

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**
Form #6

Do Not Mark In This Box

FILED

May 1 8 44 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE

AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38D

TITLE OF RULE BEING AMENDED: Sewage Sludge Management Regulations

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4224

SECTION 64-3-1(i), PASSED ON April 2, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 1, 1996


Laidley Eli McCoy, Director
Division of Environmental Protection

6.20



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

Roger T Hall
DEP - Waste Mgmt/Water
Resources
10 McJunkin Road
Nitro, WV 25143

HB 4224 authorizing, **Title 47, Series 38D, Sewage Sludge Management Rule** passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4224** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4224 Section 64-3-1(i)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

PROMULGATION HISTORY
for
Sewage Sludge Management Regulations
47 CSR 38D

March 22, 1995	filed Notice of Public Hearing on Proposed Rule
_____	filed <u>Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule Making Review Committee</u>
December 22, 1995	filed Notice of Rule Modification of a Proposed Rule
March 9, 1996	HB 4224 passed
April 2, 1996	Governor signed HB4224
May 1, 1996	Rule filed
May 1, 1996	Rule Effective

**TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION**

**SERIES 38D
SEWAGE SLUDGE MANAGEMENT REGULATIONS**

§47-38D-1. GENERAL.

1.1. Scope and Purpose. -- This legislative rule establishes requirements for the permitting siting, bonding, installation, establishment, construction, modification, and operation of any facility that generates, processes, recycles and/or disposes of sewage sludge by whatever means, including, but not limited to, land application, composting, incineration, mixed waste composting, or any other method of handling sewage sludge within the state. This rule applies to any person who owns or operates a sewage sludge facility or who is responsible for the processing or disposal of sewage sludge.

1.2. Authority. -- W. Va. Code §22-15-20(b)

1.3. Filing Date. -- May 1, 1996

1.4. Effective Date. -- May 1, 1996

1.5. Incorporation by Reference. -- Whenever federal or state statutes or regulations are incorporated into this rule by reference, the reference is to the statute or regulation in effect on the effective date of this rule.

§47-38D-2. DEFINITIONS.

The following definitions shall apply to this rule unless otherwise specified herein:

2.1. "Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed: (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and (2) To minimize the amount of nitrogen in sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

2.2. "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the Director of the Division may specify, including the following: spouses, parents, children and siblings.

2.3. "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under W. Va. Code §22-15.

2.4. "Backhauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

2.5. "Bulking Agent" means materials such as yard waste, wood chips, leaves and other living or dead plant tissues approved by the Chief as suitable to promote the passage of air through a static pile or windrow.

2.6. "Chief" means the Chief of the Office of Waste Management of the Division.

2.7. "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent (70%) by weight of the materials coming into the commercial recycling facility.

2.8. "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

2.9. "Composting" means the aerobic, thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

2.10. "Composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

2.11. "Curing area" means an area where organic material that has undergone the rapid initial stage of decomposition is further stabilized into a humus-like material.

2.12. "Director" means the Director of the Division.

2.13. "Distributor" is a person who prepares the product for distribution and marketing and is responsible for distributing and marketing the product.

2.14. "Division" means the Division of Environmental Protection.

2.15. "Domestic septage" means either liquid or solid material (septage) removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

2.16. "Energy recovery incinerator" means any solid waste facility at which solid waste is incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

2.17. "Importer" means any person receiving sewage sludge from any source whatsoever for the purpose of processing.

2.18. "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

2.19. "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

2.20. "Landfill" means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of W. Va. Code §22-15, in the county where the majority of the spatial area of such facility is located.

2.21. "Materials recovery facility" means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

2.22. "Mixed solid waste" means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

2.23. "Mixed waste processing facility" means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling or composting.

2.24. "Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

2.25. "Open dump" means any solid waste disposal which does not have a permit under W. Va. Code §22-15, or is in violation of state law, or where solid waste is disposed in a manner

that does not protect the environment.

2.26. "Person" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

2.27. "Producer" means any person producing sewage sludge at a publicly owned treatment works (POTW).

2.28. "Publicly owned treatment works" or "POTW" means any device or system used in the conveyance and/or treatment (including recycling and reclamation) of municipal sewage or industrial waste of a liquid nature which is owned by a state or municipality as defined by section 502 (4) of the Clean Water Act, any other treatment works treating domestic sewage (TWTDS), or wastewater treatment device or system, regardless of ownership (including federal facilities) used in the storage, treatment, recycling and reclamation of municipal or domestic sewage.

2.29. "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of W. Va. Code §§22C-4 and 20-11.

2.30. "Representative sample" means a sample collected from a population or whole that exhibits the average or typical properties of the larger population or whole.

2.31. "Sewage sludge" means solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator."

2.32. "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for land application, incineration or disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic digestion and anaerobic digestion.

2.33. "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

2.34. "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant, water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code §22-11-1 et seq., or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under W. Va. Code §22-18-1 et seq., or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil, and gas and other mineral resources placed or disposed of at a facility which is regulated under W. Va. Code §22-2-1 et seq., §22-3-1 et seq., §22-4-1 et seq., §22-6-1 et seq., §22-7-1 et seq., §22-8-1 et seq., §22-9-1 et seq. or §22-10-1, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters.

2.35. "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

2.36. "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to W. Va. Code §22C-3-9.

2.37. "Solid waste facility" means any system, facility, land contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, composting facilities and other such facilities not herein specified but not including land upon which sewage sludge is applied in accordance with W. Va. Code §22-15-20. Such facility shall be deemed to be situated, for purposes of this rule, in the county where the majority of the spatial area of such facility is located: Provided, That a salvage yard licensed and regulated pursuant to the terms of W. Va. Code §17-23, is not a solid waste facility.

2.38. "Source separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

2.39. "Source separated organic waste" means readily degradable organic material such as food waste, yard waste and wood waste, except pressure-treated wood waste, which is collected separately from the mixed solid waste stream. It does not include sewage sludge or domestic septage.

