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April 7, 1982

The Honorable A. James Manchin
Secretary of State
Capitol Bldg. # 1 - Room W-157
Charleston, WV 25305

Dear Mr. Secretary:

In accordance with the provisions of Chapter 29A, Code of West Virginia, 1931, as amended, and pursuant to the provisions of Chapter 29 B of the West Virginia Code, 1931, as amended, enclosed find two (2) copies of the Board's Administrative Regulations, Series VIII, Re: Regulations on Requests for Information (Freedom of Information Act), which were promulgated by the Board on April 6, 1982, and adopted on the same date.

Also enclosed is the State Register Filing form prescribed by your office and the Fiscal Note attached to above regulations.

I hereby certify that the enclosed regulations are true and accurate copies of official regulations adopted by the Board on the above date and which will become effective May 7, 1982.

Respectfully submitted,

John C. Ailes
John C. Ailes
Board Chairman

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

THIS DATE 4/7/82

JCA/feh

enclosures



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

A. JAMES MANCHIN
 SECRETARY OF STATE

STATE REGISTER FILING

I, John C. Ailes, Chairman,
 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;
- () proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- (x) rules and regulations; or
- (x) other - specify (two (2) copies of State Register Filing Form) and fiscal note

This filing pertains to

Chapter 29B
 Article 1
 Series _____
 Section 1
 Page No. _____

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 SECRETARY OF STATE
 THIS DATE 4/7/82

- () 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;

April 7, 1982
 Date Submitted

John C. Ailes
 Signature of Person Authorizing
 this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 29-B
Series VIII
(1982)

Subject: Regulations on Requests for Information (Freedom of Information Act)

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FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 4/7/82

WATER RESOURCES BOARD

REGULATIONS ON REQUESTS FOR INFORMATION

WHEREAS, the Division of Water Resources of the State Department of Natural Resources and the State Water Resources Board are public bodies subject to the provisions of Chapter 29B-1-1 et seq. of the West Virginia Code, 1931, as amended (commonly known as the Freedom of Information Act), and

WHEREAS, the purpose of such Act is to ensure the full and complete disclosure of agency records to the public.

Now, therefore, the Board promulgates the following procedural rules for the implementation of the provisions of said Act:

1.01 Scope

These rules prescribe procedures under which the public may inspect and obtain information and records generated, developed or held by the Division of Water Resources and the State Water Resources Board. These rules do not apply to the disclosure of information to any officer, employee or authorized representative of the State or Federal government.

1.02 Authority

These rules are promulgated pursuant to the authority of Chapter 29B-1-1 et seq., Chapter 29A-3-7, and Chapter 20-5A-3(b) (2) of the West Virginia Code, 1931, as amended.

1.03 Filing Date

These rules were filed in the Office of the Secretary of State on April 7, 1982.

1.04 Effective Date

These rules become legally effective on May 7, 1982.

1.05 Certification

These rules are certified authentic by the Chairman of the State Water Resources Board.

1.06 Definitions

For the purposes of these rules:

- (a) "Act" means the Freedom of Information Act, Chapter 29B-1-1 et seq.
- (b) "Board" means the State Water Resources Board.
- (c) "Division" means the Division of Water Resources, State Department of Natural Resources.

(d) "Record" means any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics which are possessed by the Division or Board. The term does not include materials that are legally owned by a Division or Board employee in his or her personal capacity and does not include materials which are readily available to the public such as books, journals and periodicals available through a reference library. Nor does the term include documents that have been advertised as being available to the public, such as applications or draft permits, draft plans, laws and regulations or other reports and brochures which may be obtained without a written request.

(e) "Request" means a written request to inspect or obtain a copy of one or more records.

(f) "Requestor" means any person, including any natural person, corporation, partnership, firm or association, who has submitted a request to the Division or Board.

1.07 Policy on Disclosure

(a) All Division and Board records shall be available to the public unless they are exempt from the disclosure requirements of the Act.

(b) All nonexempt records shall be available to the public upon request regardless of whether any justification or need has been shown by the requestor and regardless of whether or not the request cites the Act.

