



STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

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Charleston, West Virginia 25311
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June 14, 1984

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The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, WV 25305

Attn: Mr. Robert Jackson,
Administrative Law Division

Dear Sir:

Pursuant to the provisions of Chapter 29A of the Code of West Virginia, 1931, as amended, enclosed please find two (2) copies each of the proposed changes/additions/amendments/deletions to Series VI of the Administrative Regulations of the State Water Resources Board (1984) - Procedural Regulations for the Revision of Water Quality Standards (Chapter 20, Article 5A) along with the required State Register Filing form.

Please note that any reference to Petitions for Rule Making under Chapter 20, Article 5E has been deleted as the Board no longer has this authority.

Comments on above proposed regulations will be received until July 14, 1984 and can be mailed to the above address or delivered in person to the Board Office at 1260 Greenbrier Street, Charleston, WV.

Respectfully submitted,

Frances E. Hunter

Frances E. Hunter
Executive Secretary

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE June 14, 1984
Administrative Law Division

enclosures



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Frances E. Hunter, Executive Secretary,
Title or Position

STATE WATER RESOURCES BOARD, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (xx) proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- () other - specify ()

This filing pertains to

Chapter 20
Article 5A
Series Board Series VI
Section _____
Page No. _____

FILED IN THE OFFICE OF
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SECRETARY OF STATE
THIS DATE 6-14-84
Administrative Law Division

- () proposed rules and regulations are required to go to Legislative Rule Making Committee;
- (x) proposed rules and regulations are excluded from Legislative Rule Making Committee;

June 14, 1984
Date Submitted

Frances E. Hunter
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

CHAPTER 20 - 5A
SERIES VI
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 6-14-84
Administrative Law Division

NOTE: Old language deleted, new underscored.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 20
 (Articles 5A and 5B)
 Series VI
 --(1983)--
 (1984)

SUBJECT: ****Procedural Regulations for the Revision of Water Quality Standards and Petitions for Rule Making Under Chapter 20, Articles 5A and 5B****

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**Procedural Rule

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 20
(Articles 5A and 5E)
Series VI
(1983)
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 10-14-84
Administrative Law Division

PROCEDURAL REGULATIONS FOR THE REVISION OF WATER QUALITY
STANDARDS AND PETITIONS FOR RULE-MAKING UNDER CHAPTER 20,
~~ARTICLES 5A AND 5E UNDER CHAPTER 20, ARTICLE 5A~~

Section 1.00 General

1.01 Scope

The rules of procedure provided herein shall govern and apply to proceedings before the Board on the Revision of Water Quality Standards under Chapter 20-5A-1 et seq and ~~Chapter 20-5E-1(i)~~ of the West Virginia Code, ~~and for Petitions for Rule-Making under Chapter 20-5E-18(e) of the West Virginia Code.~~

1.02 Authority

These rules are promulgated pursuant to the authority of Chapter 29A-3-3 of the West Virginia Code and Chapter 20-5A-1, et seq of the West Virginia Code, ~~and Chapter 20-5E-7(i) and Chapter 20-5E-18(e) of the West Virginia Code.~~

1.03 Effective Date

These rules were adopted by the Board on January 20, 1984 and become effective on February 23, 1984.

1.04 Filing Date

These rules were filed in the Office of the Secretary of State on ~~January 24, 1983.~~ June 14, 1984.

Section 2.00 Revision of Water Quality Standards

2.01 The Board may revise a Water Quality Standard upon the application of any person, including the Chief, or upon its own initiative.

2.02 Contents of Application

Any application for a revision of Standards shall ~~contain the following:~~ be filed in six (6) copies and shall contain the following:

(a) A U. S. G. S. 7.5 minute map showing those stream segments for which the standard is to be revised and showing existing and proposed discharge points.

(b) The existing and proposed designated uses for the stream segment(s) in question.

(c) The existing and proposed water quality criteria for the stream segment(s) in question.

(d) Existing uses and water quality data for the stream segment(s) in question. Where adequate data are unavailable, additional studies may be required by the Board.

(e) General land uses (e.g., mining, agricultural, recreation, residential, commercial, industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment(s) proposed to be revised.

(f) The existing and designated uses of the receiving waters into which the segment in question discharges and the location where those downstream uses begin to occur.

(g) General physical characteristics of the stream segment including but not limited to width, depth, bottom composition and slope.

(h) The average amount of flow in the segment and the amount of flow at the 7-Q-10 in the segment in question and in adjacent segments.

