

DEP drops plan to finalize stream list

By Ken Ward Jr.
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State regulators have dropped their plan to finalize a list of protected West Virginia streams, saying they don't want to pick a fight with lawmakers over the issue.

Earlier this year, the Legislature declined to act on the list of more than 300 streams the state Department of Environmental Protection said deserved tougher pollution protections.

DEP Secretary Stephanie Timmermeyer said she planned to finalize the list anyway. Timmermeyer said the DEP had the legal authority to do so.

On Friday, Deputy DEP Secretary Randy Huffman said the agency now plans to start all over.

A new list will be published in draft form. The DEP will accept public comments and then finalize the list. The resulting version will be submitted for legislative review during the 2008 session.

"It was maybe a subversion of the leg-

islative process for us to just go out and file the rule," Huffman said. "It's a legislative process whether you agree or not."

The list in question covers streams that are deemed to qualify for "Tier 2.5" protection under West Virginia's water quality anti-degradation policy.

Under that policy, clean streams are generally supposed to be kept that way. Streams on the Tier 2.5 list could not be degraded by more than 10 percent.

DEP officials had already whittled down the Tier 2.5 list and allowed three separate rounds of public comments. But lawmakers, at the urging of coal companies, timber operators and the Farm Bureau, were slashing dozens of streams from the list.

Originally, the DEP proposed Tier 2.5 protection for about 300 streams, about 4 percent of the waterways in the state, agency officials said.

Don Garvin, lobbyist for the West Virginia Environmental Council, said the DEP's action would help regulated industries gut the stream list.

"It's going to be almost impossible to protect streams in this state," Garvin said. Huffman said he doesn't believe the DEP ever made a definite decision to move forward without legislative action on the stream list.

"My understanding was that was an option that was on the table at the time," said Huffman, who is running the DEP while Timmermeyer is on maternity leave. "There were a number of options there."

In a March 15 interview, Timmermeyer and DEP spokeswoman Jessica Greathouse said the agency planned to file the final rules, despite legislative inaction.

Timmermeyer cited several state Supreme Court decisions she said supported the DEP's plan.

Under those rulings, she said, lawmakers can approve, reject or amend state agency rules, but she said the Legislature can't veto an agency rule by simply not acting on it at all.

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Form #4

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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Environmental Protection/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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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

2007 JAN 17 AM 10: 24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

§33-9-1. General.

1.1. Scope. -- This legislative rule establishes a mechanism and requirements for the 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 Properties" means those characteristics determined to be analytically acceptable as defined in section 5.

2.5. "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.

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

2.7. "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.

2.8. "Filtrate or water treatment plant filtrate" means any sludge that results from the treatment of water at a water treatment plant.

2.9 "General Permit" means a regional or Statewide permit issued by the Department for a specified category, or categories, of beneficial use of filtrate, in accordance with the provisions of section 11, the terms and conditions of which allow an original applicant and a new applicant to register to operate under the general permit if the terms and conditions of the general permit are met.

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

2.11. "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.

2.12. "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.

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

2.14. "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.

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

2.16. "Producer" means any person producing filtrate approved for use in accordance with this rule.

2.17. "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.

2.18. "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.

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

2.20. "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.

2.21. "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.

2.22. "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.

2.23. "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.

2.24. "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 Determination and Permitting Processes.

3.1 Basis for beneficial use determination.

3.1.a. As a part of the permit process, the generator or proposed user of filtrate must request from the Secretary, in writing, a beneficial use determination that the proposed use of filtrate is a beneficial use. The Secretary shall consider a requested use on a case-specific basis or shall consider a request for a set of similar uses. The Secretary shall consider the following in reviewing a request for a beneficial use permit:

3.1.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;

3.1.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;

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

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

3.1.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.

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

3.1.b. The Secretary shall determine in writing whether to grant the request for a beneficial use permit based on consideration of subsections 3.1.a.1 through 3.1.a.6, and a showing that the following criteria have been met:

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

3.1.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 determination of the beneficial use;

3.1.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

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

3.2. Applicability. Short-term Permit. Persons shall obtain a short-term permit approving the beneficial use of filtrate for one-time or short-term applications of filtrate as set forth in this rule.

3.2.a. No person shall land apply or otherwise beneficially use filtrate subject to this rule without first obtaining a permit for such use from the Secretary.

3.2.a.1. The Secretary shall require a short-term permit for a one-time or short-term beneficial use of filtrate as set forth in this rule. Short-term permits shall be effective for a fixed term not to exceed 18 months.

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

3.3. Applicability. Long-term Permit. Persons shall obtain a long-term permit approving the beneficial use of filtrate for long-term applications of filtrate as set forth in this rule.

3.3.a. No person shall land apply or otherwise beneficially use filtrate subject to this rule without first obtaining a permit for such use from the Secretary.

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

3.3.a.2. The Secretary shall require a long-term permit for multiple or long-term applications of the beneficial use of filtrate as set forth in this rule. Long-term permits shall be effective for a fixed term not to exceed five (5) years.

3.3.b. The applicant must demonstrate that 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 shall require that a person proposing to beneficially reuse filtrate subject to this rule obtain a permit. The Secretary shall require a long-term permit where:

4.1.a.1. The application is proposed to occur on an ongoing basis for more than 18 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 shall 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 permit must conform to the standards set forth in this subsection.

5.1.a. A beneficial use 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 shall 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 shall not issue a beneficial use permit 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 shall 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 shall 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 shall 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 shall not be stored at a land application site prior to land application for a period of more than one week: Provided, That the Secretary shall 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 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 shall 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 shall 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 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 Requirements. -- All applicants for a permit 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 Permits and Public Comment.

8.1. Administration.

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

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

8.1.c. A draft permit 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 short-term permit 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 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 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 in the draft permit ;

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, and the permit application; 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;

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 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. 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. 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 if as a result of comments submitted by someone other than the applicant, the Secretary decides to revise any condition of the draft permit that had been sent to initial public notice, the Secretary may:

8.5.a.1. Prepare a new draft permit, 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.

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 prior to issuing the final permit. This response shall:

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

8.6.a.2. Briefly describe and respond to comments on the draft permit 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.

8.7.a. After the close of the public comment period on a draft permit, 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 means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

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

9.1 Actions by the Secretary.

9.1.a. Permits may be modified, revoked and reissued, suspended or revoked either at the request of any interested person or upon the Secretary's initiative. Permits may only be modified, revoked and reissued, suspended or revoked for the reasons specified in this section. All requests for action on a permit 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 under this section, only those conditions to be modified are reopened when a new draft is prepared. All other conditions of the existing permit 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 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 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 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 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.

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

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

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 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;

9.5.d. Amend the loading rate contained in the permit 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 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 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
Short-Term Permit.....	\$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.