2.40. "Stabilization" means the decomposition of organic material to the point where it neither reheats when wetted nor gives off offensive odors and does not include pathogens,

toxins or vectors in excess of Federal regulations 40 CFR 503.

§47-38D-3. STANDARDS FOR USE, DISPOSAL AND PROCESSING OF SEWAGE SLUDGE.

3.1. Incorporation of Federal Regulations. -- Federal regulations 40 CFR 503, excluding sections 503.10(b)(1) and 503.20 through 503.29 inclusive, in effect on the effective date this rule, are hereby fully incorporated and implemented as a part of these sewage sludge management regulations promulgated under the authority of W. Va. Code §22-15-20. Provided, That in instances where similar provisions exist, the more stringent requirements (state or federal) shall apply.

3.2. Sewage Sludge Land Application Siting Restrictions and Location Standards.

3.2.1. Sludge will not be applied to land that meets any of the following conditions:

3.2.1.a. Land that is frozen, snow-covered, or known to be flooded on a regular basis unless the applicant can demonstrate to the Director that the land application will not cause runoff into streams or wetlands.

3.2.1.b. Land within 50 feet of surface water to include streams, springs, ponds, wetlands, or other collection points for surface water.

3.2.1.c. Land within 200 feet of drinking water supply wells or other personal water supply.

3.2.1.d. Land within 200 feet of an occupied dwelling.

3.2.1.e. Land within 50 feet of a federal or state highway.

3.2.1.f. Land within 100 feet of an adjacent property owner's property line.

3.2.1.g. Land from which drainage leads into a sinkhole.

3.2.1.h. Land that has been tested and determined to have a pH of less than 6.2, unless the pH is adjusted to 6.2 or greater.

3.2.1.i. Land that has a slope greater than 15%.

3.2.1.j. Land that has a seasonal high groundwater table less than 2 feet from the surface.

3.2.1.k. Land that has less than 6 inches of soil over bedrock or an impervious pan.

3.2.1.l. Land containing soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

3.2.2. No person or entity shall be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc, as listed in Table 3 of this rule and the soil testing requirements of this rule. The director is authorized until December 31, 1999 to issue variances to this section to allow land application to soils which exceed the maximum soil concentrations of metals listed in Table 3 where soil analyses demonstrate that other soil factors, including but not limited to, soil pH, cation exchange capacity, organic matter content, or clay content, will limit mobility and availability of the metals. No later than June 30, 1999, the director shall propose revisions to Table 3 to adequately protect soil quality, human health and the environment.

3.2.2.a. The director shall assign an individual and lifetime loading rate for each land application site by considering background soil concentrations and maximum allowable pollutant concentrations as per Table 1 and per Table 3 of this rule.

3.2.2.b. If circumstances at sewage sludge processing facilities result in short term excursions of Table 1 criteria, the Director may develop temporary loading rates, for a period not to exceed six months, based on the provisional limitations of Table 2 of this rule.

3.2.3. No land, except a solid waste facility, shall be allowed to accept or store so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry ton~ per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land.

3.2.4. No person shall be allowed to store sewage sludge at a land application site for a period longer than one week; except, storage shall be allowed for no longer than three months where provisions, approved by the Chief of the Office of Water Resources of the Division, have been made to prevent leachate runoff into surface or groundwater. Septage storage shall only be allowed in-tank and for no more than three days, or as otherwise authorized by the Chief of the Office of Water Resources of the Division.

3.2.5. No person shall be allowed to land apply sludge except during the hours of daylight.

3.3. Sewage Sludge Processing Facility Operational and Design Requirements.

3.3.1. Sewage sludge processing facilities must adhere to the following requirements:

3.3.1.a. Areas used for processing, curing and storage of raw materials, intermediate and final products, loading and unloading areas, impoundments, pipelines, ditches, pumps and drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Storage of finished products from the facility shall be limited to one year.

3.3.1.b. The facility must be designed and operated to control vectors and odors.

3.3.1.c. The facility must not be operated or constructed within the one hundred year flood plain unless provisions have been made to prevent the encroachment of flood waters upon the facility.

3.3.1.d. All land areas within the boundaries of a sewage sludge processing facility upon which sewage sludge, intermediate or final products come in direct contact with the land surface must be protected in accordance with the Groundwater Protection Act, W. Va. Code §20-5M and the rules promulgated thereunder.

3.4. Leachate Management Requirements.

3.4.1. Any liquid which comes in contact with sewage sludge at a sewage sludge processing facility must be handled as leachate and is subject to the requirements of W. Va. Code §§22-11 and 12, and the rules promulgated thereunder.

3.5. Storm Water Requirements.

3.5.1. Storm water drainage must be directed around and away from the operating area. All storm water must be collected and discharged in compliance with State Water Quality Standards and the permit issued by the Office of Water Resources of the Division.

3.6. Landfill Disposal of Sewage Sludge. -- Sewage sludge disposed at a landfill shall contain at least twenty percent (20%) solids by weight. This requirement may be met by adding or blending sand, sawdust, lime, or soil. Alternative sludge disposal methods can be utilized upon obtaining prior written approval from the Chief.

3.6.1. Sewage sludge may not represent more than twenty-five percent (25%) by weight of the total weight of waste disposed of at the landfill on any working day.

§47-38D-4. PERMITS REQUIRED.

4.1. Applicability.

4.1.1. No person may construct or operate a sewage sludge processing facility (including mixed waste composting facilities which utilize sewage sludge) or a commercial solid

waste facility which processes or handles sewage sludge or materials derived from sewage sludge without first obtaining a solid waste facility permit; Provided, That land upon which sewage sludge is applied is not a solid waste facility.

4.1.2. On and after the effective date of this rule, all permitted facilities shall submit an application to modify such permit.

4.1.3. No person may land apply sewage sludge without first obtaining a land application permit; provided, That land application permit requirements may be incorporated into a modification of a facility's WV/NPDES permit required under W. Va. Code §22-11.

4.1.4. For those publicly owned treatment works (POTW's) which produce sewage sludge and are regulated by the Division pursuant to an WV/NPDES permit required under W. Va. Code §22-11 a sewage sludge processing facility modification will be obtained by the applicant as a part of the existing WV/NPDES permit and shall include a sewage sludge management plan approved by the Chief of the Office of Water Resources of the Division.