1.08 Form of Request

A request shall be made in writing, shall reasonably describe the records

sought in a way that will permit their identification and location and should be addressed to the Public Information Office of the Division at 1201 Greenbrier St., Charleston, WV 25311 for Division records and to the State Water Resources Board, 1205 Greenbrier St., Charleston, WV 25311 for Board records.

1.09 Requests Which Do Not Reasonably Describe Records Sought

If the description of the records sought in the request is not sufficient to allow the Division or Board to identify and locate the requested records, the requestor will be notified within five working days that the request cannot be further processed until additional information is provided. Until such additional information is provided, the five-day time limit under Section 1.11 shall not begin.

1.10 Misdirected Requests; Oral Requests

The Division and Board cannot assure that requests received by offices other than those referenced in Section 1.08 will be answered in a timely manner. The five-day period, as provided for in Section 1.11, shall begin at the time the Public Information Office or the Board receives the request. Oral or phone requests for the records may be honored if followed by a written request. The written request may be hand delivered if previous arrangements for an appointment or to receive copied material have been made by phone.

1.11 Responsibilities of Public Information Office and Board

(a) The Public Information Office or Board shall, upon receipt of a written request, mark the request with the date of receipt, and begin to identify and locate the requested information or ask for a more specific request under Section 1.09 if necessary.

(b) The Public Information Office and Board shall respond in writing to the requestor within five working days of the receipt of the request. Such response shall:

- (i) Furnish copies of the requested information;
- (ii) Advise the requestor of the time and place at which he/she

may inspect and copy the information; or

(iii) Deny the request stating in writing the reasons for such denial.

1.12 Denials of Requests

(a) Denials of requests may be issued only in the following circumstances:

- (i) The requested record is not known to exist;
- (ii) The record is not in the Division's or Board's possession;
- (iii) The record is exempt from disclosure under the Act.

(b) A letter informing the requestor of the denial must be sent within the time period specified in Section 1.11. The letter must clearly state the basis for the denial. The denial notice shall inform the requestor that he or she may appeal the agency's action in accordance with the provisions of Chapter 29B.

1.13 Exemptions

The following categories of information are specifically exempt from disclosure under the provisions of the Act:

(a) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors; provided that in no case shall effluent data submitted pursuant to Chapter 20, Article 5A of the West Virginia Code be considered trade secrets under this paragraph.

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and con-

vincing evidence requires disclosure in the particular instance: Provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(c) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(d) Records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(e) Information specifically exempted from disclosure by statute;

(f) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(g) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

(h) Internal memoranda or letters received or prepared by any public body.

1.14 Partial disclosure

If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted.

1.15 Fees

Fees will be charged requestors for searching for and reproducing requested

records, in accordance with the following:

(a) Copying costs shall be \$0.13 per page, provided that if the total cost is less than \$5.00, there shall be no charge.

(b) The charge for copying materials that must be reproduced outside the Division's or Board's facilities shall be the actual cost of such copying.

(c) A search fee of \$5.00 per hour or fraction thereof shall be charged for the agency's time spent in trying to locate requested records beyond the initial half hour used to locate such records.

(d) An invoice for the total amount of fees will be sent to the requestor. Payment shall be made by check or money order made payable to the Department of Natural Resources for Division records and to the State Water Resources Board for Board records.

(e) Total or partial prepayment may be required if the Division or Board determines that the unpaid fees attributable to one or more requests by the same requestor exceed or will exceed \$15.00.

(f) Any requestor who cannot afford to pay the fee(s) established under this section may file an affidavit with the Division or Board stating that the requestor is pecuniarily unable to pay such fee(s). Upon the filing of any such affidavit, the Division or Board shall process the request in accordance with these rules and as if the fee(s) had been paid.

Fiscal Note for Freedom of Information Act Regulations

The purpose of the proposed regulations for the Freedom of Information Act (Chapter 29B of the West Virginia Code, 1931, as amended) is to ensure complete disclosure of records of the Division of Water Resources and the State Water Resources Board. The regulations will formalize a procedure which has unofficially been in place for some time.

The Division and the Board are receiving increasing numbers of Freedom of Information Act requests. Extensive personnel time is required to fill the requests and the mandated response time impacts on the agencies' other duties and responsibilities. Although actual cost figures are not available, it is felt that the copying and searching fees (section 1.15) will offset expenses to some degree but will not fully recover the costs incurred.