

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**  
Form #4

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JAN 19 2 42 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

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

CITE AUTHORITY §20-5M-9(a)

AMENDMENT TO AN EXISTING RULE: YES  NO

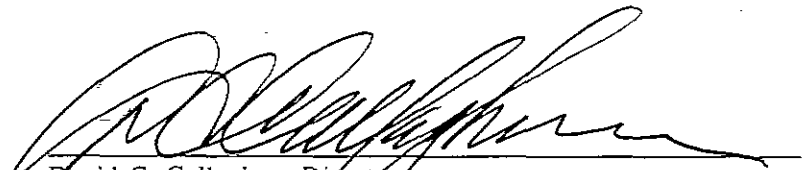
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 55

TITLE OF RULE BEING AMENDED: Groundwater Protection Act Fee Schedule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
David C. Callaghan, Director  
Division of Environmental Protection

3.60

TITLE 47  
LEGISLATIVE RULES

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

SERIES 55  
GROUNDWATER PROTECTION ACT FEE SCHEDULE

**§ 47-55-1. General.**

1.1. Scope and Purpose. -- ~~This is a new rule which establishes~~ reauthorizes 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~~ this rule by reference, the reference is to the statute or regulation in effect on the filing date listed in Section 1.3 of this ~~regulation~~ rule.

**§ 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~~ Regulation 47 C.S.R. 38-2.

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~~ this rule.

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~~ rules 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(e)(2).~~

~~2.9~~ 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, 47 C.S.R. 35.

~~2.10~~ 2.11. "Injection well (Class 1 F through 5 V)" means any injection well, Class 1 F through 5 V, as defined in Regulations for the West Virginia Underground Injection Control Program; Underground Injection Control Fee Schedule, 46 C.S.R. 9.

~~2.11~~ 2.12. "Major facility" means any facility as defined in section 2.22 of the State-National Pollutant Discharge Elimination System ~~Regulations~~ rules; Rules Governing The State National Pollutant Discharge Elimination System (NPDES) Program, 46 C.S.R. 2.

~~2.12~~ 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).

~~2.13~~ 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.

~~2.14~~ 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.

~~2.15. 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.

~~2.16. 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 Federal Pollution Control Act, (PL 92-500) as amended by ~~of~~ the Clean Water Act (PL 95-217). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~2.17. 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~~ Annual groundwater protection fund fees required -- Any person whose activities may affect groundwater quality or who 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~~ this rule.

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~~ this rule 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.~~

~~3.2.2. 3-2-3.~~ Agencies receiving the  aforementioned groundwater protection funds

shall transfer to the director of the division of environmental protection or his or her duly authorized representative, at such frequency as the director may ~~deem~~ consider 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 this rule. 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/or activities, which do not hold a valid permit and which are identified in ~~either subsection 3.5 or 3.6~~ of this regulation rule, to pay the fees provided for in subsection 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 subsection 3.4.1 of this regulation rule.

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). The director shall not issue, modify, or renew a permit subject to the requirements of West Virginia Code §20-5M-1 et seq. without groundwater certification unless he or she declares otherwise pursuant to West Virginia Code §20-5M-8(c).~~

3.4. Schedule of groundwater protection fund fees. -- (Fees are assessed on facility/or activity type based on the projected cost of administering the Groundwater Protection Act. West Virginia Code § 20-5M-1 et seq.)

3.4.1. Persons subject to the fees outlined in subsections 3.5 ~~and 3.6~~ of these regulations this rule will be notified by the director, or his or her 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/or activities except paragraph 3.5.3 of this rule which is a one time registration fee due prior to installation, ~~and except 3.5.6 which is a tipping fee,~~ shall

be are:

- 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 paragraphs 3.5.11, 3.5.12 or 3.5.13 below of this rule - \$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 2 H or class 3 HH UIC underground injection well:

3.5.16.a. Class 2 H-D or class 3 HH underground injection well - \$75.00 per well.

3.5.16.b. Class 2 H-R underground injection well - \$50.00 per well.

3.5.17. Class 5 V underground injection wells - \$15.00 per permit.

3.5.18. Class 1 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 is - \$200.00.

3.5.20. Facilities, activities, or 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 paragraphs 3.5.1 through 3.5.19 above of this rule - 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 \$0.00-125/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 rule or the application thereof to any person or circumstance is held invalid, such this invalidity shall not affect other provisions or applications of the regulation rule, and to this end the provisions of the regulation rule are declared severable.





FILED

JAN 14 1 05 PM '94

West Virginia Legislature  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

Senator Joe Manchin, III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

January 9, 1994

Debra A. Graham, Counsel  
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: David C. Callaghan, Director  
Dept. of Environmental Protection  
#10 McJunkin Road  
Nitro, WV 25143-2506  
FROM: Legislative Rule-Making Review Committee  
PROPOSED RULE: Groundwater Protection Act Fee Schedule

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     X
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. \_\_\_\_\_
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: Eli McCoy  
Dave Watkins