

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUL 23 3 48 PM '93

STATE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DCL&ER, Division of Environmental Protection TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY §20-5M-9(a) and (b)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 55

TITLE OF RULE BEING AMENDED: Groundwater Protection Act Fee Schedule

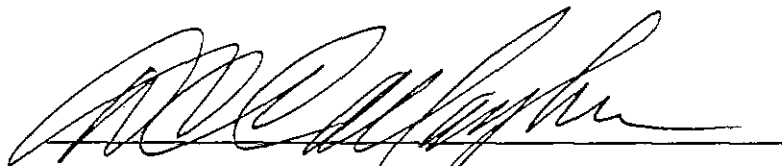
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Monday, July 26, 1993 AT 8:00 am

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS Division of Environmental Protection, Water Resources Section, 1201 Greenbrier Street, Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



David C. Callaghan, Director
Division of Environmental Protection

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

4.40



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

FILED
JUN 23 1993
STATE OF WEST VIRGINIA
JOHN M. RANSON
SECRETARY OF STATE

June 22, 1993

David C. Callaghan, Director
Division of Environmental Protection
10 McJunkin Road
Nitro, West Virginia 25143-2506

Re: Proposed Rule - Title 47, Series 55
Groundwater Protection Act Fee Schedule

Dear Mr. Callaghan:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,
John M. Ranson

John M. Ranson
Cabinet Secretary

JMR:ro

grdwtr.rul



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1201 Greenbrier Street
Charleston, WV 25311-1088

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

Memorandum

FILED
ANN A. SPANER
DEPUTY DIRECTOR

To: John M. Ranson, Secretary
Department of Commerce, Labor
and Environmental Resources

From: David C. Callaghan, Director
Division of Environmental Protection

Date: June 15, 1993

Subject: Division Approval of Proposed Rule and Request for Department Consent to File.

The proposed modification to the Groundwater Protection Act Fee Schedule, 47 CSR 55, has my approval to be proposed pursuant to the West Virginia Administrative Procedures Act. Your approval is requested.

David C. Callaghan, Director
Division of Environmental Protection

FISCAL NOTE FOR PROPOSED RULE

FILED

Rule Title: Groundwater Protection Act Fee Schedule, 47 C.S.R. 55

Type of Rule: X Legislative Interpretive Procedural

6/23 9 44 AM '93

Agency: Division of Environmental Protection

Address: #10 McJunkin Road, Nitro, West Virginia 25143-2506

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$96,454	\$1,004,880	\$908,426	\$908,426
Personal Services		27,412	285,583	258,171	258,171
Current Expenses		10,885	113,397	102,512	102,512
Repairs & Alterations		783	8,170	7,387	7,387
Equipment		14,899	155,230	140,331	140,331
Other		42,475	442,500	400,025	400,025

2. Explanation of above estimates: The Groundwater Protection Act authorizes collection of up to one million dollars per year for the Protection Fund and allows the collection of two hundred and fifty thousand dollars over a two year period for the Remediation Fund. One hundred and twenty five thousand dollars per year will go to the Remediation Fund. Remediation Funds are not allocated in the above table. Funds outlined above will be allocated to other groundwater regulatory agencies to implement their responsibilities under the act

3. Objectives of this rule: To provide a funding mechanism necessary for implementing the provisions of the Groundwater Protection Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government. Proposed rule will have no impact to the General Revenue Fund.
- B. Economic Impact on Political Subdivisions; Specific Industries; specific groups of citizens. Industries will pay \$617,568 per year. Monitoring well drillers will pay between \$50,000 - \$120,000 per year depending upon the number of drillers.
- C. Economic Impact on Citizens/ Public at Large. Citizens will pay \$225,000 per year through the purchase of new septic tanks.

Date: 6/17/93

Signature of Agency Head or Authorized Representative



Director, Division of Environmental Protection

PREAMBLE TO A PROPOSED RULE
CONCERNING
GROUNDWATER PROTECTION ACT FEE SCHEDULE

AGENCY: Department of Commerce, Labor, and Environmental Resources; Division of Environmental Protection.

