

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #4

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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-5(d)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

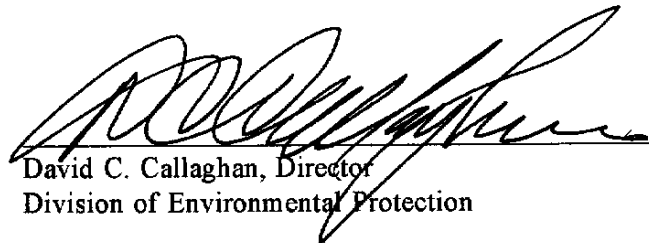
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 59

TITLE OF RULE BEING PROPOSED: Monitoring Well Regulations

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.

3-20

  
David C. Callaghan, Director  
Division of Environmental Protection

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF NATURAL RESOURCES ENVIRONMENTAL PROTECTION  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

SERIES 59  
MONITORING WELL REGULATIONS

§ 47-59-1. **General.**

1.1. Scope - This legislative rule establishes the certification of monitoring well drillers and monitoring well installations and alterations.

1.2. Authority - W. Va. Code § 20-5M-5(d).

1.3. Filing Date -

1.4. Effective Date -

1.4.1. Compliance with section 4 and 5 of this rule is not required until such time as 47 C.S.R. 60 (Monitoring Well Design Standards) becomes effective.

§ 47-59-2. **Definitions.**

2.1. "Application" - The state ~~department of health's~~ division of environmental protection's standard form(s) for applying for monitoring well driller certification, including any additions, revisions or modifications to the form(s).

2.2. "Certified Monitoring Well Driller" - An individual granted a written certificate by the ~~commissioner~~ director to drill, construct, alter or abandon monitoring wells and who meets the requirements of this rule.

~~2.3. "Chief" - Chief of the Water Resources Section, Division of Natural Resources or his lawful designee.~~

~~2.4. "Commissioner" - Commissioner of the West Virginia Bureau of Public Health or his lawful designee.~~

2.3. 2.5. "Design Standards" - Those specifications, drawings and other details promulgated by the ~~chief~~ director to ensure proper location, design, construction, completion and abandonment of monitoring wells.

2.4. "Director" means the director of the division of environmental protection or his or her lawful designee.

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

2.6. "Person" - means an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

2.7. "Monitoring Well"—~~Reserved~~ means any cased excavation or opening into the ground made by digging, boring, drilling, driving, jetting or other methods for the purpose of determining the physical, chemical, biological or radiological properties of groundwater. The term 'monitoring well' includes piezometers and observation wells which were installed for purposes other than those listed above, but does not include wells whose primary purpose is to provide a supply of potable water.

2.8. "Monitoring Well Driller" - ~~An individual that engages in monitor well drilling, construction, alteration, or abandonment or who supervises these activities.~~ means the individual operating the drilling rig when drilling, constructing, altering or abandoning (i.e., properly or improperly closing) a monitoring well(s).

2.9. "Piezometer" means a groundwater monitoring well sealed below the water table and which is installed for the specific purpose of determining the potentiometric surface or the physical, chemical, biological or radiological properties of groundwater, or both.

**§ 47-59-3. Application and Enforcement.**

3.1. Application - This rule ~~shall apply~~ applies to all monitoring well drillers.

3.2. Enforcement - The enforcement of this rule is vested with the ~~chief director of the West Virginia Division of Natural Resources~~ Environmental Protection, Office of Water Resources Section or his or her lawful designee.

**§ 47-59-4. Certification of Monitoring Well Drillers.**

4.1. ~~There shall be a certified monitoring well driller on site in direct charge of actively drilling, construction constructing, altering or abandonment of a abandoning any monitoring well.~~ All monitoring well drillers who actively drill, construct, alter or abandon any monitoring well must be certified.

4.2. To be eligible for certification, ~~the applicant~~ an individual must be able to demonstrate a minimum of two (2) years of monitoring well drilling experience under the supervision of a certified monitoring well driller.

4.3. ~~Monitoring well drillers actively engaged in a monitoring well drilling business as a monitor well driller on or before~~ on or before the effective date of this rule ~~shall be~~ are exempt from the minimum experience requirements.

4.4. An application for certification as a monitoring well driller shall be made in writing to the ~~commissioner~~ director on a form prescribed by the ~~commissioner~~ director. Information required on the form may include, but not be limited to: the applicants name, address, education, experience, business name and references.

4.5. In addition to filing an application for becoming certified to drill, construct, alter or abandon monitoring wells, the applicant must pass an oral or written examination to assure the director that the applicant is thoroughly familiar with all requirements of applicable laws, regulations and design standards pertaining to monitoring well drilling and construction. Examinations shall be administered by personnel of the West Virginia division of environmental protection or their appointees. An applicant must obtain a passing grade of seventy per cent (70%) before becoming certified. An applicant who has failed an examination must wait thirty (30) days before again taking the examination.

