believes that this definition should be clarified to state that the sludge must be created during/from the water treatment process.*

Response: **It is necessary to utilize this definition in order to maintain consistency with other land application programs. This definition is to be used in unison with §33-9-2.7.**

§33-9-5. Standards for Beneficial Use of Filtrate

§33-9-5.1.a.2 Residential soil concentrations in 60CSR3, and 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.

Comment: *Why should residential soil concentrations be met on non-residential or industrial sites? WVAW feels that the regulation should be revised to read:*

*Residential soil concentrations in 60 CSR3 or other applicable soil concentrations in accordance with the use of the property, and 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.*

**Response:** **The DEP, in other programs, provides for the protection of human health. In order to maintain consistency with other programs, this requirement will remain.**

§33-9-5.7.a Land Surface. Filtrate shall not be applied to land that meets any of the following conditions unless approved by the Secretary:

§33-9-5.7.a.2 Land within fifty (50) feet of surface water to include streams, springs, ponds, wetlands, or other collection points for surface water unless the water in the collection point will be treated before being released into a surface water, including by not limited to ponds, ditches, and cells used to treat surface runoff from surface mines or as a phosphorous control material on agricultural sites.

Comment: *Chemical analysis shows that the water treatment residual material from West Virginia American Water does not leach any of the constituents found in the material. If proper erosion and sedimentation controls are installed around the area where land application is being conducted, application within 50 feet of surface water is not an issue.*

*Further, how are we to provide for wetland determinations? Are we to investigate and determine based on readily available mapping provided by the U.S. Army Corps of Engineers or are we to perform detailed field evaluations prior to land application in an area?*

*WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain. Wetland determinations should be made by the appropriate agencies.**

§33-9-5.7.a.3 Land within two hundred (200) feet of drinking water supply wells or other private water supply.

Comment: *Chemical analysis shows that the water treatment residual material from West Virginia American Water does not leach any of the constituents found in the material. Therefore, location to a drinking water supply well or other private water supply well is not an issue.*

*Additionally, are we to do a detailed investigation as to the location of all water supply wells prior to submitting an application for certification or a permit for land application or will the West Virginia Department of Environmental Protection (DEP) provide that information to us in association with the application?*

*This exclusionary criteria should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain. Location information of wells would need to be done as a part of the siting process.**

§33-9-5.7.a.4 Land within fifty (50) feet of an occupied dwelling.

Comment: *The material to be land applied under these regulations is an inert material that, based on previous analysis of West Virginia American Water's residual material, presents no threat to human health or the environment. Therefore, the restriction of no land application within 50 feet of an occupied dwelling should be eliminated.*

*What is the definition of an occupied dwelling? Is this also industrial facilities and offices? Areas may exist where water treatment residuals could be used as fill material within 50 feet of an industrial building, warehouse, or office building and this area should not be excluded by regulation.*

*WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-5.7.a.8 Land that has a seasonal high groundwater table less than 3 feet from the surface.

Comment: *Chemical analysis shows that the material does not leach any of the constituents found in the material. The material is an inert material that, based on the analysis, presents no threat to human health or the environment.*

*Further, how is the seasonal high groundwater table to be determined? Will the DEP provide mapping illustrating the general elevation of the seasonal high groundwater table or are we to drill piezometers on a site and monitor the groundwater table for 6 months prior to submission of an application to the DEP?*

*WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-5.7.a.9 Land where the application of filtrate is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

Comment: *The material is an inert material that, based on the analysis, presents no threat to human health or the environment. WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-5.7.c Any filtrate applied to the land subsurface for the maintenance and construction of utility distribution and collection systems shall be covered by a minimum of six inches of non-filtrate fill material.

Comment: *Does material that is used in the maintenance and construction of utility distribution and collection systems need to meet the additional exclusionary criteria for subsurface application that is detailed in §33-9-5.7.b.1 through §33-9-5.7.b.5? WVAW believes that the DEP should clarify this in the regulations.*

**Response:** **The requirements of §33-9-5.7.b would be applicable. Based on the progression of the organization of information, the DEP felt that was understood. §33-9-5.7.c is an additional requirement for this particular use. §33-9-5.7.c was revised for clarification.**

§33-9-5.8 Land Application site location standards and restrictions

§33-9-5.8.b Beneficial characteristics. Beneficial characteristics that may be considered under this subsection include nutrient content and, where applicable, alkaline properties.