(i) An assessment of the existing and potential aquatic life habitat in the stream segment in question and in the adjacent upstream and downstream segments.

(j) In addition, for establishing a less restrictive use, information must be supplied as follows:

(i) An explanation of the irretrievable person-induced or natural conditions which preclude attainment of a higher use designation; or

(ii) An assessment of the adverse social and economic impacts of additional controls beyond the effluent limitations required pursuant to Section 301(b)(2)(A) and (B) of the Federal Act.

(k) The Board may require any additional information or data it deems necessary to make a decision.

2.03 Board Review

The Board shall review any application prepared and submitted pursuant to the above and the recommendation of the Chief and then, shall decide whether to tentatively approve the requested revision to the standards. The recommendation of the Chief shall be based upon all available information.

2.04 Decision on Application

If the Board decides to tentatively approve a revision, including one on its own initiative, it shall prepare or cause to be prepared a fact sheet containing at least the following:

- (a) The name and address of the applicant.
- (b) The name and sketch or description of the waters proposed for revision of standards, including the location of existing and proposed discharge points.
- (c) The proposed designated use(s).
- (d) The proposed water quality criteria for the segment(s) based on the proposed designated use(s).
- (e) A brief abstract of the supportive documentation which demonstrates that the revision is appropriate.
- (f) The treatment requirements proposed for discharges to the waters in question if designated for the proposed use(s).
- (g) A summary of the implications of such designation for the community and other users or potential users of the waters in question.
- (h) The procedure by which the designation will be made.
- (i) The Chief's recommendations and any relevant Division reports, etc.

2.05 Proposal of Revision

In proposing said revision(s), the Board shall follow the applicable procedures in Chapter 29A-3-1, et seq, with the following added for clarification:

- (a) In addition to filing notice of the proposed rule(s) in the State

Register, the Board shall publish notice of a public hearing on the proposed rule(s) as a Class I legal advertisement in a publication area determined by the Board.

(b) The said notice of public hearing shall include the following information:

- (i) Time and location of hearing;
- (ii) Hearing agenda;
- (iii) Notification of the availability of a fact sheet as required under Section 2.04; and
- (iv) The location where reports, documents, and data pertaining to the hearing agenda are available for public inspection.

(c) Any such notice of public hearing shall also be mailed to any person who has filed with the Board a request for notices of proposed rules revising water quality standards. Such notices shall also be mailed to affected downstream States and Federal, State and interstate agencies which may be affected by the proposed revision(s).

(d) The Board shall cause to be prepared a transcript of any public hearing held pursuant to these rules and shall make such transcript available for public inspection.

2.06 Multiple Applications

In consideration of limited time and resources, the Board may, within its discretion, consider several applications for revised standards at one time and may defer all such considerations to its tri-annual review required under Section 303 of the Federal Act.

~~Section 3.00. Petitions for Rule Making Under Chapter 20-5E~~

~~3.01. General~~

~~Any person may petition the Board, as provided for in Chapter 20-5E-18(e) of the West Virginia Code, to modify, revise, or repeal any rule or regulation arising under Article 20-5E, and within the jurisdiction of the Board.~~

~~3.02. Contents of Petition~~

~~Any petition for rule making shall contain:~~

~~(a) The petitioner's name and address.~~

~~(b) Specific identification of the particular provisions of the regulations for which the revision or amendment is sought.~~

~~(c) A description of the proposed amendment, revision, or repeal including (where appropriate) suggested regulatory language.~~

~~(d) Statement of reasons and arguments in support of such amendment, revision, or repeal.~~

~~(e) Request for opportunity for "Oral Presentation of the Petition", and a written explanation of why the petition will not suffice to communicate the petitioner's views.~~

~~3.03. Filing of Copies~~

~~Nine (9) copies of the petition are to be filed with the Secretary of the West Virginia State Water Resources Board at 1205 Greenbrier Street, Charleston, West Virginia 25311.~~

~~3.04. Distribution of Copies~~

~~Copies of the petition will be distributed by the Board Secretary to Board members, Director Department of Natural Resources, Chief Division of~~

~~Water Resources and the Board's counsel.--~~

~~--3.05-- Additional Information--~~

~~Upon receipt of a petition, the Board may request, if necessary,
that the petitioner submit, within a specified time, adequate information
to meet the requirements of Section 3.02, or any other information the
Board may reasonably require to make a decision on the petition.--~~