4.1.5. Facilities which are surface disposal sites as defined in 40 CFR 503, Subpart C, are hereby defined as "landfills" and must meet all requirements of 47 CSR 38 applicable to landfills.

4.1.6. Permits issued under paragraph 4.1.1 of this rule, shall be subject to the provisions of 47 CSR 38, section 3 (excluding the provisions for Liner Requirements) and the closure requirements of 47 CSR 38, section 6.

4.1.7. Permits issued under paragraph 4.1.4. of this rule, shall be subject to the permit issuance procedures, procedures for permit modifications, suspension and revocation, procedures for transfer of permits, and the procedures for permit appeals of 47 CSR 10 and are not subject to the procedures outlined in 4.1.5, 4.1.6. and 4.1.8 of this rule.

4.1.8. Permits issued under paragraph 4.1.5, of this rule, shall be subject to the procedures of 47 CSR 38 section 3 and the closure requirements of 47 CSR 38 section 6.

4.1.9 Permits issued under paragraph 4.1.3 of this rule except for land application modifications made in WV/NPDES permits under paragraph 4.1.4 of this rule shall be subject to the permit issuance procedures (subsections 3.17 through 3.29 inclusive) of 47 CSR 38 and are not subject to the procedures outlined in paragraphs 4.1.5, 4.1.6 and 4.1.8 of this rule.

4.2. General, Processing Facility, and Land Application Permit Requirements.--Persons required to obtain a permit pursuant to this rule must provide the following information, in the form and manner prescribed by the Chief of the Office of Waste Management or the Office of Water Resources of the Division as appropriate. The form may require information in addition to that required by this subsection.

4.2.1. Permit Application General Requirements. All applicants must provide the following information:

- 4.2.1.a. The name, address, and location of the facility;
- 4.2.1.b. A description of the activities conducted or to be conducted by the applicant;
- 4.2.1.c. The operator's and owner's name, address, telephone number, ownership status, and status as a federal, state, private, public or other entity;
- 4.2.1.d. Other environmental permits issued by any local, state or federal agency;
- 4.2.1.e. A description of the specific source(s) of sewage sludge;
- 4.2.1.f. The amount of sewage sludge actually generated or imported;
- 4.2.1.g. The content of heavy metals, pathogens, toxins or vectors and moisture (percent solids) present in the sewage sludge;
- 4.2.1.h. Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;
- 4.2.1.i. Information relative to the quality of the sewage sludge(s) or product(s) derived from sewage sludge as required by 40 CFR 503, and
- 4.2.1.j. A detailed design and a description of the method to collect and control leachate and surface water runoff, including the method for treatment and disposal of leachate generated.

4.2.2. Sewage Sludge Processing Facility Permit Requirements.--All applicants for permits for sewage sludge processing facilities, except facilities located at the site where sewage sludge is generated, must submit the following additional information:

4.2.2.a. An engineering report to construct must contain, at a minimum, the following:

4.2.2.a.A. A regional map, or maps, (of appropriate scale) that delineate the entire service area of the proposed facility (both existing and proposed); existing and proposed collection, processing, and disposal operations; the location of the closest population centers; and the transportation systems including highways, airports, railways and waterways;

4.2.2.a.B. A vicinity map (minimum scale of 1"=2000') that delineates the area within one mile of the facility boundaries, zoning and land use, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the project;

4.2.2.a.C. A site plan (minimum scale of 1"=200' with five foot contour intervals) that delineates property boundaries, the location of existing and proposed soil boring, monitoring wells, buildings and appurtenances, fences, gates, roads, parking areas, drainage, culverts, storage facilities or areas, loading areas; existing and proposed elevation contours and direction of prevailing winds; and the location of residences, potable wells, surface water bodies, and drainage swales located within the site and in the site plan area; and

4.2.2.a.D. A map indicating wetlands and flood plains within 1,000 feet of the site, if any.

4.2.2.b. A description of the operation of the facility, detailed engineering plans and specifications for the entire facility, must be submitted by the applicant including at a minimum:

4.2.2.b.A. A schedule of operation, including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;

4.2.2.b.B. Anticipated daily traffic flow to and from the facility, including the number of trips by private or public collection vehicles, and the quantity of material contained in each vehicle;

4.2.2.b.C. The procedure for unloading trucks (including frequency, rate, and method);

4.2.2.b.D. Special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;

4.2.2.b.E. A description of the ultimate use for the finished compost or other product, method for removal from the site, and a plan for use or disposal of those finished products that cannot be used in the expected manner due to poor quality or change in market conditions;

4.2.2.b.F. A (description) copy of the label or other information source, by the distributor, that outlines the type of waste the compost product was derived from, a list of any restrictions on use, and recommended safe uses and application rates;

4.2.2.b.G. Identification of the personnel required to operate and

maintain the facility and their job descriptions/responsibilities;

4.2.2.b.H. A detailed description of the source, and anticipated quality, and quantity of any bulking agent to be used in the process; and

4.2.2.b.I. A detailed description of the quantity, quality and specific source of the sewage sludge received or anticipated to be received.

4.2.2.c. The permit application must contain an operating engineering report which must include, at a minimum, the following:

4.2.2.c.A. Detailed engineering plans and specifications for the entire sewage sludge processing facility, including manufacturer's performance data for the selected equipment;

4.2.2.c.B. Contingency plans detailing corrective (or remedial) action to be taken in the event of equipment breakdown; air pollution (odors); unacceptable waste delivered to the facility; groundwater contamination; spills; and undesirable conditions such as fires, dust, noise, vectors, lack of a market for the compost product and unusual traffic conditions; and

4.2.2.c.C. An Operation and Maintenance manual.--The manual must contain general design information, detailed operational information and instructions. In addition, the manual must list the specific procedures used or to be used in monitoring, sampling and analyzing sewage sludge and the finished product, and record keeping requirements.