REGULATION: Title 47, Series 55, "Groundwater Protection Act Fee Schedule."

ACTION: Filing of a Proposed Modification to an Existing Rule, Notice of a Thirty Day Public Comment Period.

SUMMARY: The proposed, rule is being refiled as per the provision set forth in subsection 1.5 of the rule and said subsection is being deleted.

Written comments received prior to 8:00 am, July 26, 1993 will be accepted. Written comments should be sent to:

Laidley Eli McCoy, Chief
Division of Environmental Protection
Office of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311

DEPT. OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
JUL 23 9 40 AM '93
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23 9 27 AM '93

**TITLE 47
LEGISLATIVE RULES**

**DIVISION OF ENVIRONMENTAL PROTECTION
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES** **OFFICE OF WEST VIRGINIA
STATE**

**SERIES 55
GROUNDWATER PROTECTION ACT FEE SCHEDULE**

§ 47-55-1. General.

1.1. Scope and Purpose. -- This is a new rule which establishes a schedule of fees for the groundwater protection fund and the groundwater remediation fund. This rule is applicable to any person who owns or operates facilities or conducts activities subject to the provisions of West Virginia Code §20-5M-1 et seq.

1.2. Authority. -- West Virginia Code §20-5M-9 subsections (a) and (b).

1.3. Filing Date. -- _____

1.4. Effective Date. -- _____

~~1.5. In order to allow for a review of the effectiveness of the schedule of fees set forth in this regulation, the fee schedule may through rulemaking be revised at any time prior to the regulations expiration. This regulation expires July 1, 1994.~~

~~1.5.1-6.~~ Incorporation by Reference. -- Whenever federal or state statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on the filing date listed in Section 1.3 of this regulation.

§ 47-55-2. Definitions.

2.1. "Agency" means any branch, section, division, department or unit of the state, county or local government however designated or constituted which has authority under West Virginia Code § 20-5M-1 et seq. to regulate facilities, or activities which have the potential for impacting groundwater.

2.2. "Chief" means the chief of the office of water resources of the division of environmental protection.

2.3. "Class (A through F) landfill" means any landfill Class A through F as defined in Solid Waste Management regulations 47CSR38-2.

2.4. "Director" means the director of the division of environmental protection of the department of commerce, labor and environmental resources, unless otherwise specified in these regulations.

2.5. "Generator" means any generator as defined in West Virginia Code §20-5G-1 et seq.

2.6. "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

2.7. "Groundwater Certification" means an assurance issued by the director of the division of environmental protection that a permit or other approval issued by a state, county, or local government body regarding an activity that affects or is reasonably anticipated to affect groundwater complies with all requirements of West Virginia Code §20-5M-1 et seq., and the legislative rules promulgated pursuant to that chapter in accordance with West Virginia Code §29A-1-1 et seq. and any other requirements of state law, regulations or agreements regarding groundwater.

2.8. "Groundwater protection fund" is the fund established by West Virginia Code §20-5M-9(c)(1).

2.9. "Groundwater remediation fund" is the fund established by West Virginia Code §20-5M-9(c)(2).

2.10. "Hazardous waste" means any hazardous waste as defined in section 3.1.3 of the division of environmental protection's hazardous waste management regulations, 47CSR35.

2.11. "Injection well (Class I through V)" means any injection well, Class I through V, as defined in Regulations for the West Virginia Underground Injection Control Program, 46CSR9.

2.12. "Major facility" means any facility as defined in section 2.22 of the State-National Pollutant Discharge Elimination System Regulations, 46CSR2.

2.13. "Monitoring well driller" means the individual operating the drilling rig when drilling, altering or abandoning (i.e., properly closing) a monitoring well(s).

2.14. "Permit" means any license, certification, registration, permit, or any other approval granted by an agency authorized to regulate facilities, or activities, which may have an impact on groundwater.

2.15. "Person" means 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; 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.

