

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In This Box

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Mar 13 3 45 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE  
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Division of Environmental Protection TITLE NUMBER: 47

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 1005

SECTION 64-3-17(n), PASSED ON 3/16/94

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: 6/1/94



David C. Callaghan, Director  
Division of Environmental Protection

3.40

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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Deputy Secretary of State

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**STATE OF WEST VIRGINIA**  
**SECRETARY OF STATE**

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(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

March 18, 1994

Laidley Eli McCoy  
Natural Resources  
Water Resources Section  
1201 Greenbrier St.  
Charleston, WV 25311

**SB 1005** authorizing, **Title 47, Series 55, Groundwater Protection Act Fee Schedule**, passed the Legislature on **March 16, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 1005, 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 **SB 1005** section **64-3-17(n)**. 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" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, 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 call our office.

Thank You  
Administrative Law Division

## Promulgation History For

Rule Name: Groundwater Protection Act Fee Schedule

Rule Title: 47 CSR 55

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Date of Notice of Public

Hearing/Comment Period on Proposed Rule: 6/23/93

Date of Public Hearing or Close of Comment Period: 7/26/93

Date Agency Approved Proposed Rule Filed  
with the Legislative Rule Making Review Committee: 8/12/93

Date of LRMRC Approval: 1/9/94

Date Rule Modification of Proposed Rule Filed: 1/19/94

Rule Authorized by: SB 1005, Section 64-3-17(n)

Date Passed Legislature: 3/16/94

Date Governor Signed: 4/6/94

Date of Final Filing and Adoption of a  
Legislative Rule Authorized by the West Virginia Legislature: 4/29/94

Date Rule to become Effective: 5/1/94

FILED

TITLE 47  
LEGISLATIVE RULES

MAY 13 3 45 PM '94

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

SERIES 55  
GROUNDWATER PROTECTION ACT FEE SCHEDULE

§ 47-55-1. General.

1.1. Scope and Purpose. -- This rule reauthorizes a schedule of fees for the groundwater protection 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 subsection (a).

1.3. Filing Date. -- May 13, 1994.

1.4. Effective Date. -- June 1, 1994.

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 filing date listed in Section 1.3 of this 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 Regulation 47 C.S.R. 38.

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

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

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

### **§ 47-55-3. Groundwater Protection Fund.**

3.1. 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 fees in accordance with the provisions of subsection 3.5 of this rule.

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

3.2.1. All groundwater protection fund fees assessed under this rule shall be paid to the appropriate agency by check, money order or electronic transfer.

3.2.2. Agencies receiving the 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 consider appropriate, all groundwater protection 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 fees be paid in accordance with subsection 3.5 of this rule. The permit shall also contain language stating that failure to remit groundwater protection 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 subsection 3.5 of this rule, to pay the fees provided for in subsection 3.5.

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

3.3.2. 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 subsection 3.5 of 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 limit on fees provided for in West Virginia Code §20-5M-9 subsection (a) 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 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 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 or class 3 UIC underground injection well:

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

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

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

3.5.18. Class 1 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 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 of this rule - reserved.



§ 47-55-4. Severability.

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

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SENATE BILL NO. 170

(By Senators Anderson, Grubb, Macnaughton and  
Murford)

[Introduced January 31, 1994; referred to the  
Committee on

NATURAL RESOURCES

Finance

and

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

16 Be it enacted by the Legislature of West Virginia:

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

20 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND  
21 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-3-17. Division of environmental protection.

23 (a) The legislative rules filed in the state register on the  
24 eleventh day of October, one thousand nine hundred ninety-one,

1 modified by the division of environmental protection to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the ninth day of November, one  
4 thousand nine hundred ninety-two, relating to the division of  
5 environmental protection (operator's designation of bona fide  
6 future use of oil and gas wells - qualification for inactive  
7 status), are authorized.

8 (b) The legislative rules filed in the state register on the  
9 third day of September, one thousand nine hundred ninety-two,  
10 modified by the division of environmental protection to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the nineteenth day of February,  
13 one thousand nine hundred ninety-three, relating to the division  
14 of environmental protection (oil and gas wells and other wells),  
15 are authorized.

16 (c) The legislative rules filed in the state register on the  
17 third day of September, one thousand nine hundred ninety-two,  
18 modified by the division of environmental protection to meet the  
19 objections of the legislative rule-making review committee and  
20 refiled in the state register on the nineteenth day of February,  
21 one thousand nine hundred ninety-three, relating to the division  
22 of environmental protection (abandoned wells), are authorized.

23 (d) The legislative rules filed in the state register on the  
24 eighteenth day of September, one thousand nine hundred  
25 ninety-two, modified by the division of environmental protection

1 to meet the objections of the legislative rule-making review  
2 committee and refiled in the state register on the nineteenth day  
3 of February, one thousand nine hundred ninety-three, relating to  
4 the division of environmental protection (underground storage  
5 tank assessment fees), are authorized.