4.2.2.d. A description of the design of the facility, including:

4.2.2.d.A. The type, size, and associated detention times of equipment used in the handling, processing, and storage of sewage sludge;

4.2.2.d.B. The method of measuring, shredding, mixing, and proportioning input materials;

4.2.2.d.C. A description and sizing of the storage facilities for amendment, bulking agent, and finished product;

4.2.2.d.D. The separation, processing, storage, and ultimate disposal of materials that cannot be composted, if applicable;

4.2.2.d.E. The location of all temperature and any other type of monitoring points, and the frequency of monitoring;

4.2.2.d.F. A process flow diagram of the entire process,

including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

4.2.2.d.G. The aeration capacity of the system;

4.2.2.d.H. The method of supplying and regulating airflow;

4.2.2.d.I. The expected mass balance through the composting system;

4.2.2.d.J. A description of how the (temperature) monitoring equipment will ensure that facility qualifies as a process to further reduce pathogens, toxins, heavy metals and/or vectors; and

4.2.2.d.K. If applicable, a description of the air emission collection and control technologies.

4.2.3. Land Application Permit Requirement.--Persons performing land application of sewage sludge or materials derived from sewage sludge must submit the following information to the Chief of the Office of Water Resources of the Division in addition to that required under section 4.2.1. of this rule

4.2.3.a. Soil analysis for all land application sites including but not limited to pH, potassium, phosphorus, nitrogen, all metals listed in Table 1 of this rule and any additional chemical analysis required by the Director;

4.2.3.b. Information relative to the nitrogen content of the sludge(s) or product(s) derived from sewage sludge to be land applied;

4.2.3.c. A soils map with application sites clearly defined;

4.2.3.d. An agreement between the preparer of sewage sludge(s) or material(s) derived from sewage sludge, the applier, and the owner of the land application site indicating each party's concurrence with the application, and certifying that each will comply with applicable requirements of 40 CFR 503 and this rule;

4.2.3.e. A description of existing and future uses of the land application site;

4.2.3.f. Information relative to past application(s) of sewage sludge or material(s) derived from sewage sludge as necessary to comply with 40 CFR 503.12 and this rule;

4.2.3.g. Information relative to past fertilizer applications to the site;

4.2.3.h. In addition to the chemical analyses required in paragraph 4.2.1 of this rule, any additional chemical analyses of sewage sludge(s) or material(s) derived from sewage sludge, requested by the Chief of the Office of Water Resources of the Division, including, but not limited to sodium, chloride, fluoride, calcium and sulfates;

4.2.3.i. A description of the methods to be used for land application;

4.2.3.j. A description of the methods for transportation of sludge to the site;

4.2.3.k. For sewage sludge or material derived from sewage sludge, which has been imported, a copy of the POTW's NPDES permit;

4.2.3.l. For sewage sludge or material derived from sewage sludge, which has been imported, information relative to the significant industrial users of the POTW from which the sludge or material originated;

4.2.3.m. For sewage sludge or material derived from sewage sludge, which has been imported, a description of the methods by which pathogen control and vector attraction reduction are being achieved; and

4.2.3.n. A description of the methods to be utilized to adjust and maintain the soil to a minimum pH of 6.2 for at least 5 years from the date of application.

§47-38D-5. GENERAL, PROCESSING FACILITY, AND LAND APPLICATION PERMIT REQUIREMENTS.

5.1. Permit General Requirements.--All permits issued pursuant to this rule shall contain the following:

5.1.1. Any requirement of 40 CFR 503, including but not limited to:

5.1.1.a. Limitations on the concentrations of pollutants (heavy metals), toxins, vectors and pathogens in the sewage sludge or sewage sludge products;

5.1.1.b. Requirements relative to monitoring sewage sludge and sewage sludge product quality and reporting the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorus, calcium, magnesium, total nitrogen, ammonia nitrogen, pathogen test results, vector attraction verification; and all heavy metals listed in Table 1 of this rule except that the frequency of monitoring shall be as described in Appendix A of this rule ;

5.1.1.c. Requirements relative to reporting and certification;

5.1.1.d. Requirement to pay fees as identified in section 6 of this

rule;

5.1.1.e. Requirements for the proper collection, control and disposal of leachate and stormwater runoff for the protection of ground and surface waters;

5.1.1.f. Requirements to retain records for the facility for a minimum of five years;

5.1.1.g. Requirements to monitor and report monthly to the Division the quantity of sewage sludge produced or imported and the specific source of the sewage sludge produced or imported;

5.1.1.h. Requirements not to exceed a commercial solid waste facility's tonnage limits, where applicable;

5.1.1.i. Requirements to provide copies of monthly reports to the county or regional solid waste authority in which the facility or land application site(s) is located;

5.1.1.j. Any other requirements, including additional monitoring, determined to be necessary by the Director to insure compliance with state and federal regulations;

5.2. Processing Facility Permit Requirements.--In addition to the requirements of subsection 5.1. of this rule, any solid waste facility permit issued to a sewage sludge processing facility, pursuant to the sewage sludge regulations, must contain the following:

5.2.1. Operational requirements relative to pathogen control in accordance with 40 CFR 503.32 and its Appendix B;

5.2.2. Operational requirements relative to vector attraction reduction in accordance with 40 CFR 503.33;

5.2.3. Requirements to routinely monitor and report information relative to the quality of raw materials used in the sewage sludge processing facility including but not limited to: sewage sludge, bulking agents, and kiln dust; except that the frequency of monitoring shall be as described in Appendix A of this rule;

5.2.4. Limitations for the pollutant concentrations of the end product of the sewage sludge processing facility;

5.2.5. Labeling requirements as per 40 CFR 503.14.e., if applicable;

5.2.6. Requirements for the implementation of practices to prevent the contamination of ground and surface waters, including liners if necessary; and

5.2.7. For commercial sewage sludge processing facilities, requirements for reporting in accordance with subsection 4.12 of the Solid Waste Management Regulations (47 CSR.38);

5.3. Land Application Permit Requirements.--In addition to the requirements of subsection 5.1 of this rule, any land application permit issued pursuant to the sewage sludge regulations shall contain the following:

5.3.1. Requirements delineating the sites for which land application is approved;

5.3.2. Limitations on the maximum amount of sewage sludge allowed to be land applied;

5.3.3. Requirements implementing the siting restrictions and location standards of subsection 3.2 of this rule;

5.3.4. Requirements limiting the types of crops that may be grown on land used for application of sewage sludge and the time between application of sewage sludge and the harvesting of crops, in accordance with 40 CFR 503.32(b);

5.3.5. Restrictions on animal grazing and public access, in accordance with 40 CFR 503.32(b);

5.3.6. Applicable vector attraction reduction requirements of 40 CFR 503.33; and

5.3.7. Applicable pathogen reduction requirements of 40 CFR 503.32 and its Appendix B.

§47-38D-6. FEE AND BONDING REQUIREMENTS

6.1. Applicability.--Any producer or importer of sewage sludge for land application shall be subject to non-refundable fees, as described herein, which shall be used to cover the costs of the sewage sludge management program. The fees established herein in paragraphs 6.4.1 and 6.4.2 of this rule shall be assessed on forms prescribed by the Chief of the Office of Water Resources of the Division and shall be paid to said chief quarterly.

6.2. Water Quality Management Fund. Fees collected for land application shall be deposited in the special revenue fund designated the "Water Quality Management Fund" established under the provisions of W.Va. Code § 22-11-10 except as otherwise specified herein.

6.3. Bonding.--The Director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the cost of future environmental remediation from producers and importers of sewage.

6.4. Fee Assessments.

6.4.1. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee calculated as \$5.00 per actual ton of sludge times the proportion of solids in the sludge for sludge with maximum metals concentrations not exceeding those listed in Table 1 of this rule.

6.4.2. All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the Division, shall be subject to the same tipping and other fees as levied on the disposal of solid waste under W. Va. Code § 22; Provided, That no such fees, excepting assessment fees required by this section, shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with the statute and this rule.

6.4.3. Fees generated pursuant to paragraph 6.4.1 shall be reviewed periodically by the Director and shall be adjusted as necessary to assure that total collections shall not exceed \$200,000 per year.

APPENDIX A

FREQUENCY OF MONITORING

AMOUNT OF SEWAGE SLUDGE RECEIVED (actual dry tons per 365 day period)	FREQUENCY OF MONITORING
Greater than zero but less than 290	once every 6 months
Equal to or greater than 290 but less than 1,500	once per quarter (4 times per year)
Equal to or greater than 1,500 but less 15,000	once per month (12 times per year)
Equal to or greater than 15,000	once per week

TABLE 1
MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE
FOR LAND APPLICATION

Metal	Concentration (mg/kg)
Arsenic	41
Cadmium	10
Chromium	1000
Copper	1000
Lead	250
Mercury	10
Molybdenum	18
Nickel	200
Selenium	36
Zinc	2500

TABLE 2
PROVISIONAL MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE
FOR PRODUCERS NOT MEETING TABLE 1 CRITERIA

Metal	Concentration (mg/kg)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

TABLE 3
MAXIMUM ALLOWABLE SOIL CONCENTRATIONS

Metal	Concentration (mg/kg)
Arsenic	18.0
Cadmium	5.0
Chromium	300.0
Copper	300.0
Lead	70.0
Mercury	2.0
Molybdenum	4.0
Nickel	74.0
Selenium	7.0
Zinc	500.0

1
2
3
4
5
6
7
8
9

SENATE BILL NO. 176

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

NATURAL RESOURCES

FINANCE

THE JUDICIARY

47-33D

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate legislative rules relating to
15 sewage sludge management.

16 Be it enacted by the Legislature of West Virginia:

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

24 (a) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 (1. Part 60.335(f)(1)."

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (acid rain provisions and permits, 45 CSR 33),
11 are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register
17 on the fifteenth day of August, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 fifteen, article one, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the eleventh
23 day of January, one thousand nine hundred ninety-five,
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the fifteenth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section six,
18 article seventeen, chapter twenty-two, of this code,
19 relating to the division of environmental protection
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section six,
24 article eighteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the
4 thirteenth day of January, one thousand nine hundred
5 ninety-five, relating to the division of environmental
6 protection (hazardous waste management regulations, 47 CSR
7 35), are authorized.

8 (q) The legislative rules filed in the state register
9 on the twenty-second day of July, one thousand nine hundred
10 ninety-four, authorized under the authority of section
11 four, article three, chapter twenty-two, of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-four, relating to the division of environmental
17 protection (standards for certification of blasters-surface
18 coal mines, 38 CSR 2C), are authorized with the amendments
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form
21 MR-30-TR." by inserting a second paragraph to read as
22 follows:

23 "In lieu of completing the training program, the
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and
2 other materials available from the Division of
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher
5 training course" by inserting the phrase "or complete the
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the
8 phrase "a cessation order and/or take other action as
9 provided in West Virginia Code 22-3-16 and 17" and the
10 phrase "the provisions of West Virginia Code 22-3-1 et
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the
13 subsection and inserting in lieu thereof a new subsection
14 to read as follows: "11.1. **Suspension** - Upon service of a
15 written notice of violation by the Director to a certified
16 blaster, the Director may suspend his or her certification.
17 Prior to the issuance of such an order, the certified
18 blaster shall be granted a hearing before the Director to
19 show cause why his or her certification should not be
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase
24 "cessation order".

1 (r) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 nine, article three, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the sixth
8 day of January, one thousand nine hundred ninety-five,
9 relating to the division of environmental protection (rules
10 and regulations relating to abandoned mine lands and
11 reclamation, 38 CSR 2D), are authorized.