Comment: *The DEP has identified other benefits of land application in other portions of the regulations (i.e. §33-9-2.4) in addition to nutrient content and alkaline properties. Additionally, beneficial characteristics are not a site location standard restriction. WVAW believes that this requirement should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-5.8.h Filtrate shall not be applied to land that meets any of the following conditions without specific permission from the Secretary:

§33-9-5.8.h.1 Land within one hundred (100) feet of an adjacent property owner's property line, unless written permission is given by the adjacent property owner.

Comment: *This material is an inert material that, based on analysis, presents no threat to human health or the environment. In addition, this material generally has little to no odor. WVAW believes that this exclusionary criteria should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other land application programs and provide protection, this requirement will remain.**

§33-9-5.8.h.2 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, and provided that the adjustment of pH to 6.2 or greater can be accomplished by the addition of a higher pH filtrate.

Comment: *Why limit the land application of water treatment residuals to soil with a pH of 6.2 or higher? Additionally, why limit the land application of the water treatment residuals in a way such that application of the residuals must raise the pH of the soil to 6.2? The application of water treatment residuals may raise the pH of a low pH soil, but may not raise it to 6.2. This would still be a benefit to the soil. WVAW believes that this section should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other land application programs and provide protection, this requirement will remain.**

§33-9-6. Storage and Other General Requirements

§33-9-6.1 Storage requirements.

§33-9-6.1.a Areas used for storing, mixing, processing, and curing of filtrate, including filtrate loading and unloading areas, impoundments, pipelines, ditches, pumps, drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Outdoor storage of finished products which have been processed or cured shall be limited to one year; Provided, that a permanently constructed area for the storage, mixing, processing, or curing of filtrate where filtrate is removed from and added to the area on an ongoing basis shall not be prohibited by this provision so long as the permanent storage area is constructed and operated to prevent the release of contaminants to groundwater or surface water.

Comment: *Does this include storage, mixing, processing, and curing areas at the location where the material is generated (the water treatment plant) or only storage areas at the land application site? Some water treatment plants do not generate a large enough volume of residuals to allow for the economic removal of residuals on an annual basis. WVAW believes that the reference to storage of finished product being limited to one year should be eliminated from the regulation.*

*Additionally, WVAW believes that the DEP should clarify what is meant by impoundments, etc. must be designed, constructed, and operated to prevent release of contaminants to the groundwater. Analysis on the water treatment residuals generated by WVAW has indicated that the material does not leach constituents found in the residuals. The potential for groundwater contamination, based on the fact that TCLP analysis indicates no leaching of constituents, is insignificant.*

**Response:** **This would primarily be directed to the storage at the site. However, there would have to be a coordinated applicability of this requirement with the Bureau for Public Health design standards and the actual water treatment plant. Overall, in order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-6.1.b All storage areas must be designed and operated to control vectors and odors.

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals, vector control and odor control are not an issue. WVAW believes that this should be eliminated from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-6.1.c 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.

Comment: *Does this include storage areas at the location where the material is generated (the water treatment plant) or only storage areas at the land application site?*

*Is this applicable to water treatment residuals holding tanks at the water treatment plant? Is this applicable to drying beds and lagoons at the water treatment plant? WVAW believes that the intent of this statement should be clarified by the DEP.*

**Response:** **This would primarily be directed to the storage at the site for the purposes of this rule. However, again, there would have to be a coordinated applicability of this requirement with the Bureau for Public Health design standards and the actual water treatment plant. Use of the 100-year flood level of protection is fairly uniform in use for the design of various structures.**

§33-9-6.1.d All land application site storage areas must protect groundwater 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.

Comment: *Analysis on the water treatment residuals generated by WVAW has indicated that the material does not leach constituents found in the residuals. The potential for groundwater contamination, based on the fact that TCLP analysis indicates no leaching of constituents, is insignificant. Does the DEP expect that facilities where land application occurs will need to have groundwater monitoring wells installed? WVAW believes that this criteria should be removed from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-6.2.e If the beneficial use of filtrate is as fill material then the Secretary will exercise best professional judgment in establishing the maximum amount of filtrate that can be used under various site conditions.

