

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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JUN 22 2 57 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

Division of Environmental Protection
Office of Water Resources

AGENCY: _____ TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY: 22-1-1(b)(10) and 22-1-6d

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 NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Pollution Prevention and Compliance
Assistance Rule

DATE OF PUBLIC HEARING: July 23, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Resources
Conference Room
1201 Greenbrier Street
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL ___ , WRITTEN ___ , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as Above
Attn: Lyle Bennett

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.

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Carrie J. Chamberlain
Authorized Signature

\$2.80



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

Michael P. Miano
COMMISSIONER

June 17, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 47CSR3 - "Pollution Prevention & Compliance
Assistance"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced interpretive rule with your office as notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Lyle Bennett

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

RULE TITLE: POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE

A. AUTHORITY: WV Code 22-1-1(b)(10) and 22-1- 6d

B. SUMMARY OF RULE:

To promote pollution prevention by encouraging the reduction or elimination of pollutants at the source through process modification, material substitution, in process recycling, reduction of raw material use or other source reduction opportunities. These rules establish requirements governing the Division of Environmental Protection in-house mechanisms for encouraging bona fide pollution prevention efforts to assist industries achieve compliance with environmental regulations thru source reduction, waste minimization, recycling, treatment, and proper disposal; and to improve compliance with environmental laws by improving advisory and technical assistance features of agencies within the Division.

Allowing the director to establish a multi-media program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; requiring release of information when human health or the environment are at risk; granting the director authority to propose legislative rules to implement the pollution reduction and elimination program.

Designating existing programs by the Director within the Division of Environmental Protection engaged in bonafide pollution prevention and compliance assistance activities to keep information confidential and independent from enforcement or other division personnel unless an imminent hazard to human health or the environment exist.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

During the 1998 legislative session HB 4693 (pollution prevention bill) was enacted and signed into law by the Governor. HB 4693 requires the director of the Division of Environmental Protection to propose for legislative promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

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

The federal counterpart is the Pollution Prevention Act of 1990. Regulations under 42 U.S.C. §§ 13101 to 13109 govern the federal act. The Division of Environmental Protection is not proposing to adopt the federal rule nor write a comparable rule.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

“In accordance with §22-1A-1 and 3(c), the Director 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:

“This amendment to the rule will be reviewed by the Advisory Council during its meeting in July, 1998. Recommendations of the Council and the Director’s response to Council’s recommendations will be included In the August1,1998 filing with the Secretary of State’s Office and the Legislative Rulemaking Review Committee.”

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

OCT 9 10 06 AM '98

Rule Title: State Construction Grants Program

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Environmental Protection

Address: Office of Water Resources
617 Broad Street
Charleston, WV 25301

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1. Effect of Proposed Rule

	ANNUAL 1999 FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0		
CURRENT EXPENSE	0	0	0		
REPAIRS & ALTERNATIONS	0	0	0		
EQUIPMENT	0	0	0		
OTHER	0	0	963,480	unknown	

2. Explanation of above estimates:

The entire hardship grant amount will go directly to communities receiving assistance. No dollars allowed for administrative purposes.

3. Objectives of these rules:

To govern the disbursement and use of grants to communities for wastewater treatment works from moneys held in the State Construction Grants Fund.



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

October 6, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

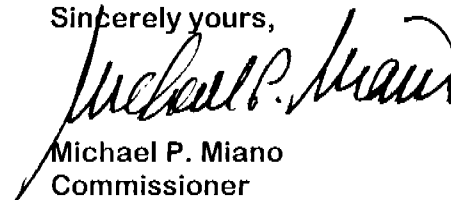
RE: 47CSR3 - "Pollution Prevention and Compliance Assistance"

Dear Ms. Cooper:

As you will note from the attached letter, Joe Altizer, Counsel for the Legislative Rule-Making Review Committee, has requested that we refile the fiscal note for the above-referenced rule. Therefore, please replace the fiscal note that we filed with 47CSR3 on June 22 for notice of public hearing and on July 30 as an agency-approved rule, with the enclosed amended page 1 fiscal note.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,



Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Carrie Chambers
Barb Taylor, Chief, OWR
Mike Johnson, OWR

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OFFICE OF THE SECRETARY OF STATE
CHARLESTON, WEST VIRGINIA



DIVISION OF ENVIRONMENTAL PROTECTION

617 Broad Street
Charleston, WV 25301-1251

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
DIRECTOR

September 30, 1998

Mr. Joseph A. Altizer
Legislative Rule-Making Committee
Room MB-49, State Capitol
Charleston, West Virginia 25305

RE: 47CSR33-State Construction
Grants Program

Dear Mr. Altizer:

Attached is a revised page 1 of the Fiscal Note for the above proposed rule. This was requested during the September 22, 1998 meeting of the Committee. Should you have any further questions, please call me at (304) 558-0641.