6 (e) The legislative rules filed in the state register on the  
7 eighteenth day of September, one thousand nine hundred  
8 ninety-two, relating to the division of environmental protection  
9 (underground storage tanks), are authorized.

10 (f) The legislative rules filed in the state register on the  
11 eighteenth day of September, one thousand nine hundred  
12 ninety-two, modified by the division of environmental protection  
13 to meet the objections of the legislative rule-making review  
14 committee and refiled in the state register on the nineteenth day  
15 of February, one thousand nine hundred ninety-three, relating to  
16 the division of environmental protection (hazardous waste  
17 management), are authorized.

18 (g) The legislative rules filed in the state register on the  
19 third day of March, one thousand nine hundred ninety-two,  
20 modified by the division of environmental protection to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the eighteenth day of February,  
23 one thousand nine hundred ninety-three, relating to the division  
24 of environmental protection (groundwater protection act fee  
25 schedule), are authorized.

1        (h) The legislative rules filed in the state register on the  
2 twelfth day of August, one thousand nine hundred ninety-three,  
3 modified by the division of environmental protection to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the nineteenth day of January,  
6 one thousand nine hundred ninety-four, relating to the division  
7 of environmental protection (groundwater protection act fee  
8 schedule), are authorized.

9  
10        [NOTE: The purpose of this bill is to authorize the Division  
11 of Environmental Protection to promulgate legislative rules  
12 relating to the Groundwater Protection Act fee schedule.

13  
14        Strike-throughs indicate language that would be stricken from  
15 the present law, and underscoring indicates new language that  
16 would be added.

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H. B. 4254

(By Delegates Gallagher, Douglas, Compton,  
Huntwork, Burk and Faircloth  
(Introduced January 31, 1994; referred to the  
Committee on the Judiciary)

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

16 Be it enacted by the Legislature of West Virginia:

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

20 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND  
21 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-3-17. Division of environmental protection.

23 (a) The legislative rules filed in the state register on the  
24 eleventh day of October, one thousand nine hundred ninety-one,

4254

1 modified by the division of environmental protection to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the ninth day of November, one  
4 thousand nine hundred ninety-two, relating to the division of  
5 environmental protection (operator's designation of bona fide  
6 future use of oil and gas wells - qualification for inactive  
7 status), are authorized.

8 (b) The legislative rules filed in the state register on the  
9 third day of September, one thousand nine hundred ninety-two,  
10 modified by the division of environmental protection to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the nineteenth day of February,  
13 one thousand nine hundred ninety-three, relating to the division  
14 of environmental protection (oil and gas wells and other wells),  
15 are authorized.

16 (c) The legislative rules filed in the state register on the  
17 third day of September, one thousand nine hundred ninety-two,  
18 modified by the division of environmental protection to meet the  
19 objections of the legislative rule-making review committee and  
20 refiled in the state register on the nineteenth day of February,  
21 one thousand nine hundred ninety-three, relating to the division  
22 of environmental protection (abandoned wells), are authorized.

23 (d) The legislative rules filed in the state register on the  
24 eighteenth day of September, one thousand nine hundred  
25 ninety-two, modified by the division of environmental protection

1 to meet the objections of the legislative rule-making review  
2 committee and refiled in the state register on the nineteenth day  
3 of February, one thousand nine hundred ninety-three, relating to  
4 the division of environmental protection (underground storage  
5 tank assessment fees), are authorized.

6 (e) The legislative rules filed in the state register on the  
7 eighteenth day of September, one thousand nine hundred  
8 ninety-two, relating to the division of environmental protection  
9 (underground storage tanks), are authorized.

10 (f) The legislative rules filed in the state register on the  
11 eighteenth day of September, one thousand nine hundred  
12 ninety-two, modified by the division of environmental protection  
13 to meet the objections of the legislative rule-making review  
14 committee and refiled in the state register on the nineteenth day  
15 of February, one thousand nine hundred ninety-three, relating to  
16 the division of environmental protection (hazardous waste  
17 management), are authorized.

18 (g) The legislative rules filed in the state register on the  
19 third day of March, one thousand nine hundred ninety-two,  
20 modified by the division of environmental protection to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the eighteenth day of February,  
23 one thousand nine hundred ninety-three, relating to the division  
24 of environmental protection (groundwater protection act fee  
25 schedule), are authorized.



1     (h) The legislative rules filed in the state register on the  
2 twelfth day of August, one thousand nine hundred ninety-three,  
3 modified by the division of environmental protection to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the nineteenth day of January,  
6 one thousand nine hundred ninety-four, relating to the division  
7 of environmental protection (groundwater protection act fee  
8 schedule), are authorized.

9  
10     NOTE: The purpose of this bill is to authorize the Division  
11 of Environmental Protection to promulgate legislative rules  
12 relating to the Groundwater Protection Act fee schedule.

13  
14     Strike-throughs indicate language that would be stricken from  
15 the present law, and underscoring indicates new language that  
16 would be added.