Comment: *How will it be determined what is the maximum amount of filtrate that can be used under various site conditions? Will drawings of the area prior to fill placement and drawings of the area as it is to be final graded after fill placement be required by the DEP? WVAW believes that the DEP should clarify this statement.*

**Response:** **This is presented as a general requirement. The scope of the proposed fill project will determine the appropriate level of technical support documentation. Mapping and geotechnical data may be required. The DEP wishes to leave the implementation of this condition to best professional judgment.**

§33-9-6.3 Sample Analysis

§33-9-6.3.a US Environmental Protection Agency analytical procedure SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, shall be used to analyze all samples required by this rule: Provided, that the Secretary may allow other approved standard method of analyses appropriate to certain materials.

Comment: *In some instances the analytical procedures detailed in SW-846 are not the best method for analysis of the water treatment residuals. For example, there may be interference when using certain SW-846 procedures for analysis. Will the DEP allow other methods, such as Standard Methods, for analysis where SW-846 methods are not appropriate? How will it be determined by the Secretary what other approved standard method of analyses will be allowed? WVAW believes that the DEP should clarify this regulation by eliminating the reference to SW-846 or including other analytical methods that will be allowed.*

**Response:** **As indicated, the DEP may allow other approved standard method of analyses appropriate to certain materials. This may have to be instituted on a case-by-case basis. In order to maintain consistency with other programs, this requirement will remain.**

§33-9-6.3.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.

Comment: *Will the DEP allow laboratories that are certified under NELAP to perform the analysis or will they only allow West Virginia certified laboratories perform the analysis? WVAW believes that the DEP should allow laboratories certified under the national program to perform the analyses of the water treatment residuals.*

**Response:** **Only laboratories certified in the accordance with state procedures will be accepted. In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7. Permit Application and Certification Requirements

§33-9-7.2 Permit Application and Certification Requirements – All applicants for a permit or certification must provide the following information:

§33-9-7.2.e A description of the filtrate to be beneficially used, including:

§33-9-7.2.e.3 A physical description of the filtrate, including moisture content expressed as percent solids, odor, particle size, and appearance;

Comment: *How is the odor of the filtrate to be determined and expressed? Does the DEP anticipate just a physical description such as “the sample has no odor?” Additionally, does the DEP anticipate laboratory particle size analysis on the material to be included with the permit application or just a physical description of the material? The water treatment residuals are a fairly consistent material, with mostly clay and silt size particles. A laboratory analysis for grain size distribution seems to be unnecessary for the type of material. WVAW believes that the DEP should clarify this regulation.*

**Response:** **As the term physical is intended to indicate, this would be a presentation of the more apparent characteristics. If site-specific analytical requirements were deemed necessary, then the DEP would make the request. In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.2.i The following information, where applicable:

§33-9-7.2.i.2 A description of the method used to collect or control leachate and surface water runoff from any storage areas.

Comment: *The only liquid that is anticipated to be found in storage areas would be surface water runoff. The material is not a waste that leaches constituents and results in leachate. The term leachate implies that this material is a municipal waste material and should be removed from the regulation. WVAW believes that the regulation should read:*

*A description of the method used to collect or control surface water runoff from any storage areas.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.2.i.3 A description of the existing land uses adjacent to the proposed land application site or beneficial use area.

Comment: *Water treatment residuals are an inert material that, based on analysis, presents no threat to human health or the environment. Additionally, the material does not leach constituents. Therefore, the land application of water treatment residuals on a property will have no affect on the adjacent properties. WVAW believes that this criteria should be removed from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.3 Permit Application Requirements

§33-9-7.3.a Persons required by the Secretary to apply for a permit for the long term application or beneficial use of filtrate must submit the following information to the Secretary in addition to that required under subsection 7.2 of this rule, where applicable:

§33-9-7.3.b Soil analysis for all land application sites including but not limited to pH, potassium, phosphorous, nitrogen, all metals listed in Table 1 of this rule and any additional chemical analysis requested by the Secretary.

Comment: *In some instances the material to be used on a land application site will be used for fill material and WVAW believes that these sites should not be required to perform soil analysis in conjunction with a permit application.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.3.c Information relative to the nutrient content of filtrate to be land applied.

Comment: *The nutrient content of the filtrate is not of concern when the filtrate is to be used as fill material. This regulation should be clarified to exclude the need for nutrient content testing for residuals to be used as fill material. WVAW believes that the regulation should be revised to read:*

*Information relative to the nutrient content of filtrate to be land applied when the filtrate is not being land applied as fill material.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.3.f A description of existing and future uses of the land application site.

