

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

"NOTICE OF EXTENSION OF COMMENT PERIOD"

Division of Environmental Protection

AGENCY: Office of Water Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY 22-12-5(I) and 47CSR57, subsection 6.4

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 57A

TITLE OF RULE BEING PROPOSED: Groundwater Protection Standards at Steam Electric Generating Facilities

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 July 31, 1999 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Office of Water Resources
1201 Greenbrier Street
Charleston, WV 25311
Attn: Dave Watkins

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

Carri J. Chambers

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
Fax: (304) 759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

July 19, 1999

Ms. Judy Cooper
Director, Administrative
Law Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"

Dear Ms. Cooper:

The above-referenced rule was filed with your office on June 17, 1999, as Notice of Public Hearing on a Proposed Rule. The hearing is scheduled for Wednesday, July 21, at 6:00 p.m., in our Office of Water Resources Conference Room located at 1201 Greenbrier Street, Charleston. However, in accordance with 47CSR57 - Groundwater Quality Standard Variances, filed May 13, 1994, effective June 1, 1994, subsection 6.4 states in part:

" . . . the Director shall hold a public hearing, following thirty (30) days notice, at which oral comments may be received from any interested person, and the Director must allow at least ten (10) days after such hearing for the submission of written comments . . ." (subsection 6.4 attached).

Therefore, please find attached a "Notice of Extension of Comment Period" for 47CSR57A to comply with the 10-day requirement for submission of written comments. Your cooperation in this regard, is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Barb Taylor
Dave Watkins
Carrie Chambers

advertisement in a newspaper of general circulation in the area to be affected by the requested variance. If the petitioner seeks a variance which would apply throughout the state, a Class I advertisement must be placed in a newspaper of statewide circulation. Any advertisement must identify the name, address, and telephone number of the person requesting the variance, the area in which the variance would be effective (note: include a map if appropriate), and the source or class of sources for which the variance is requested and the constituents for which the variance is requested.

6.2. Contents -- An application for a variance from preventative action limits or groundwater quality standards, or both, must contain the following information:

6.2.a. A name, mailing address, and phone number of the person requesting the variance, and the name of the individual to be contacted regarding the application;

6.2.b. A description of the source or class of sources and constituents for which the variance is being requested;

6.2.c. The levels of constituents for which the variance is being requested.

6.2.d. A description of the area for which the variance is proposed, including an analysis of the geology and hydrology of the area;

6.2.e. A description of current groundwater quality and uses in the area to be affected by the variance, and the predicted long-term effect of the variance on the groundwater quality and uses;

6.2.f. A list of other sources which may have an effect on groundwater quality in the area for which the variance is requested;

6.2.g. The alternate limits or standards and mitigation measures proposed by the applicant if the variance is granted, and any proposed variance conditions;

6.2.h. A statement describing why the source or class of sources by their nature cannot

be altered or modified to avoid violating preventative action limits or water quality standards;

6.2.i. A statement of the nature and extent of the benefits of the proposed variance including, but not limited to, benefits associated with economics, employment opportunities, health and safety, and the environment;

6.2.j. A description of alternatives to the variance, and an explanation of why the benefits of the proposed action outweigh the benefits of each considered alternative course of action, including not granting a variance, and an explanation of why none of the considered alternatives is reasonable and prudent;

6.2.k. A statement explaining why the proposed action is more in the public interest than the protection of groundwater quality standards or preventative action limits; and

6.2.l. A certificate of publication.

6.3. Rulemaking -- If, after considering the variance petition for a single source or class of sources, the Director concludes that a variance is appropriate, in whole or in part, the Director shall initiate legislative rulemaking as provided in W. Va. Code §29A-3. The proposed rule shall set forth:

6.3.a. A description of the single source or class of sources to be granted the variance and the constituents for which the variance is requested;

6.3.b. The geographical area for which the variance is allowed;

6.3.c. Any appropriate terms and conditions; and

6.3.d. The Director's preliminary findings pursuant to subsection 6.7 of this rule with respect to which public comment is to be solicited.

6.4. The proposed rule shall be accompanied by a statement of the Director's grounds for proposing the variance. In addition to all other

rulemaking requirements, the Director shall hold a public hearing, following thirty (30) days notice, at which oral comments may be received from any interested person, and the Director must allow at least ten (10) days after such hearing for the submission of written comments. Notice of the public hearing shall also be filed with the state capitol press office. The Director shall issue a determination as to whether such a variance is or is not appropriate within forty-five (45) days of the close of the comment period and, if determined to be appropriate, shall take such further steps as may be appropriate to have the variance promulgated as a legislative rule.

6.5. Denials -- If the Director determines that a variance for a single source or class of sources shall not be allowed, he shall publish a denial decision stating the reasons for the denial and provide a copy of the denial decision to the petitioner along with a notification of the petitioner's appeal rights by certified mail, and by regular mail to any other person who requests a copy of the denial decision. Notice of the denial decision shall also be published in the State Register.

6.6. Appeal -- Any person who is adversely affected by the Director's decision to deny a variance may appeal that decision to the Environmental Quality Board within thirty (30) days of the date of publication of a denial decision in the State Register.

6.7. Variance Criteria -- The Director shall promulgate rulemaking for a variance for a single source or class of sources, if the Director finds that:

6.7.a. A single source or class of sources by their very nature cannot be conducted in compliance with the requirements of W. Va. Code §22-12-5(g).

6.7.b. The benefits of granting the variance outweigh the benefits of complying with the preventative action limits, or groundwater quality standards, or both;

6.7.c. The variance is more in the public interest than the protection of groundwater quality standards or preventative action limits; and

6.7.d. There is no reasonable and prudent alternative to the variance.

6.8. The Director's findings pursuant to the foregoing subsection shall include a statement of basis in support of each finding.

6.9. Terms and Conditions -- The Director may propose the variance through the initiation of rulemaking upon such reasonable terms or conditions as may be necessary to protect human health and the environment, to satisfy all requirements of the Act (other than compliance with groundwater quality standards or preventative action limits, or both as specified in the variance), and to minimize adverse impact to groundwater consistent with granting the variance. Such terms and conditions shall include, where the Director deems it to be appropriate, alternative groundwater water standards, alternative preventative action limits, monitoring and reporting requirements, and enforcement provisions. To the extent that such terms and conditions include alternative groundwater quality standards, the Director shall consult with the Environmental Quality Board in establishing such alternative standards.

6.10. Initial Variance -- All sources, except for those sources operating pursuant to subsection 4.2 of this rule, shall be granted a waiver of the requirements to comply with all groundwater quality standards and preventative action limits until November 1, 1994. Any source, whether single or class, which has filed with the Director on or before October 31, 1994, a statement declaring an intent to make application for a variance shall be granted a waiver of the requirements to comply for only those groundwater quality standards and preventative action limits, specific to the variance application, until July 1, 1996. The letter of intent shall include, but not be limited to, identification of the constituent(s) for which a variance is requested, a statement of the nature of the activity requesting the variance, and the geographical area to be affected, by the variance, if granted. Notwithstanding any other provisions of