

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED
JUL 31 10 12 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

Division of Environmental Protection
AGENCY: Office of Water Resources TITLE NUMBER: 47

CITE AUTHORITY 22-1-1(b)(10) and 22-1-6(d)

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 NEW RULE BEING PROPOSED: _____ 3

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Carrie J. Chambers
Authorized Signature

\$6.40



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

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

July 24, 1998

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

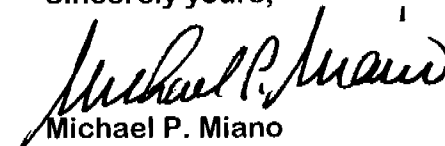
RE: 47CSR3 - "Pollution Prevention and Compliance Assistance"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office and Legislative Rule-Making as an agency-approved rule.

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
Lyle Bennett

QUESTIONNAIRE

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

DATE: July 31, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Division Environmental Protection
Office of Water Resources - 1201 Greenbrier Street, Charleston,
West Virginia 25311

LEGISLATIVE RULE TITLE: Pollution Prevention and Compliance
Assistance Rule

1. Authorizing statute(s) citation 22-1-1(b)(10) and 22-1-6(d)

2. a. Date filed in State Register with Notice of Hearing or
Public Comment Period:
June 22, 1998

b. What other notice, including advertising, did you give
of the hearing?
DEP Public Notice Bulletin and DEP InDepth Newsletter. Both are
distributed state-wide.

c. Date of Public Hearing(s) or Public Comment Period ended:
July 23, 1998

hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**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:

After review of 47CSR3 at their July 22, 1998 meeting, the DEP Advisory Council recommended to the Director that this rule be filed as amended. No further amendments were recommended. Minutes of that meeting are attached.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE

Type of Rule: Legislative Interpretive Procedural

Agency Division of Environmental Protection

Address 10 McJunkin Road

Nitro, WV 25143

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
Estimated Total Cost	\$0	\$0	\$133,590	\$60,000	\$0
Personal Services			\$86,588	\$33,336	0
Current Expense			\$25,664	\$13,138	0
Repairs & Alternations			0	0	0
Equipment			0	0	0
Other			\$21,338	\$13,526	0

2. Explanation of above estimates: Pollution Prevention program has been funded by federal grants through EPA. Future Pollution Prevention grants are being phased out by the EPA after 1999.

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

FILED

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

JUL 31 10 12 AM '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 the Office of Environmental Enforcement to conduct an inspection. The Office of Environmental Enforcement is the enforcement arm of the Office of Waste Management and the Office of Water Resources.

PUBLIC HEARING

47CSR 3 - POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE RULE

OFFICE OF WATER RESOURCES CONFERENCE ROOM

July 23, 1998

Jessica Welsh: This is a public hearing for an amendment to Legislative Rule 47CSR3,
"Pollution Prevention and Compliance Assistance Rule"

There is no one in attendance. The record is now closed.

AMENDMENT MADE TO RULE AFTER PUBLIC COMMENT PERIOD

The following change was made after the Public Hearing. The change is not a substantive amendment, but is being made to clarify DEP's Office of Environmental Enforcement:

In second sentence, page 4, subsection 5.1 insert "Office of" before Environmental Enforcement; and in same paragraph, last sentence insert "The Office of" before Environmental Enforcement" and "enforcement" before the word "arm".

MINUTES

DIVISION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 22, 1998, DIRECTOR'S CONFERENCE ROOM, NITRO HEADQUARTERS

The eleventh meeting of the DEP Advisory Council was held Wednesday, July 22, 1998, in the Director's Conference Room, Nitro Headquarters' Offices. The meeting was called to order at 1:00 p.m. by Chairman Mike Miano.