~~--3.06-- Amendments to the Petition--~~

~~Upon motion by the petitioner and for good cause shown, the Board may
grant leave to the petitioner to amend his petition.--~~

~~--3.07-- Scheduling of Oral Presentation on the Petition~~

~~If an opportunity for an oral presentation on the petition is granted,
the Board shall schedule such presentation within 45 days of the filing of
the petition.-- The Board may grant a continuance upon motion by the petitioner
or may at any time grant a continuance upon its own motion.--~~

~~--3.08-- Transcript of Oral Presentation--~~

~~The petitioner, at his own cost, shall furnish to the Board, within
30 days following the completion of the proceeding, the original stenographic
transcript and seven (7) copies of the proceeding taken by a competent,
qualified and reputable court reporter.-- Upon written request and good
cause shown, the Board may assume the cost of the stenographic transcript
of the proceeding provided that such written request shall be filed with
and granted by the Board prior to the proceeding.--~~

~~3.09 Disposition of Petitions----~~

~~Within 90 days of the filing of the petition, or within 60 days of~~

~~the filing of the stenographic transcript if an oral presentation on the~~
~~petition was granted, the Board shall make a tentative decision whether~~
~~the issue(s) raised by the petitioner merit rule making; In making such~~
~~decision, the Board may commence any studies or investigations, including~~
~~seeking recommendations from the Chief of the Division of Water Resources,~~
~~or the Director of the Department of Natural Resources.~~

~~(a) Decision to pursue rule making:~~

~~If the Board decides the petitioner's request has merit and desires~~
~~to pursue rule making, the Board shall proceed under all applicable require-~~
~~ments of Chapter 29-A-1-1 et seq, of the West Virginia Code, and the following~~
~~additional requirements:~~

~~(1) In addition to filing notice of the proposed rule(s) in the State~~
~~Register, the Board shall publish notice of a public hearing on the proposed~~
~~rule(s) as a Class I legal advertisement in a publication area determined~~
~~by the Board;~~

~~(2) Such notice of a public hearing shall contain the following~~
~~information:~~

~~(i) Time and location of the hearing;~~

~~(ii) Hearing agenda;~~

~~(iii) A summary of the proposed amendment or revision; and~~

~~(iv) The location where reports, documents, and other data~~

~~pertaining to the hearing are available for public inspection.~~

~~(3) Any such notice of public hearing shall also be mailed to any~~
~~person who has filed with the Board a request for notices of hearings on~~
~~proposed modifications or revisions to rules under Chapter 20-5E.~~

--(4)--The Board shall cause to be prepared a transcript of any public--
--hearing held pursuant to these rules and shall make such transcript available--
--for public inspection.--

--(b)--Denial of petition:--

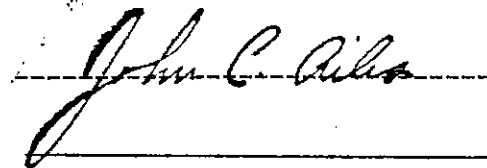
--If the Board decides to deny the petition and not to pursue rule--
--making, the Board must set forth such decision in writing with substantial--
--reasons for refusing to do so.

--3.10--Multiple Petitions--

--In consideration of limited time and resources, the Board may, within--
--its discretion, consider or consolidate several petitions at one time.--

--Adopted this 20th day of January, 1983, by the West Virginia State--
--Water Resources Board.--

--Attest:--



--John C. Ailes--
--Chairman--

PROMULGATION HISTORY

The proposed procedural regulation for the revision of water quality standards was filed with the Secretary of State on June 29, 1981, with an effective date of July 29, 1981.

The Board then went to public notice on October 28, 1982 with a combined procedural regulation for the revision of water quality standards ~~and petitions for rule making under~~ Chapter 20, Articles 5A ~~and 5E~~ and adopted the ~~combined~~ regulations designated Series VI on the 20th day of January 1983, with an effective date of February 19, 1983.

On June 14, 1984 the Board filed in the Office of the Secretary of State proposed changes/additions/amendments/deletions to these regulations with the comment period closing July 14, 1984. In this proposed regulation all reference to Petitions for Rule Making under Chapter 20, Article 5E has been deleted as the Board no longer has this authority.

WRB
Adm. Reg. 20-5A
Series VI

FISCAL NOTE

The proposed changes/additions/amendments/deletions to Series VI of the Administrative Regulations of the State Water Resources Board are not expected to require any additional fiscal impact on the public or the State.