

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark in this Box
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED

JUL 23 1 37 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY 22-11-4(a)(14)

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: 47 CSR 11A

TITLE OF RULE BEING PROPOSED: Wasteloads

DATE OF PUBLIC HEARING: August 26 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Division Environmental Protection

#10 McJunkin Road

Nitro, WV 25143

Training Room

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Div. Water Resources

1201 Greenbrier Street

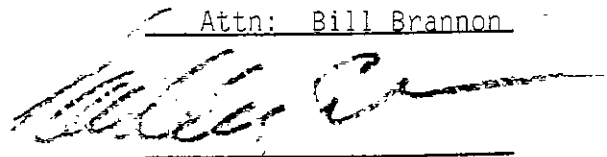
Charleston, WV 25311

Attn: Bill Brannon

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



BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 47CSR11A Legislative Rule - Waste Loads

A. AUTHORITY: WV CODE CHAPTER 22, ARTICLE 11-4(a)(14)

B. SUMMARY OF RULE:

This legislative rule is intended to clarify the intent of the waste load allocation in regard to its use in the planning and design of wastewater treatment facilities. It also establishes time limits, transferability and assignment procedures.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Historically, the agency has used the waste load allocation to provide applicants for domestic sewage wastewater facility permits guidance on developing treatment processes which will protect water quality standards. The waste load allocation is a planning tool for the applicant and, as such, conveys no rights or privileges associated with property or water use. Upon issuance of a National Pollutant Discharge Elimination System permit, the discharge limitations imposed effectively eliminate the need for and existence of the waste load allocation.

Issues relating to the sale and transfer of waste load allocations, interpretations regarding waste loads as a property right, and the use of the waste load allocation to limit and/or prevent development have arisen in recent months which require the agency to establish procedures clarifying its intent and use as a planning tool.

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

There is no federal counterpart regulation

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with Section 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 proposed rule will be reviewed by the Council at its meeting on July 17, 1996. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 30, 1996 filing with the Secretary of State's Office and Legislative Rulemaking Review Committee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 47 CSR 11A - Wasteloads

Type of Rule: Legislative Interpretive Procedural

Agency Division of Environmental Protection

Address 1201 Greenbrier St.
Charleston, WV 25311

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ N/A	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

This rule will not cause a fiscal impact to the agency, the public or the affected community.

3. Objectives of these rules:

To clarify the intent and establish procedures for the use of the wasteload allocation for the design of wastewater treatment facilities.

Rule Title: 47 CSR 11A - Wasteloads

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No impact

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

No impact

C. Economic Impact on Citizens/Public at Large.

No impact

Date: 7/11/96

Signature of Agency Head or Authorized Representative

Barbara S. Taylor
Barbara S. Taylor, Chief
OFFICE OF WATER RESOURCES

FILED

47CSR11A

May 23 1 37 PM '96

TITLE 47
LEGISLATIVE RULE
BUREAU OF THE ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

SERIES 11A
WASTE LOADS

47-11A-1. General.

1.1 Scope -- This rule provides the agency's interpretation of the rights and privileges associated with waste load allocations using the provisions of 47CSR10 and 47CSR11, National Pollutant Discharge Elimination System (NPDES) Program and Special Rules respectively. It is further the purpose of this rule to explain the procedures used in requesting and transferring a waste load determination and the length of time for which that determination is applicable.

1.2 Authority -- W. Va. Code 22-11-4(a)(14).

1.3 Filing Date. --

1.4 Effective Date. --

1.5 This is a new rule interpreting the provisions of 47CSR10, National Pollutant Discharge Elimination System (NPDES) Program and 47CSR11 Special Rules. This rule applies to current holders of wasteload allocations and all applicants for wasteload allocations.

1.6. Constitutional Takings Determination -- As a legislative rule, the director has determined that his rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America. The director further finds that his rule is consistent with the Declaration of Policy provided for in 22-11-2 of the WV Code.

47-11A-2. Definition.

2.1 Waste Load Allocation -- Means a calculation to determine a stream's capacity, which takes into consideration a margin of safety, to assimilate a potential discharge within the immediate receiving watershed. This allocation is used by the applicant to plan and complete wastewater treatment works design in preparing to make application for an NPDES permit, and is used by the office of water resources in developing permit effluent limits.

47-11A-3. Interpretation of the Waste Load Allocation Concept.