Comment: *Water treatment residuals are an inert material that, based on analysis, presents no threat to human health or the environment. Additionally, the material does not leach constituents. The future land uses of a site cannot always be determined at the time of land application, especially in the case of land that is currently farmed. Therefore, the land application of water treatment residuals on a property will have little or no affect on the future land use of the property. WVAW believes that this criteria should be removed from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.3.g Information relative to past application of filtrate, sewage filtrate, material derived from sewage filtrate, fertilizers, pesticides, and herbicides to each land application site.

Comment: *In most instances, water treatment residuals will be land applied to agricultural lands for crops or they will be used as fill material on non-residential or industrial properties. While records are kept of sewage filtrate that may have been applied to the land prior to the application for a permit to apply water treatment residuals, it is unlikely that either agricultural lands or industrial and non-residential properties will have any record of the types of fertilizers, pesticides, and herbicides that have historically been applied to the land. WVAW believes that this criteria should be revised to read:*

*Information relative to past application of filtrate, sewage filtrate, and material derived from sewage filtrate to each land application site.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-7.3.1 A description of the methods by which pathogen control and vector attraction reduction are being achieved

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals, pathogen control and vector attraction reduction are not appropriate for the residuals. WVAW believes that this criteria should be removed from the regulations.*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-8. Draft Certifications, Draft Permits, and Public Comments.

§33-9-8.2 Public Notice.

§33-9-8.2.a Public notice of the preparation of a draft permit pursuant to this rule must provide at least thirty (30) days for public comment. Public notice of the preparation of a draft certification letter pursuant to this rule must provide at least fifteen (15) days for public comment.

Comment: *The residuals are water treatment plant residuals, not bio-solids. They are an inert material that presents no threat to human health or the environment. WVAW believes that the public comment period should be shortened to 15 days.*

**Response:** **In order to maintain consistency with other permitting programs and procedures, this requirement will remain.**

§33-9-8.2.b Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

Comment: *The residuals are water treatment plant residuals, not bio-solids. They are an inert material that presents no threat to human health or the environment. The need for a public hearing with respect to the land application of water treatment residuals should not be necessary. WVAW believes that public hearings should be removed from the regulations.*

**Response:** **In order to maintain consistency with other permitting programs and procedures, this requirement will remain.**

§33-9-10 Permit Conditions and Requirements

§33-9-10.1 General requirements – All permits issued pursuant to this rule shall contain applicable requirements of this rule, including but not limited to the following:

§33-9-10.1.a Limitations on the concentrations of pollutants and pathogens in the filtrate;

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals, pathogen will not be present in the material. Therefore, the statement regarding limitations on concentrations of pathogens should be removed from the regulations. WVAW believes that the regulation should read:*

*Limitations on concentrations of pollutants in the filtrate;*

**Response:** **In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-10.1.b Requirements to monitor the filtrate, and report the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorous, calcium, magnesium, total nitrogen, ammonia nitrogen, pathogen test results, vector attraction reduction verification, all heavy metals listed in Table I of this rule, and any other analyses required by the Secretary: Provided that the frequency of monitoring shall be as described in Appendix A of this rule;

Comment: *The residuals are water treatment plant residuals, not bio-solids. Based on the nature of the residuals pathogen test results and vector attraction reduction verification cannot be performed on the material, as pathogens are not present in the material.*

*Additionally, the frequency of monitoring proposed in Appendix A is too frequent in the case of water treatment residuals. Water treatment is a process that does not frequently change and the chemicals used do not frequently change. The frequency of analysis required by Appendix A could preclude companies from beneficial use based on the cost of the analysis alone. At an average cost of \$700/sample, the annual cost to analyze at the once per month frequency is \$8,400. This same material could be disposed in a landfill and only require annual analysis at the cost of \$700. If analysis on material disposed in a landfill is only required 1 time per year, only annual analysis should be required by the DEP on the water treatment residuals, which are an inert material that presents no threat to human health or the environment. WVAW believes that the regulation should require annual analysis, unless the treatment process is modified during that time period and Appendix A should be removed from the regulations.*

*WVAW believes that the regulation should be revised to read:*

*Requirements to monitor the filtrate, and report the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorous, calcium, magnesium, total nitrogen, ammonia nitrogen, all heavy metals listed in Table I of this rule, and any other analyses required by the Secretary: Provided that the frequency of monitoring shall be annually, unless there is a change in the treatment process producing the filtrate;*