Sincerely,

OFFICE OF WATER RESOURCES

Mike Johnson, P.E.
Assistant Chief
Construction Assistance

MJ/a

cc: Carrie Chambers, DEP w/attachments

OFFICE OF THE
SECRETARY OF STATE

OCT 9 10 07 AM '98

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3. **Objectives of these rules:** To better define language in pollution prevention and Compliance assistance section of WV Code 22-1-1 and 22-1-6.

Rule Title: POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. Economic Impact on State Government.

None anticipated

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The rules may have an economic impact on industries receiving assistance.

C. Economic Impact on Citizens/Public at Large.

None anticipated.

Date: June 22, 1998

Signature of Agency Head or Authorized Representative

Carrie J. Chambers

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TITLE 47
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

JUN 22 2 57 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE RULE

§47-3-1. General.

1.1. Scope and Purpose. -- To promote pollution prevention by encouraging the reduction or elimination of pollutants at the source through process modification, material substitution, in process recycling, reduction of raw material use or other source reduction opportunities. This rule establishes requirements governing the Division of Environmental Protections in-house mechanisms for encouraging bonafide pollution prevention efforts by industries to assist in achieving compliance with environmental rules through source reduction, waste minimization, recycling, treatment, and proper disposal; and to improve compliance with environmental laws by improving advisory and technical assistance features of programs within the Agency.

This rule establishes a multi-media program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; requiring release of information when human health or the environment are at risk; granting the director authority to propose legislative rules to implement the pollution reduction and elimination program;

Designating existing programs by the Director within the Division of Environmental Protection engaged in bonafide pollution prevention and compliance assistance activities to keep information confidential and independent from enforcement or other agency personnel unless an imminent hazard to human health or the environment exist.

1.2. Authority. -- W. Va. Code §§22-1-1(b)(10) and 22-1-6d

1.3. Filing Date. --

1.4. Effective Date. --

§47-3-2. Definitions.

2.1. "Agency" means the Division of Environmental Protection.

2.2. "Compliance Assistance" means services provided to the regulated community in order to assure environmental laws and regulations are being addressed by cooperating businesses.

2.3. "Director" means the Director of the Division of Environmental Protection.

2.4. "Imminent Environmental Hazard" means any conditions or practices that present an impending and unreasonable risk to the environment and which may also be an immediate threat to human health.

2.5. "Multi-media" means water, air, waste, and land.

2.6. "Pollution Prevention" is the means of reducing pollutants entering any waste stream through (in order of acceptability) source reduction, waste minimization, recycling, treatment, and proper disposal.

2.7. "Program" Pollution Prevention Services is designated as a program of the Division of Environmental Protection within the Office of Water Resources.

2.8. "Source Reduction" means any practice which reduces the amount of any substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

§47-3-3. Powers and Limitations.

The Director has established Pollution Prevention Services, a program within the Office of Water Resources that provides pollution prevention and compliance assistance to the regulated community within the state.

3.1. The multi-media section seeks to coordinate activities within the Offices of Air, Water, and Waste in matters relating to pollution prevention and compliance assistance.

3.2. Assistance does not protect participating businesses from ongoing enforcement actions or any independent action initiated after the assistance activities are underway. Assistance activities may be conducted concurrent to enforcement activities by enforcement agencies.

3.3. The agency makes specific technical assistance available to businesses seeking information about pollution prevention/compliance assistance opportunities, including on site technical information and to assist in the development of pollution prevention plans to businesses seeking assistance.

3.4. The agency targets assistance to businesses for whom lack of information is an impediment to pollution prevention.

3.5. The agency provides training in pollution prevention techniques.

3.6. Pollution prevention activities are coordinated with other assistance providers, federal agencies, other states' pollution prevention/compliance assistance providers, educational establishments, and any other organization engaged in providing pollution prevention resources.

3.7. Agency personnel function as the invited guest of businesses seeking assistance, no right of entry is required for activities. Participating businesses may terminate agency interaction at any time.

§47-3-4. Confidentiality.

4.1. The agency will maintain all information from site evaluations, interviews or otherwise obtained from facility personnel confidential and shall not provide information to enforcement personnel except in circumstances which may result in an imminent hazard to the environment or human health.

4.2. Any information generated subsequent to field evaluations, correspondence, etc., may be retained in a temporary

file which shall be given to the participating business upon request following completion of agency involvement.

§47-3-5. Imminent Hazard.

5.1. Notify company of obligation on part of pollution prevention personnel to report imminent hazards. If imminent hazards are noted, inform company of hazard, and the Pollution Prevention staff will immediately notify Environmental Enforcement to conduct an inspection. Environmental Enforcement is the arm of the Office of Waste Management and the Office of Water Resources.