ATTENDING:

Advisory Council Members:

Michael P. Miano, Chairman
Jacqueline Hallinan
Larry Harris
William Raney
Rick Roberts
William Samples

Environmental Protection:

John Ailes	Jennifer Pauer
John Benedict	Pete Pitsenbarger
Dick Cooke	Ken Politan
Mike Dorsey	Cap Smith
Andy Gallagher	Barb Taylor
Randy Huffman	Karen Watson
Pat Park	Mike Zeto

1) **Introduction of A. V. Gallagher, DEP's Chief Communications Officer.**

Chairman Miano introduced DEP's new Chief Communications Officer, A. V. Gallagher. Council Members welcomed Mr. Gallagher and wished him well in his new job.

2) **Review and Approval of Minutes of April 30, 1998.**

The minutes of the April 30 meeting were approved with the correction of two typos. Mr. Roberts brought to everyone's attention the discussion in the April 30 minutes of AML funding issues in the last meeting, and the Council's desire to send letters to West Virginia's Congressional delegation to identify West Virginia's share of the AML funds that need to be

released by the US Congress. Separate letters would go to West Virginia's legislative leadership informing them of the problems created by not having the AML funds available, with a copy of the letters sent to the Congressional delegation attached to them.

Randy Huffman asked if the Council members would like to sign each letter individually. They each expressed their desire to do so. Pat Park, AML, distributed a copy of the draft letters to Council for their review. After several minutes of discussion, it was decided the draft letters would be edited and made available to the Council members for their signature before the end of the meeting.

Mr. Miano said that Pete Pitsenbarger would like a few minutes of the Council's time before they continued with the agenda.

Mr. Pitsenbarger informed the Council of his retirement plans for the end of August. He said he would like to express his heartfelt thanks to the Council for their letter of appreciation they had sent him thanking him for his many years of service to the State of West Virginia. Mr. Pitsenbarger said his years in state government had been a wonderful opportunity, and he will miss both the work and the people.

3) Review of Proposed DEP Rules in Accordance with WV Code §22-1-3(c).

Mr. Miano asked if there were any other issues to be discussed before continuing with the Agenda and the review of DEP proposed rules for the 1999 session.

Mr. Roberts said he would like to express his concern with the approach DEP has taken in involving the Council members in the rulemaking process -- not only this year, but in the past. He said the rules are not sent to the Council members until the last minute and they are not given adequate time to review and comment on them.

It was pointed out that the law [22-1-1(c)] specifically requires the Council to be consulted prior to the proposal of any new rule.

Mr. Raney said he would like to go on record wholeheartedly in agreement with the concerns of Mr. Roberts. He said he has great concerns with giving advice or recommendations to the Director on development of rules (or amendments to rules) the Council members were not involved in before they were filed with the Secretary of State's Office for Public Hearing and Comments. He said he believes there definitely needs to be improvement in this process in the future.

A discussion was then held on possible ways to bring the Council into the rulemaking process in an earlier stage of rule development. Several DEP staff members expressed their frustrations with the rulemaking process, and gave one example as the short period of time between the signature of bills by the Governor and the early filing date of the rules with the

Legislative Rulemaking Review Committee. Another example that was given was turnaround time with federal agencies, i.e., EPA and OSM, which are also involved in the process.

After several minutes of discussion, Mr. Huffman stated, with the Chairman's approval, that he would put together a committee to discuss the Council's concerns and get back to the Council with their recommendations by the first of September.

Mr. Miano also expressed his desire to improve the involvement of the Council in the rulemaking process, and assured the Council that everything possible would be done in the future to comply with the Council's recommendations.

[It should be noted that at this time Ms. Hallinan left the Advisory Council Meeting because of a previously-scheduled commitment].

Continuing with the agenda, Mr. Miano said that staff would be available from each program office to give a brief description of the proposed new rules or rule amendments and to answer any questions the Council members might have. If a question should come up that couldn't be answered during the meeting, we would make note of it and get back with an answer to the Council as soon as possible. The first rule on the agenda is 60CSR4, filed under the Director's Office.