**Response:** **These are conditions and requirements that may or may not be prescribed in a permit. The section was structured to present the spectrum of conditions and requirements. Actual implementation will depend on the circumstances.**

**Additionally, your discussion of the monitoring frequency presented an analysis of what the laboratory analytical costs would be. This would be but one (1) component in the total economic evaluation of the situation. When adding in the costs of disposal at the landfill, the entire economic depiction may change.**

**In order to maintain consistency with other programs and provide protection, these requirements will remain.**

§33-9-10.1.h Requirements for the implementation of practices to prevent the contamination of ground and surface waters, including liners if necessary;

Comment: *Analysis on the water treatment residuals has indicated that the material does not leach constituents found in the residuals. The potential for groundwater contamination, based on the fact that TCLP analysis indicates no leaching of constituents, is insignificant. Additionally, if proper erosion and sedimentation controls are installed around land application areas, the potential for contamination of surface water is insignificant. Is the DEP indicating that a geosynthetic liner system, similar to that associated with municipal solid waste landfills could be required on some land application sites? This would make it difficult to grow crops in soil where land application has taken place. WVAW believes that the DEP should clarify the intent of this statement or remove it from the regulations.*

**Response:** **Again, these are conditions and requirements that may or may not be prescribed in a permit. The section was structured to present the spectrum of conditions and requirements. Actual implementation will depend on the circumstances. In order to maintain consistency with other programs and provide protection, this requirement will remain.**

§33-9-12 Fees

§33-9-12.1 Applicability. Filtrate that are approved for use and require a permit in accordance with this rule shall be subject to fees, as described herein, which shall be paid by the producer, processor, or transporter of filtrate approved for beneficial use in accordance with this rule and shall be used to administer the requirements of this rule.

Comment: *Are these fees also applicable to filtrate that are approved for use and require a beneficial use certification? WVAW believes that the DEP should clarify this regulation.*

**Response:** **Yes. This section will be appropriately revised.**

§33-9-12.3 Fee Assessments.

§33-9-12.3.b Producers, processors, or transporters of filtrate or other material disposed of under this rule shall be assessed a fee calculated as \$5.00 per actual ton of filtrate or other material multiplied by the proportion of solids in the filtrate. This fee shall be used to fund site evaluations, compliance inspections, complaint investigations, sampling, and related activities to determine compliance with this rule.

Comment: *The implementation of a "tax" such as this \$5.00 per dry ton fee could discourage the beneficial use of water treatment residuals in some instances. In many cases, the cost of hauling and beneficial use coupled with this fee could lead the generator to determine that it is just as cost effective to dispose of the material at a landfill and there is less hassle involved with landfill disposal. WVAW believes that this fee should be removed from the regulations.*

**Response:** **The same fee is implemented in other programs. When viewing the economics of landfill disposal versus the fee proposed here, the DEP fee would be minute in the overall analysis. Funds are needed to defer the cost of program implementation. Therefore, this requirement will remain.**

Appendix A Frequency of Monitoring

Comment: *Due to the nature of water treatment residuals, the frequency proposed in Appendix A for monitoring is too frequent. Analysis of water treatment residuals during the last 10 to 20 years has indicated that, absent a treatment modification, the analytical components of the residuals do not change.*

*The frequency of analysis required by Appendix A could preclude companies from beneficial use based on the cost of the analysis alone. At an average cost of \$700/sample, the annual cost to analyze at the once per month frequency is \$8,400. This same material could be disposed in a landfill and only require annual analysis at the cost of \$700. If analysis on material disposed in a landfill is only required 1 time per year, only annual analysis should be required by the DEP on the water treatment residuals, which are an inert material that presents no threat to human health or the environment. WVAW believes that, therefore, the frequency of monitoring of the residuals should be modified to annual, unless the treatment process is changed during this time period and Appendix A should be eliminated from the regulations.*

**Response:** **Again, your discussion of the monitoring frequency presented an analysis of what the laboratory analytical costs would be. This would be but one (1) component in the total economic evaluation of the situation. When adding in the costs of disposal at the landfill, the entire economic depiction may change. In order to maintain consistency with other programs and defer cost of program implementation, this requirement will remain.**

Table 1 Maximum Concentration of Metals in Filtrate for Land Application

Arsenic 20 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for arsenic? It is the belief of WVAW that this level should be raised to 41 mg/kg.*