12 (s) The Legislature hereby authorizes and directs the
13 division of environmental protection to promulgate the
14 legislative rules filed in the state register on February,
15 seventh, one thousand nine hundred ninety-five, authorized
16 under the authority of section five, article twenty,
17 chapter sixteen, of this code, relating to the division of
18 environmental protection (prevention and control of
19 particulate air pollution from combustion of fuel in
20 indirect heat exchangers, 45 CSR 2), effective the first
21 day of May, one thousand nine hundred ninety-five, with the
22 amendments set forth below:

23 On page eight, section 3.4(e) after the word "operated" by
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words
3 "monthly or", and, following the words "quarterly basis" by
4 striking the word "as"; and by inserting the words "unless
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel
10 having characteristics or specifications necessary for a
11 fuel burning unit to comply with the opacity standards set
12 forth in section 3 or any emergency situation or condition
13 creating a threat to public safety or welfare, the Director
14 may grant an exception to the otherwise applicable visible
15 emission standards for a period not to exceed fifteen (15)
16 days, provided that visible emissions during the exception
17 period do not exceed a maximum six (6) minute average of
18 thirty (30) percent and that a reasonable demonstration is
19 made by the owner or operator that the emission standards
20 under section 4 of this rule will not be exceeded during
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a
23 flue gas desulphurization system must by-pass such system
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)
2 opacity during such period of maintenance. The Director
3 may require advance notice of necessary planned
4 maintenance, including a description of the necessity of
5 the maintenance activity and its expected duration and may
6 limit the duration of the variance or the amount of the
7 excess opacity exception herein allowed. The Director
8 shall be notified of unplanned maintenance and may limit
9 the duration of the variance or the amount of excess
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register
13 on the nineteenth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 four, article three, chapter twenty-two, of this code,
16 relating to the division of environmental protection
17 (surface mining and reclamation regulations, 38 CSR 2), are
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,
2 calcium carbonate, or anhydrous ammonia for purposes of
3 meeting applicable state and federal effluent limitations.
4 Chemical treatment does not include passive treatment
5 systems such as but not limited to limestone drains,
6 wetlands, alkaline addition, application of flyash,
7 agricultural lime, or injection of flyash, limestone, or
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of
12 subsection 3.1 (o) and inserting in lieu thereof a new
13 second paragraph 3.1 of subsection 3.1 (o), to read as
14 follows: "Any permit application which references an
15 approved centralized ownership and control file may be
16 determined to be complete and accurate for the purposes of
17 this subsection. Each centralized ownership and control
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in
21 subsection 3.26, and inserting in lieu thereof the
22 following:

23 "(a) All changes including name changes, replacements,
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator
2 pursuant to the provisions of paragraph (c) of subsection
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has
7 incurred no changes in its ownership and control
8 information and therefore has not been obligated to file
9 a report within any consecutive twelve-month period, that
10 permittee or operator is required to notify the Director in
11 writing that no changes to the information required by
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be
17 subject to the renewal requirements and provisions for
18 issuance of a renewal discussed in Section 19 of the Act:
19 *Provided*, That the Director may waive the requirement for
20 renewal if the permittee certifies in writing that all coal
21 extraction is completed, that all backfilling and regrading
22 will be completed within sixty (60) days prior to the
23 expiration date of the permit, and that an application for
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete
2 backfilling and regrading within sixty (60) days prior to
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive
5 status in accordance with subsection 14.11 of this rule
6 shall also be subject to the renewal requirements of
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms
9 provided by the Director and shall contain at a minimum the
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word
14 "criteria" by inserting the words "paragraph (b) of
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)
17 and substituting therefor a new subsection 3.34 (b) (3), to
18 read as follows: "(3) The permittee was linked to a
19 violation, penalty or fee through ownership or control,
20 under the violation review criteria, paragraph (b) of
21 subsection 3.32 of this section at the time the permit was
22 issued and an ownership or control link between the
23 permittee and the person responsible for the violation,
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and
4 substituting therefor a new subparagraph (g) to read as
5 follows:

6 "(g) For purposes of this subsection, a permit is
7 issued when it is originally approved, as well as when a
8 transfer, assignment, or sale of permit rights is approved
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this
10 rule, or where a permit is revised pursuant to subsection
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding
13 the following sentence: "Prospecting roads are to be
14 designed, constructed, maintained, and reclaimed in
15 accordance with the provisions of subsection 13.6 of this
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)
18 to read as follows: (1) Minimize downstream sedimentation
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new
21 sentence between the second and third sentence which reads
22 as follows: "Where the certification statement indicates a
23 change from the design standards or construction
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored
4 language, after the word, "completed" by inserting the
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)
7 and inserting in lieu thereof a new subsection 14.14 (g)
8 (8), to read as follows: "(8) Surface water runoff from
9 areas above and adjacent to the fill shall be diverted into
10 properly designed and constructed stabilized diversion
11 channels which have been designed using best current
12 technology to safely pass the peak runoff from a 100 year,
13 24-hour precipitation event. The channel shall be designed
14 and constructed to ensure stability of the fill, control
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated
17 subsection 14.19 (d) to read as follows: "(d) Timber from
18 clearing and grubbing operations may be wind-rowed below
19 the projected toe of the outslope in a manner that will
20 provide shelter and habitat for game and non-game wildlife
21 and provide for enhanced sediment control. These materials
22 may not be placed in natural water courses or where they
23 will be covered by spoil material at the toe of the
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly
2 distributed along the lower reaches and within the permit
3 area."

4 On Page 240, subsection 17.1, in the first sentence,
5 after the words "mining and reclamation," by striking out
6 the remainder of the paragraph and substituting therefor
7 the following: "required by the Act and these Rules,
8 including the engineering analyses and designs; the
9 development of cross-section maps and plans; the geologic
10 drilling and statement of results of test borings and core
11 samplings; preblast surveys; the collection of
12 site-specific resource information and production of
13 protection and enhancement plans for fish and wildlife
14 habitats and other environmental values; and the collection
15 of archaeological and historical information; and any other
16 archaeological and historical information required by the
17 federal department of the interior and the preparation of
18 plans that may be necessitated thereby; and the director
19 shall provide or assume the cost of training coal operators
20 that meet the qualifications concerning the preparation of
21 permit applications and compliance with the regulatory
22 program, and shall ensure that qualified coal operators are
23 aware of the assistance available under this section.