4.5. ~~The commissioner director may suspend, revoke or deny certification if the information on the application form is incomplete, inaccurate, false or misleading, or indicates that the provisions of this rule cannot be met. if the provisions of this rule, or any other rule pertaining to monitoring wells are willfully or negligently violated.~~

4.6. Certification ~~shall not be~~ is not transferable or assignable and shall automatically become invalid upon suspension or revocation.

4.7. Certification ~~shall~~ expires one (1) year after date of issuance and may be renewed thirty days (30) before such the expiration date.

4.8. ~~When certification has been denied, suspended or revoked, the person individual thereby affected shall immediately discontinue the drilling, altering, constructing and abandonment of monitoring wells.~~

4.9. ~~Any person individual whose application for certification has been denied, or whose certification has been suspended or revoked, may request a hearing in accordance with Section 7, Administrative Due Process, of this rule. The applicant must submit a written request for hearing within thirty (30) days from receipt of denial, suspension, or revocation of certification. the provisions of W Va Code§20-5M-11.~~

4.10. ~~Denial, suspension or revocation of certification shall be in writing from the commissioner director and shall state specific reasons for the denial, suspension or revocation.~~

4.11. ~~Suspension or revocation of certification shall be preceded by a written notice from the commissioner director, at least ten (10) days prior to actual revocation or suspension.~~

~~4.12. In addition to filing an application for becoming certified to drill, construct, alter or abandon monitoring wells, the applicant must pass an oral or written examination to assure the commissioner director that the applicant is thoroughly familiar with all requirements of applicable laws, regulations and design standards pertaining to monitoring well drilling and construction. Examinations shall be administered by personnel of the West Virginia division of environmental protection or their appointees. An applicant must obtain a passing grade of seventy per cent (70%) must be obtained before becoming certified. An applicant who has failed an examination must wait thirty (30) days before again taking the examination.~~

**§ 47-59-5. Identification Numbers of Monitor Well Rigs and Monitor Well Head. Monitoring Well Driller Identification.**

~~5.1. It shall be the duty of all monitor well contractors to see that all monitor well rigs used by them or their employees in the monitor well drilling business are marked with legible and plainly visible identification numbers at all times.~~

~~5.2. The identification number to be used on monitor well rigs shall be the certification number of the monitor well driller at the well site who is responsible for the monitor well drilling operations.~~

~~5.3. Certification numbers shall be printed upon each side of every monitor well rig in numerals of not less than two inches high and such numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that the certification number shall be plainly legible.~~

~~5.4. Monitor well contractors shall see that all monitor well rigs used by them or their employees in the monitor well drilling business are marked as provided in Sections 5.2 and 5.3 of this rule.~~

All monitoring well drillers shall have proof of certification available for inspection at all times when actively engaged in drilling, constructing, altering, or closing/abandoning a monitoring well(s).

**§ 47-59-6. Advisory Board.**

6.1. The chief director may establish an advisory board and designate the chairman of said the board.

6.2. The advisory board membership shall consist of, but not necessarily be limited to, the following members:

Certified <u>monitoring</u> well drillers:	3 members
State health department:	1 member
<u>Office of water resources section:</u>	1 member

West Virginia geological survey: 1 member.

6.3. The duties of the advisory board shall be assigned by the ~~chief~~ director.

6.4. The ~~chief~~ director may establish other boards, committees and commissions to assist in carrying out the provisions of this rule.

**§20-59-7. Denial, Suspension, Revocation of Certification.**

7.1. The director may suspend, revoke or deny certification if the information on the application form is incomplete, inaccurate, false or misleading, or if the provisions of this rule, or any other rule pertaining to monitoring wells are willfully or negligently violated.

7.2. Suspension or revocation of certification shall be preceded by a written notice from the director, at least ten (10) days prior to actual revocation or suspension.

7.3. Denial, suspension or revocation of certification shall be in writing from the director and shall state specific reasons for the denial, suspension or revocation.

7.4. When certification has been denied, suspended or revoked, the individual thereby affected shall immediately discontinue the drilling, altering, constructing and abandonment of monitoring wells.

7.5. Any individual whose application for certification has been denied, or whose certification has been suspended or revoked, may request a hearing in accordance with the provisions of W Va Code §20-5M-11.

~~§ 47-59-7. Administrative Due Process.~~

**§ 47-59-8. Administrative Due Process.**

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a the manner prescribed in ~~the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 C.S.R. 1.~~ W Va Code § 20-5M-11

~~§ 47-59-8. Severability.~~

**§ 47-59-9. Severability.**

If any provisions of this rule or the application thereof to any person or circumstance ~~shall~~ be ~~are~~ held invalid, ~~such~~ the invalidity shall not affect the provisions or the application of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are declared to be severable.



WEST VIRGINIA LEGISLATURE  
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
 Room M-152, State Capitol  
 Charleston, West Virginia 25305  
 (304) 340-3286

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OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

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

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

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

September 28, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: David C. Callaghan, Director  
 Division of Environmental Protection  
 10 McJunkin Road  
 Nitro, WV 25143-2506

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Monitoring Well Regulations

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, Chief  
 Water Resources Section  
 Frank Pelurie