**Response:** **This is a maximum concentration level that has been specifically utilized for the state. It was initially established in §33-2. It is necessary to utilize this maximum concentration level in order to maintain consistency with other programs.**

Chromium 1000 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for chromium? It is the belief of WVAW that this level should be raised to 1200 mg/kg.*

**Response:** **This is a maximum concentration level that has been specifically utilized for the state. It was initially established in §33-2. It is necessary to utilize this maximum concentration level in order to maintain consistency with other programs.**

Lead 250 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for lead? It is the belief of WVAW that this level should be raised to 300 mg/kg.*

**Response:** **This is a maximum concentration level that has been specifically utilized for the state. It was initially established in §33-2. It is necessary to utilize this maximum concentration level in order to maintain consistency with other programs.**

Mercury 10 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for mercury? It is the belief of WVAW that this level should be raised to 17 mg/kg.*

**Response:** **This is a maximum concentration level that has been specifically utilized for the state. It was initially established in §33-2. It is necessary to utilize this maximum concentration level in order to maintain consistency with other programs.**

Nickel 200 mg/kg

Comment: *This maximum concentration level is lower than that recommended in other states and by 40 CFR, Part 503, Standards for the Use or Disposal of Sewage Sludge. How did the state arrive at this maximum concentration level for nickel? It is the belief of WVAW that this level should be raised to 420 mg/kg.*

**Response:** **This is a maximum concentration level that has been specifically utilized for the state. It was initially established in §33-2. It is necessary to utilize this maximum concentration level in order to maintain consistency with other programs.**

## **II. COMMENTER – West Virginia Manufacturers Association**

*Comment A: General Comment*

*The WVMA supports the development of a rule implementing the beneficial use of water treatment plant filtrate. This rule will help West Virginia businesses find cost-effective ways of recycling filtrate in an environmentally responsible and efficient manner. Currently, businesses often incur the cost of disposing filtrate at landfills, which is inefficient in terms of cost to business and waste of landfill space.*

**Response:** **The DEP is appreciative of your support.**

*Comment B: Fee Assessment per Ton of Filtrate*

*In addition to a permit application fee, the DEP proposes a fee of \$5 per ton of filtrate or other material, multiplied by the proportion of solids in the filtrate. See Section 33-9-12.3.b. The combination of a tonnage fee and permit/certification fee is excessive for several reasons. First, the fiscal note indicates the DEP needs only an additional \$25,000 to implement this program. It is commendable that the DEP is working efficiently with existing resources. However, assuming an average solids proportion of 50%, the DEP will recoup its costs if as few as 10,000 tons of filtrate and other material are land applied in the state. That is before any consideration is given to permit fees. As we believe much more than this will be land applied, we urge the DEP to greatly reduce or eliminate this fee. By imposing both permitting fees and a significant tonnage fee, some businesses may be discouraged from finding beneficial uses for filtrate.*

*Moreover, if the DEP seeks to assess fees based upon environmental risk factors of the filtrate use, this contingency is already addressed in the ability of the Secretary to require a surety bond or deposit. If the DEP is worried that owners of certain land application sites may not be able to pay for remedial actions in the event of a violation or environmental hazard, bonds may be required. If over the course of the next few years, filtrate users are not acting with enough responsibility, the DEP can amend the rule to require more stringent environmental safeguards during the permitting and certification process. We don't believe that will be the case.*

*The tonnage fees are too burdensome and they are not needed to allow the DEP to recover the cost of its program. We urge that they be eliminated.*

**Response:** **The financial projections are based on a presumption that a small number of facilities, which could potentially participate in this program, would choose this option each year. The tonnage fee would go to offset shortages resulting from variations in the facilities' need for filtrate removal. Further, other programs have the same fee instituted. In order to maintain uniformity across program implementation, the fee must remain.**

*Comment C: Definition of Beneficial Reuse*

*The definition of beneficial use (Section 33-9-2.4) includes the term "non-hazardous material," which is undefined, and which we interpret to mean filtrate. If this is an incorrect interpretation of the phrase, clarification is necessary. If it is a correct interpretation, we urge the DEP to use the term "filtrate" in its stead.*

**Response:** **This definition was mirrored from Title 33, Series 8. Since the term was used and defined in another beneficial use program, the definition was used again. In order to maintain consistency with other programs, the definition will remain as presented. Clarification is provided under §33-9-1.1.**

*Comment D: Definition of Long-term*

*The definition of "long-term" (Section 33-9-2.8) states that the term means application of filtrate to a site one or more times for a period of twelve months or more. It is unclear how one application could last for twelve months or more. For clarity, this section should be revised or explained. We suggest that "long term" refer to multiple applications that occur over a period of 12 months or greater, and that "short term" refer to one or more applications occurring over less than a twelve month period.*

**Response:** It was not intended to indicate that one (1) application would last for twelve months or more. One (1) particular method of application could occur for twelve months or more. The intent was to define a time line for the need of a permit or a certification. After further review, Section 33-9-2.8 was revised to afford clarification.