2.16. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any undesirable insects, rodents, nematodes, fungi, weeds, or other organisms which the commissioner of agriculture may declare to be a pest, and any substances intended for use as a plant regulator, defoliant, desiccant or herbicide, except viruses on or in living man or other living animals.

2.17. "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by Section 502(4) of the Clean Water Act. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

2.18. "Solid waste" means any solid waste as defined in West Virginia Code §20-5F-2(k).

§ 47-55-3. Groundwater Protection Fund and Groundwater Remediation Fund Fees.

3.1. Groundwater remediation fund fees and annual groundwater protection fund fees required -- Any person whose activities may affect groundwater quality or is required to obtain a permit from any agency shall pay the appropriate groundwater protection fund and groundwater remediation fund fees in accordance with the provisions of subsections 3.5 and 3.6 of these regulations.

3.2. Method of fee collection, fee limits, and transfer of fees to funds.

3.2.1. All groundwater protection fund and groundwater remediation fund fees assessed under these regulations shall be added together and paid to the appropriate agency by check, money order or electronic transfer.

3.2.2. Groundwater remediation fund fees will be collected for a period not to exceed two years (from the effective date of this regulation). Furthermore, the director shall also discontinue collection of groundwater remediation fund fees if \$250,000.00 is collected before the two year period expires.

3.2.3. Agencies receiving the aforementioned funds shall transfer to the director of the division of environmental protection or his duly authorized representative, at such frequency as the director may deem appropriate, all groundwater protection fund and groundwater remediation fund fees collected.

3.3. Conditions of certification relative to fees and effect on permits.

3.3.1. Each agency's permit shall require that all groundwater protection fund and groundwater remediation fund fees be paid in accordance with subsections 3.5 and 3.6 of these regulations. The permit shall also contain language stating that failure to remit groundwater protection fund and/or groundwater remediation fund fees shall result in withdrawal or denial of groundwater certification, and subject the person to the penalties outlined in West Virginia Code §20-5M-10.

3.3.1.a. Agencies may require operating facilities/activities, which do not hold a valid permit and which are identified in either section 3.5 or 3.6 of this regulation, to pay the fees provided for in section 3.5 and 3.6.

3.3.1.b. Prior to issuing a permit, each agency shall require that all groundwater protection fund fees and groundwater remediation fund fees be paid following the provisions set forth in section 3.4.1 of this regulation.

3.3.2. No permit, subject to the requirements of West Virginia Code §20-5M-1 et seq. shall be issued, modified, or renewed without groundwater certification, unless the director declares otherwise pursuant to West Virginia Code §20-5M-8 (c).

3.4. Schedule of groundwater protection fund fees. -- (Fees are assessed on facility/activity type based on the projected cost of administering the Groundwater Protection Act.)

3.4.1. Persons subject to the fees outlined in subsections 3.5 and 3.6 of these regulations will be notified by the director, or his delegate, of the appropriate rate or actual amount of the fee, and the date fees are due.

3.4.2. The director shall coordinate the fee collection activities to assure that the statutory limits on fees provided for in West Virginia Code §20-5M-9 subsections (a) and (b) are not exceeded.

3.5. Schedule of groundwater protection fund fees -- The annual groundwater protection fund fee for the following facilities/activities except 3.5.3 which is a one time registration fee due prior to installation, and except 3.5.6 which is a tipping fee, shall be:

3.5.1. Registering a pesticide -- \$15.00.

3.5.2. Fertilizers - reserved.

3.5.3. Septic tank registration seals - \$30.00 each. These seals are to be purchased from the division of environmental protection, office of water resources .

3.5.4. Underground storage tank certification/ registration - \$5.00 per tank.

3.5.5. Generators of hazardous waste - \$100.00.

3.5.6. Disposal of solid waste in a class A, B, or C landfill - a tipping fee of one cent per ton (\$0.01/ton). These fees will be collected following the procedures outlined in West Virginia Code §20-5F-5a.