3.1. The Special Rule, 47CSR11 includes miscellaneous provisions related to the NPDES program. In particular, section 6 of that rule contains provisions titled "Waste load allocations for sewage discharges." Subsection 6.1 of that rule clearly indicates that waste load allocations are provided only to assist in the planning of waste water treatment works while preparing a (NPDES)/Water Pollution Control Permit application. Nowhere in the provisions of this subsection are any other rights provided the applicant other than as stated above. Furthermore, paragraph 3.4.b of 47CSR10, National Pollutant Discharge Elimination System (NPDES) Program, states that the issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

3.2 Because an NPDES permit does not convey any special right or privilege, and that such permit can be revoked, suspended or modified; it is clear then that a calculation, such as the waste load allocation, used in planning the application for the permit can carry no greater right or privilege than the permit which finally results.

3.3 Accordingly then, a waste load allocation is no more than a calculation of the quantity of waste which can be discharged into a stream at a given location on a given date without violating the state's water quality standards provided for in 46CSR1, Requirements Governing Water Quality Standards. Further, the waste load allocation for a point on a stream could range from zero to the maximum allowable depending upon development/discharges, including nonpoint sources, industrial, mining and domestic discharges in the watershed. Waste load allocations then are not a right that runs with any particular piece of property.

3.4. The changing nature of a stream's ability to assimilate wastes, forces a wasteload allocation to be temporary. As a practical matter, a potential applicant for an NPDES Permit needs to know the discharge limitations to be imposed in the permit, so that an appropriate treatment facility can be designed.

47-11A-4. Waste Load Allocation Procedure.

4.1. In order to provide the services identified in Subsection 3.4 of this rule, the Office of Water Resources will incorporate the calculated values of a wasteload allocation as discharge limitations in a WV/NPDES Permit, provided that a complete WV/NPDES Permit application is submitted within six months after the applicant receives the wasteload allocation. If a potential permit applicant can demonstrate that application preparation has begun, but, if the applicant demonstrates to the Chief that despite good faith efforts, a complete application

cannot be submitted in the six-month time frame, then the Chief may grant one six-month extension of the wasteload allocation. Requests for an extension must be in writing to the Chief. A wasteload allocation terminates automatically upon submission of the complete WV/NPDES Permit application.

4.2. At times, planned development may cause the submission of multiple wasteload allocation requests which, if granted, could exceed the watershed's assimilative capacity. Requests for wasteload allocations will therefore be processed on a first-come, first-served basis. If a wasteload allocation is granted that precludes the granting of subsequent allocations, then the latter allocation(s) will be denied. Applicants that have been denied an allocation may have their name put on a waiting list. If the potential permit applicant holding the wasteload allocation does not submit a complete permit application in the time frame specified above, then the allocation will be rescinded and the next applicant(s) on the waiting list will be offered an allocation. Waiting list activities will also be conducted on a first come, first serve basis.

4.3. As stated previously, the wasteload allocation process was designed specifically for potential permit applicants to plan wastewater treatment works. The Chief may deny a request for a wasteload allocation if it is believed that the applicant does not intend to pursue, or is unable to accomplish development as indicated in the request. The Chief may require the submission of information as necessary to determine the validity of a request for a wasteload allocation.

4.4. Application forms will be provided by the Chief which shall include, but not be limited to, a statement identifying the source of the applicant's right to enter in and upon the real property adjacent to the receiving stream to install or construct the proposed point source. Such a statement, acceptable to the Chief, shall be a condition precedent to receiving a wasteload allocation. Though not limited to these forms of real property interests, such interests as may be acceptable to the Chief for purposes of granting wasteload allocations are recorded deeds, leases, options, real estate contracts and easements. Wasteload allocations are planning tools only and do not create interests in real property.

47-11A-5. Transfer or Assignment of Wasteload Allocation.

Once a wasteload allocation is granted to a potential permit applicant, that allocation may be transferred or assigned with the written approval of the Chief. Because wasteload allocations are granted with the expectation that a complete WV/NPDES Permit application will be timely filed with the Office of Water

Resources, the approval of a transfer or assignment of a wasteload allocation will not alter the time limitation of Section 41-11A-4.1 for the filing of a complete WV/NPDES Permit application by the proposed transferee. No approval of a transfer or assignment of a wasteload allocation shall be granted by the Chief except on compliance by the proposed transferee with all of the requirements of these regulations for the original issuance thereof and upon forms provided by the Chief.