*Comment E: Definitions of Land Application Site and Soil Improvement Site*

*The definitions of both "land application site" (Section 33-9-2.9) and "soil improvement site" (Section 33-9-2.19) seem to be identical. To avoid confusion, it would be helpful if the DEP would explain how they should be applied differently.*

**Response:** The intent of the land application site definition was to define applications, which would be primarily agricultural involving nutrients. The intent of the soil improvement site definition was to define sites where filtrate would be used as a mixing agent, in a micronutrient application, or potentially for pH adjustment. The definitions were refined to avoid duplicity.

*Comment F: Filtrate's effect on groundwater*

*One of the factors that the Secretary must consider in reviewing a request for a beneficial use certification is whether the filtrate is not likely to adversely impact existing groundwater (Section 33-9-3.2.a.2). This section needs clarification to make it clear that a de minimis increase in groundwater levels is not an adverse impact. This will allow regulated persons to better anticipate what uses of filtrate will be approved. We believe the statement in Section 6.2.h that no filtrate application is allowed if it would cause a violation of groundwater quality standards in 46 C.S.R. 12 is the better way to express this restriction.*

**Response:** This section is presented as a general overview. Utilization of the filtrate as a constitute in another product may result in compliance requirements with other rules and regulations specific to the product. The other section is directed toward the actual beneficial reuse specific to the filtrate and not in association with something else. No change is warranted.

*Comment G: Consideration as to whether a proposed use is disposal*

*One of the factors that the Secretary must consider in reviewing a request for a beneficial use certification is whether the proposed use is not a disposal (Section 33-9-3.2.b.1). (This does not seem to be a requirement for filtrate that is used pursuant to a permit.) It is not clear whether disposal will disqualify filtrate from a beneficial use certification and, if so, how an applicant may show that the use is not a disposal. (Note that section 12.3.b sets fees on filtrate and other material that is "disposed," suggesting that disposal is an acceptable motivation for the filtrate producer.) If disposal is a prohibited motive, as suggested by section 3.2.b.1, we are concerned that this will require the filtrate producer to prove that the filtrate has economic value in the form of a market for its sale. (See section 3.2.a.5, which refers to the probability of a market coming into existence for the filtrate use for which certification is requested.) That might be difficult to do, even though the filtrate has valuable properties.*

*We suggest the DEP eliminate any inquiry into the issue of whether the proposed use is a disposal. W. Va. Code § 22-15-23 declares that filtrate can be beneficially used, and there is no reason that the issue of whether a beneficial use exists should be determined by whether the filtrate generator has no options for use of the filtrate other than the uses described in this rule.*

**Response:** The West Virginia Code § 22-15-23 states that a program for the beneficial reuse of the material be developed. While the result of the reuse activity is an indirect method of disposal, the agency does not want disposal to be the primary purpose. If disposal were the primary purpose then it would not be a beneficial reuse program. We are understanding of the cross interpretation of the terms, but think that the separatism must remain for purposes of autonomy.

*Comment H: Duplication of standards in sections*

*Sections 33-9-5.1.a.1 and 33-9-1.a.2 seem to impose essentially the same standard as sections 33-9-5.8.c and 33-9-5.8.d. Are the standards for certification only those found in section 33-9-5.1, while the standards for permits are found in Section 33-9-5.8? It is not clear why these requirements are separately stated. Sections 33-9-5.5 and 33-9-5.8.i also seem to impose almost identical requirements. Furthermore, it appears that some general requirements are included in Section 5 of the rule, and some in Section 6.*

*If there is a reason for having the general standards for beneficial use set out in this fashion, we suggest that be explained in the rationale for the rule. If not, we would urge the DEP to consider restructuring the rule to put general requirements in one section, and specific requirements for particular land applications in another section or subsection, and storage requirements in yet another section or subsection.*

**Response:** The provisions of Sections 33-9-5.1.a.1 and 33-9-1.a.2 are intended to have an overall applicability to certification and permit processes, as stated in Section 33-9-5.1. The provisions of Sections 33-9-5.8.c and 33-9-5.8.d are intended to have specific applicability to land application sites as stated in Section 33-9-5.8. It was not intended to duplicate a provision, but to provide for a more clear scope of applicability of a provision. In the final development of the draft rule, restructuring was done. The DEP does not think any further restructuring is necessary.