3.5.7. A Class F solid waste facility - \$300.00.

3.5.8. A facility which may impact groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under West Virginia Code §22A-3-1 et seq., or West Virginia Code §20-5A-5 (b)(6), or West Virginia Code §22A-4-1 et seq. - \$100.00.

3.5.9. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is designated a major facility (industrial) - \$500.00.

3.5.10. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is not designated as a major facility (industrial) or is not described in 3.5.11, 3.5.12 or 3.5.13 below - \$50.00.

3.5.11. A POTW with design flow greater than one million gallons per day (gpd) - \$100.00.

3.5.12. A POTW with design flow less than one million gallons per day (gpd) - \$25.00.

3.5.13. A non POTW operating a sewage treatment plant - \$10.00 per plant.

3.5.14. An oil well - \$3.00 per well.

3.5.15. A gas well - \$3.00 per well.

3.5.16. A class II or class III UIC underground injection well:

3.5.16.a. Class II-D or class III underground injection well - \$75.00 per well.

3.5.16.b. Class II-R underground injection well - \$50.00 per well.

3.5.17. Class V underground injection wells - \$15.00 per permit.

3.5.18. Class I underground injection wells - \$200.00 per well.

3.5.19. A monitoring well drilling operation shall utilize a certified monitoring well driller for the drilling of groundwater monitoring wells. The certification fee for each monitoring well driller shall be - \$200.00.

3.5.20. Facilities/activities/persons which are reasonably suspected to have the potential to adversely impact groundwater quality, as determined by the chief, and which are not subject to fees outlined in 3.5.1 through 3.5.19 above - reserved.

3.6. Schedule of groundwater remediation fund fees -- The groundwater remediation fund fees for the following facilities/activities except 3.6.3 which is a one time registration fee due prior to installation, and except 3.6.5 which is a tipping fee, shall be:

3.6.1. Registering a pesticide - \$2.00.

3.6.2. Fertilizers - reserved.

3.6.3. Septic tank registration seals - \$3.75. These seals are to be purchased from the division of environmental protection, office of water resources.

3.6.4. Generators of hazardous waste - \$12.50.

3.6.5. Disposal of solid waste in a Class A, B, or C landfill - a tipping fee of \$0.00125/ton. These fees will be collected following the procedures outlined in West Virginia Code §20-5F-5a.

3.6.6. For Class F solid waste facilities - \$37.50.

3.6.7. A facility which may impact groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under West Virginia Code §22A-3-1 et seq., or West Virginia Code §20-5A-5 (b)(6), or West Virginia Code §22A-4-1 et seq. -\$12.50.

3.6.8. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is designated a major facility (industrial) - \$62.50.

3.6.9. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is not designated as a major facility (industrial) or is not described in 3.6.10, 3.6.11 or 3.6.12 below - \$6.25.

- 3.6.10. A POTW with design flow greater than one million gallons per day - \$12.50.
- 3.6.11. A POTW with design flow less than one million gallons per day - \$3.13.
- 3.6.12. A non POTW operating a sewage treatment plant -\$1.25 per plant.
- 3.6.13. An oil well - \$0.38 per well.
- 3.6.14. A gas well - \$0.38 per well.
- 3.6.15. A class II or class III UIC underground injection well:
 - 3.6.15.a. Class II-D or class III underground injection well - \$9.38 per well.
 - 3.6.15.b. Class II-R underground injection well - \$6.25 per well.
- 3.6.16. Class V underground injection wells -\$1.88 per permit.
- 3.6.17. Class I underground injection wells -\$25.00 per well.
- 3.6.18. A monitoring well drilling operation shall utilize a certified monitoring well driller for the drilling of groundwater monitoring wells. The certification fee for each monitoring well driller shall be - \$25.00.
- 3.6.19. Facilities/activities/persons reasonably suspected to have the potential to adversely impact groundwater quality, as determined by the chief, and that are not subject to fees outlined in 3.6.1 through 3.6.18 above - reserved.

§ 47-55-4. Severability.

If any provisions of this regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the regulation, and to this end the provisions of the regulation are declared severable.