**60CSR4 -"AWARDING OF WEST VIRGINIA STREAM PARTNERS PROGRAM GRANTS
RULE"**

Jennifer Pauer, AML, said 60CSR4 is a new rule that is being proposed by the West Virginia Stream Partners Program to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects. Ms. Pauer stated that the program is a joint effort of DEP, Forestry, Natural Resources, and the West Virginia Soil Conservation Agency.

A brief discussion was held concerning the source of the funding, availability of the funds, guidelines for criteria, and possible additional funding. Mr. Samples asked if there could also be additional funding sources, for example contributions from supplemental environmental projects used to offset proposed penalties. Ms. Pauer stated that as the rule now stands, it's only purpose is to distribute the funds, but she would check into the law and let the Council know if language could be added to also implement provisions for additional funding from penalty collections or other sources. Mr. Raney moved to recommend to the Chairman (in his capacity as Director of DEP) the filing of 60CSR4 with the condition that Mr. Samples' recommendation be considered. The motion was seconded and passed unanimously.

The following Air Quality rules were discussed by Karen Watson, OAQ, with assistance from John Benedict, also from the OAQ office:

45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"

45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITIES"

45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"

45CSR24 - "TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS"

45CSR36 - "CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. TO THE FEDERAL TRANSIT LAWS, TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS (TRANSPORTATION CONFORMITY)"

45CSR8 - "AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER"

45CSR9 - "RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE"

Ms. Watson gave the Council a brief explanation of the proposed OAQ rules. She explained that seven rules (45CSR33, 25, 34, 16, 36, 8, and 9) were being amended to conform to federal regulations, and 45CSR24 is a proposed new rule to adopt federal New Source Performance Standards for new and existing hospital/medical/infectious waste incinerators. This rule also incorporates by reference the federal standards, with limited exception.

Mr. Raney said he had always questioned the validity of the Appendix B Fiscal Note that is attached to each rule that is filed; in particular the section that relates to the effect of the proposed rule which usually contains all zeros.

John Benedict explained that is a question that has come up several times in the past, and the agency has always taken the position that the numbers are reflective of the cost to the state of implementing the new rule or the proposed amendments to an existing rule.

After a brief question and answer session of the OAQ rules, Mr. Raney moved that recommendation be made to the Director that all eight (8) rules be filed, as proposed, with the exception that 45CSR34, subdivision 4.1.b, be revised to clarify that 45CSR30 includes certain requirements relating to Section 112(r) of the Clean Air Act. The motion was seconded and passed unanimously by the Council.

38CSR2 - "SURFACE MINING AND RECLAMATION RULE"

John Ailes, Chief of OMR, said the amendments to this year's submission of the Surface Mining and Reclamation rule were few in number. Two new definitions were added,

“mountaintop mining operation” and “area mining operation,” and only minor cleanup to correct typographical errors and update and clarify other sections within the rule. Mr. Raney moved recommendation be made to the Chairman that the rule be filed as proposed. The motion was seconded and passed unanimously by the Council.

Mike Dorsey and Dick Cooke from the Office of Waste Management described the following Waste Management rules:

33CSR20 - “HAZARDOUS WASTE MANAGEMENT RULE”

33CSR1 - “SOLID WASTE MANAGEMENT RULE”

33CSR2 - “SEWAGE SLUDGE MANAGEMENT RULE”

Mike Dorsey explained the amendments to 33CSR20 - Hazardous Waste Management Rule. Along with other federally-required amendments to this rule, Section 11 contains a major rewrite to conform with the federal requirements of 40 CFR Part 124.

Mr. Samples asked why it takes up to 120 days to receive approval from the state to exclude a waste at a particular generating facility when EPA has already approved the petition - could the time be changed from 120 days to 60 days?

Cap Smith, Chief, OWM, said the time of 60 to 120 days is just a general number. He stated that he didn't see a problem with changing the time from 120 days to 60 days. He said it rarely takes anywhere close to that time to approve or deny the petition - it is usually taken care of in a matter of days.