24 On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:
2 "The Director will develop a procedure for the interstate
3 coordination and exchange of information collected under
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its
6 entirety and substituting therefor the following: "17.4
7 Request for Assistance. Each applicant requesting
8 assistance shall provide information on forms provided by
9 the director in an application that shall be clear and
10 concise and shall be provided in a format prescribed by the
11 Director and/or a format required by the Federal Office of
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words
14 "twelve (12) month period" by striking the remainder of the
15 sentence and inserting in lieu thereof the words
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word
18 "first" by striking out the words "thirty (30)" and
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words
21 "date of the" by striking out the words "Assessment Officer
22 receiving the
23 finding specified in paragraph (a) of this subsection." and
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the
3 first sentence, and inserting in lieu thereof the
4 following: "The time and place of an informal assessment
5 conference shall be posted at the Department of
6 Environmental Protection Office nearest to the operation.

7 (u) The legislative rules filed in the state register
8 on the twenty-second day of June, one thousand nine hundred
9 ninety-five, authorized under the authority of section
10 twenty, article fifteen, chapter twenty-two, of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-
14 second day of December, one thousand nine hundred
15 ninety-five, relating to the division of environmental
16 protection (sewage sludge management, 47 CSR 38D), are
17 authorized.

18

19 NOTE: The purpose of this bill is to authorize the
20 Division of Environmental Protection to promulgate
21 legislative rules relating to sewage sludge management.

22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.

2726

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

H. B. 4247

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996; referred to the
Committee on the Judiciary.)

47-38D

A BILL to amend and reenact section one, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of environmental protection to promulgate legislative rules relating to sewage sludge management.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Division of environmental protection.

(a) The legislative rules filed in the state register

4247

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 "1. Part 60.335(f)(1)."

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (acid rain provisions and permits, 45 CSR 33),
11 are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register
17 on the fifteenth day of August, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 fifteen, article one, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the eleventh
23 day of January, one thousand nine hundred ninety-five,
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the fifteenth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section six,
18 article seventeen, chapter twenty-two, of this code,
19 relating to the division of environmental protection
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section six,
24 article eighteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the
4 thirteenth day of January, one thousand nine hundred
5 ninety-five, relating to the division of environmental
6 protection (hazardous waste management regulations, 47 CSR
7 35), are authorized.

8 (q) The legislative rules filed in the state register
9 on the twenty-second day of July, one thousand nine hundred
10 ninety-four, authorized under the authority of section
11 four, article three, chapter twenty-two, of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-four, relating to the division of environmental
17 protection (standards for certification of blasters-surface
18 coal mines, 38 CSR 2C), are authorized with the amendments
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form
21 MR-30-TR." by inserting a second paragraph to read as
22 follows:

23 "In lieu of completing the training program, the
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and
2 other materials available from the Division of
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher
5 training course" by inserting the phrase "or complete the
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the
8 phrase "a cessation order and/or take other action as
9 provided in West Virginia Code 22-3-16 and 17" and the
10 phrase "the provisions of West Virginia Code 22-3-1 et
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the
13 subsection and inserting in lieu thereof a new subsection
14 to read as follows: "11.1. **Suspension** - Upon service of a
15 written notice of violation by the Director to a certified
16 blaster, the Director may suspend his or her certification.
17 Prior to the issuance of such an order, the certified
18 blaster shall be granted a hearing before the Director to
19 show cause why his or her certification should not be
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase
24 "cessation order".

1 (r) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 nine, article three, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the sixth
8 day of January, one thousand nine hundred ninety-five,
9 relating to the division of environmental protection (rules
10 and regulations relating to abandoned mine lands and
11 reclamation, 38 CSR 2D), are authorized.

12 (s) The Legislature hereby authorizes and directs the
13 division of environmental protection to promulgate the
14 legislative rules filed in the state register on February,
15 seventh, one thousand nine hundred ninety-five, authorized
16 under the authority of section five, article twenty,
17 chapter sixteen, of this code, relating to the division of
18 environmental protection (prevention and control of
19 particulate air pollution from combustion of fuel in
20 indirect heat exchangers, 45 CSR 2), effective the first
21 day of May, one thousand nine hundred ninety-five, with the
22 amendments set forth below:
23 On page eight, section 3.4(e) after the word "operated" by
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words
3 "monthly or", and, following the words "quarterly basis" by
4 striking the word "as"; and by inserting the words "unless
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel
10 having characteristics or specifications necessary for a
11 fuel burning unit to comply with the opacity standards set
12 forth in section 3 or any emergency situation or condition
13 creating a threat to public safety or welfare, the Director
14 may grant an exception to the otherwise applicable visible
15 emission standards for a period not to exceed fifteen (15)
16 days, provided that visible emissions during the exception
17 period do not exceed a maximum six (6) minute average of
18 thirty (30) percent and that a reasonable demonstration is
19 made by the owner or operator that the emission standards
20 under section 4 of this rule will not be exceeded during
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a
23 flue gas desulphurization system must by-pass such system
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)
2 opacity during such period of maintenance. The Director
3 may require advance notice of necessary planned
4 maintenance, including a description of the necessity of
5 the maintenance activity and its expected duration and may
6 limit the duration of the variance or the amount of the
7 excess opacity exception herein allowed. The Director
8 shall be notified of unplanned maintenance and may limit
9 the duration of the variance or the amount of excess
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register
13 on the nineteenth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 four, article three, chapter twenty-two, of this code,
16 relating to the division of environmental protection
17 (surface mining and reclamation regulations, 38 CSR 2), are
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,
2 calcium carbonate, or anhydrous ammonia for purposes of
3 meeting applicable state and federal effluent limitations.
4 Chemical treatment does not include passive treatment
5 systems such as but not limited to limestone drains,
6 wetlands, alkaline addition, application of flyash,
7 agricultural lime, or injection of flyash, limestone, or
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of
12 subsection 3.1 (o) and inserting in lieu thereof a new
13 second paragraph 3.1 of subsection 3.1 (o), to read as
14 follows: "Any permit application which references an
15 approved centralized ownership and control file may be
16 determined to be complete and accurate for the purposes of
17 this subsection. Each centralized ownership and control
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in
21 subsection 3.26, and inserting in lieu thereof the
22 following:

23 "(a) All changes including name changes, replacements,
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator
2 pursuant to the provisions of paragraph (c) of subsection
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has
7 incurred no changes in its ownership and control
8 information and therefore has not been obligated to file
9 a report within any consecutive twelve-month period, that
10 permittee or operator is required to notify the Director in
11 writing that no changes to the information required by
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be
17 subject to the renewal requirements and provisions for
18 issuance of a renewal discussed in Section 19 of the Act:
19 *Provided*, That the Director may waive the requirement for
20 renewal if the permittee certifies in writing that all coal
21 extraction is completed, that all backfilling and regrading
22 will be completed within sixty (60) days prior to the
23 expiration date of the permit, and that an application for
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete
2 backfilling and regrading within sixty (60) days prior to
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive
5 status in accordance with subsection 14.11 of this rule
6 shall also be subject to the renewal requirements of
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms
9 provided by the Director and shall contain at a minimum the
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word
14 "criteria" by inserting the words "paragraph (b) of
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)
17 and substituting therefor a new subsection 3.34 (b) (3), to
18 read as follows: "(3) The permittee was linked to a
19 violation, penalty or fee through ownership or control,
20 under the violation review criteria, paragraph (b) of
21 subsection 3.32 of this section at the time the permit was
22 issued and an ownership or control link between the
23 permittee and the person responsible for the violation,
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and
4 substituting therefor a new subparagraph (g) to read as
5 follows:

6 "(g) For purposes of this subsection, a permit is
7 issued when it is originally approved, as well as when a
8 transfer, assignment, or sale of permit rights is approved
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this
10 rule, or where a permit is revised pursuant to subsection
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding
13 the following sentence: "Prospecting roads are to be
14 designed, constructed, maintained, and reclaimed in
15 accordance with the provisions of subsection 13.6 of this
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)
18 to read as follows: (1) Minimize downstream sedimentation
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new
21 sentence between the second and third sentence which reads
22 as follows: "Where the certification statement indicates a
23 change from the design standards or construction
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored
4 language, after the word, "completed" by inserting the
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)
7 and inserting in lieu thereof a new subsection 14.14 (g)
8 (8), to read as follows: "(8) Surface water runoff from
9 areas above and adjacent to the fill shall be diverted into
10 properly designed and constructed stabilized diversion
11 channels which have been designed using best current
12 technology to safely pass the peak runoff from a 100 year,
13 24-hour precipitation event. The channel shall be designed
14 and constructed to ensure stability of the fill, control
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated
17 subsection 14.19 (d) to read as follows: "(d) Timber from
18 clearing and grubbing operations may be wind-rowed below
19 the projected toe of the outslope in a manner that will
20 provide shelter and habitat for game and non-game wildlife
21 and provide for enhanced sediment control. These materials
22 may not be placed in natural water courses or where they
23 will be covered by spoil material at the toe of the
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly
2 distributed along the lower reaches and within the permit
3 area."

4 On Page 240, subsection 17.1, in the first sentence,
5 after the words "mining and reclamation," by striking out
6 the remainder of the paragraph and substituting therefor
7 the following: "required by the Act and these Rules,
8 including the engineering analyses and designs; the
9 development of cross-section maps and plans; the geologic
10 drilling and statement of results of test borings and core
11 samplings; preblast surveys; the collection of
12 site-specific resource information and production of
13 protection and enhancement plans for fish and wildlife
14 habitats and other environmental values; and the collection
15 of archaeological and historical information; and any other
16 archaeological and historical information required by the
17 federal department of the interior and the preparation of
18 plans that may be necessitated thereby; and the director
19 shall provide or assume the cost of training coal operators
20 that meet the qualifications concerning the preparation of
21 permit applications and compliance with the regulatory
22 program, and shall ensure that qualified coal operators are
23 aware of the assistance available under this section.

24 On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:
2 "The Director will develop a procedure for the interstate
3 coordination and exchange of information collected under
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its
6 entirety and substituting therefor the following: "17.4
7 Request for Assistance. Each applicant requesting
8 assistance shall provide information on forms provided by
9 the director in an application that shall be clear and
10 concise and shall be provided in a format prescribed by the
11 Director and/or a format required by the Federal Office of
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words
14 "twelve (12) month period" by striking the remainder of the
15 sentence and inserting in lieu thereof the words
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word
18 "first" by striking out the words "thirty (30)" and
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words
21 "date of the" by striking out the words "Assessment Officer
22 receiving the
23 finding specified in paragraph (a) of this subsection." and
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the
3 first sentence, and inserting in lieu thereof the
4 following: "The time and place of an informal assessment
5 conference shall be posted at the Department of
6 Environmental Protection Office nearest to the operation.

7 (u) The legislative rules filed in the state register
8 on the twenty-second day of June, one thousand nine hundred
9 ninety-five, authorized under the authority of section
10 twenty, article fifteen, chapter twenty-two, of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-
14 second day of December, one thousand nine hundred
15 ninety-five, relating to the division of environmental
16 protection (sewage sludge management, 47 CSR 38D), are
17 authorized.

18

19 NOTE: The purpose of this bill is to authorize the
20 Division of Environmental Protection to promulgate
21 legislative rules relating to sewage sludge management.

22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.



FILED

Dec 18 8 23 AM '95

**West Virginia Legislature
Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840**

**Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair**

**Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant**

December 10, 1995

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Mr. Roger Hall
Bureau of Environment
10 McJunkin Road
Nitro, WV 25143-2506
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Sewage Sludge Management Rule

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. X
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Clifton Browning
Div. Environment Protection
1201 Greenbrier Street
Charleston, WV 25311-1088

47-38D

Mr. Roger Hall
Re: Sewage Sludge Management Reg.
Page 2

The Committee approved the motion that the proposed rule be amended by reinserting Table III and references to Table III and to adjust the numbers in the table by changing the concentration of Arsenic to 12.5 and Nickel to 74.