

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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JUN 18 9 51 AM '93

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE

AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 55

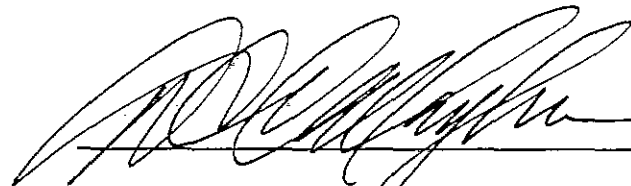
TITLE OF RULE BEING PROPOSED: Groundwater Protection Act Fee Schedule

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

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 100

SECTION 17(g), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 18, 1993



David C. Callaghan, Director
Division of Environmental Protection

3.60

KEN HECHLER
Secretary of State

MARY P. RATLIFF
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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

Frank Pleurie
Natural Resources
Div of Water Resources
1201 Greenbrier Street
Charleston, WV 25305

HB 100 authorizing, **Title 47, Series 55, Groundwater Protection Act Fee Schedule**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, 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. Authorization for your legislative rule is cited in **HB 100** section **64-3-17(g)**. 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 COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE 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

FILED

TITLE 47
LEGISLATIVE RULES

FEB 18 9 37 AM '93

DIVISION OF ENVIRONMENTAL PROTECTION
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY OF 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.

1.6. 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.

SENATE BILL NO. 190

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on Natural Resources; and then to
the Committee on the Judiciary.]

9

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

16 **Be it enacted by the Legislature of West Virginia:**

17 That article three, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen, to read as follows:

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

23 **§64-3-16. Division of environmental protection.**

1 The legislative rules filed in the state register on the
2 third day of March, one thousand nine hundred ninety-two,
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 eighteenth day of February,
6 one thousand nine hundred ninety-three, relating to the division
7 of environmental protection (groundwater protection act fee
8 schedule), are authorized with the amendments set forth below:

9 On page four by striking out all of subdivision 3.5.3 and
10 renumbering the remaining subdivisions; and

11 On page six by striking out all of subdivision 3.6.3 and
12 renumbering the remaining subdivisions.

13

14 NOTE: The purpose of this bill is to authorize the Division
15 of Environmental Protection to promulgate legislative rules
16 relating to the Groundwater Protection Act Fee Schedule.

17

18 This section is new; therefore, strike-throughs and
19 underscoring have been omitted.



KEN HECHLER
Secretary of State

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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 1 9 30 AM '93

FILED

TO: Frank Pleurie

AGENCY: Div. of Natural Resources

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 26, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 55 TITLE: 47 Div. of Natural Resources

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Frank Pleurie

TITLE OF PERSON SIGNING: Administrative

DATE: 8/30/93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.