There was some discussion as to whether this amendment should be proposed in this legislative session. The Council decided to wait until the rule is modified and filed in the 2000 Legislative Session to propose the amendment.

Dick Cooke, OWM, briefed the Council on 33CSR1. He said the revision is necessary to ensure consistency between the WV Code and 33CSR1. The emergency rule will establish criteria in determining a commercial solid waste facility's monthly tonnage limits, as required by Chapter 22, Article 15, as amended by Senate Bill No. 178.

Mike Zeto, Environmental Enforcement Office, then discussed 33CSR2 and explained the proposed emergency rule is necessary to update the Sewage Sludge Management rule to comply with mandates of Senate Bill 178. The revisions and inclusions are necessary to ensure consistency between the WV Code and 33CSR2. The emergency rule will also impose new requirements relating to the management of sewage sludge as required by Chapter 22, Article 15, as amended by Senate Bill 178, specifically as it relates to the control of off-site odors, and the protection of waters of the state.

After discussion was completed on the Waste Management rules, Mr. Raney moved to recommend that the Chairman file the Waste rules as proposed. The motion was seconded and passed unanimously.

The following Office of Water Resources rules were reviewed by Barb Taylor and Ken Politan.

47CSR31 - "STATE WATER POLLUTION CONTROL REVOLVING FUND"

47CSR33 - "STATE CONSTRUCTION GRANTS PROGRAM RULE"

47CSR3 - "POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE"

47CSR4 - "STATE CERTIFICATION OF ACTIVITIES REQUIRING NATIONWIDE PERMITS NO. 21 AND NO. 26"

Barb Taylor, Chief, OWR, explained the amendments contained in 47CSR31, 33, and 3. She said 47CSR31 is being amended to comply with the latest revisions of the Clean Water Act and current design practices; 47CSR33 is a proposed new rule which allows DEP to make grants to communities to provide adequate wastewater collection and/or treatment services; and 47CSR3 is a new proposed rule to implement the provisions of HB 4693 passed during the 1998 Session to promote pollution prevention by encouraging 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.

Mr. Roberts asked if the proposed amendments to prohibit the use of closed-vessel ultraviolet disinfection and inverted siphons in "Appendix B" under "Design Standards for Collection Systems and Treatment Works" is one recommended by EPA or by the state.

Ms. Taylor replied that she would need to check with Bob Coontz in Water Resources' Construction Assistance Office who drafted the proposed rule amendments, and have Mr. Coontz get back with Mr. Roberts with an answer as soon as possible.

The last rule to be addressed by the Council, 47CSR4, was reviewed by Ken Politan from the Office of Mining and Reclamation. Ken stated that this is a new proposed rule that will establish a water certification program for surface mining operations and will implement the provisions of SB 145 passed during the 1998 Session.

Mr. Raney asked if implementation of this rule was specifically mandated in SB 145.

Mr. Politan said no, but the agency felt the proposed rule is needed to give some guidance in the implementation of the Senate bill.

Mr. Raney voiced his concern over the rule. He said he did not believe it was a workable

rule, and he had received several comments from others indicating the same concerns. He said that one of his biggest objections to the proposed rule was lack of input from outside DEP when the rule was written. Mr. Raney stated that SB 145 indicates the Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations who have an interest in water quality, before such a manual is developed and DEP staff did not do this.

After several minutes of discussion concerning 47CSR4, Mr. Raney made a motion to recommend that the Chairman file 47CSR3, 31, and 33 as proposed, with the condition that Mr. Roberts' questions are addressed in 47CSR31; that the comment period be extended after the end of the public hearing for 47CSR4, and any actions to implement the proposed rule be delayed until such time as a more workable rule can be drafted with the opportunity for input from interested parties. The motion was seconded and passed with a 3 to 1 vote.

Due to the length of time taken to review the proposed rules, there was no open discussion by the Council members. The meeting was adjourned at 5:15 p.m.