*Comment I: Monitoring Frequency*

*Section 10.1.b. requires monitoring in compliance with the schedule described in Appendix A; for some sites that will be once per week, or once per month where as little as 1500 tons per year are land applied. Absent some reasonable basis for believing that the constituents of the filtrate have changed significantly, monitoring the filtrate should not be required more than once or twice per year. Appendix A should be changed to greatly reduce monitoring frequency, or Section 10.1.b should be amended to allow the Secretary to vary the monitoring requirements for good cause shown.*

**Response:** This monitoring frequency is utilized in other programs. In order to maintain consistency with other programs and provide protection, these requirements will remain.

**III. COMMENTER – Weirton Area Water Board**

*Comment: The Weirton Area Water Board wishes to make a formal complaint against the \$5.00 tipping fee included in the Solid Waste Management Act Chapter 22, Article 15 of the West Virginia Code.*

*It is of our opinion that this should not be included with the changes of this act. Thank you for your time.*

**Response: The same fee is implemented in other programs. When viewing the economics of landfill disposal versus the fee proposed here, the DEP fee would be minute in the overall analysis. In order to maintain uniformity across program implementation, the fee must remain.**



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DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUMMARY OF REVISIONS  
LEGISLATIVE RULE TITLE 33, SERIES 9  
“STANDARDS FOR BENEFICIAL USE OF FILTRATE FROM WATER TREATMENT  
PLANTS”  
PROMULGATED UNDER THE WEST VIRGINIA CODE §22-15-23

JULY 27, 2006

The Department of Environmental Protection’s (DEP) Division of Water and Waste Management (DWWM) reviewed comments presented on the proposed rule. A Response to Comments was prepared as a separate document. Resultant to those comments, revisions were instituted in the rule. The section as was proposed will appear first, then the revised section will appear following in bold.

Proposed:

§33-9-2.8. “Long-term” means the application of filtrate to a site one or more times for a period of twelve months or more.

Revised:

§33-9-2.8. **“Long-term” means the application of filtrate to a site multiple times for a period of twelve months or more.**

Proposed:

§33-9-2.9. “Land Application site” means a location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil so that the filtrate can fertilize or improve the growing conditions for the crops or vegetation grown in the soil.

Revised:

§33-9-2.9. **“Land Application site” means a location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil so that the filtrate can fertilize the crops or vegetation grown in the soil.**

Promoting a healthy environment.

Proposed:

- §33-9-2.19. “Soil improvement site” means the location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil, so that the filtrate can fertilize or improve the growing conditions for the crops or vegetation grown in the soil.

**Revised:**

- §33-9-2.19. “Soil improvement site” means the location where filtrate is sprayed or spread onto the land surface, or incorporated into the soil, so that the filtrate can improve the growing conditions for the crops or vegetation grown in the soil.**

Proposed:

- §33-9-5.7.c. Any filtrate applied to the land subsurface for the maintenance and construction of utility distribution and collection systems shall be covered by a minimum of six inches of non-filtrate fill material.

**Revised:**

- §33-9-5.7.c. In addition to the requirements of 5.7.b, any filtrate applied to the land subsurface for the maintenance and construction of utility distribution and collection systems shall be covered by a minimum of six inches of non-filtrate fill material.**

Proposed:

- §33-9-12.1. Applicability. -- Filtrate that are approved for use and require a permit in accordance with this rule shall be subject to fees, as described herein, which shall be paid by the producer, processor, or transporter of filtrate approved for beneficial use in accordance with this rule and shall be used to administer the requirements of this rule.

**Revised:**

- §33-9-12.1. Applicability. -- Filtrate that is approved for use and requires a permit or beneficial use certification in accordance with this rule shall be subject to fees, as described herein, which shall be paid by the producer, processor, or transporter of filtrate approved for beneficial use in accordance with this rule and shall be used to administer the requirements of this rule.**