

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In This Box

FILED

MAY 13 3 44 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 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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

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

SECTION 64-3-17(i), 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

Roger W. Mall  
David C. Callaghan, Director  
Division of Environmental Protection

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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 59, Monitoring Well Regulations**, 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(i)**. 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: Monitoring Well Regulations

Rule Title: 47 CSR 59

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Date of Notice of Public

Hearing/Comment Period on Proposed Rule: 6/16/92

Date of Public Hearing or Close of Comment Period: 7/28/92

Date Agency Approved Proposed Rule Filed  
with the Legislative Rule Making Review Committee: 1/28/93

Date of LRMRC Approval: 9/28/93

Date Rule Modification of Proposed Rule Filed: 10/6/93

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

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

MAY 13 3 44 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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 - May 13, 1994.

1.4. Effective Date - June 1, 1994.

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 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 director to drill, construct, alter or abandon monitoring wells and who meets the requirements of this rule.

2.3. "Design Standards" - Those specifications, drawings and other details promulgated by the 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" 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" means the individual operating the drilling rig when drilling, constructing, altering or abandoning (i.e., properly or improperly closing) a monitoring well.

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 applies to all monitoring well drillers.

3.2. Enforcement - The enforcement of this rule is vested with the director of the West Virginia Division of Environmental Protection, 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, constructing, altering, testing or abandoning any monitoring well.

4.2. To be eligible for certification, 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 monitoring well drilling on or before the effective date of this rule 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 director on a form prescribed by the 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.

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

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

**§ 47-59-5. Monitoring Well Driller Identification.**

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 director may establish an advisory board and designate the chairman of the board.

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

Certified monitoring well drillers:	3 members
State health department:	1 member
Office of water resources:	1 member
West Virginia geological survey:	1 member.

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

6.4. The 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.

**§ 47-59-8. 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 the manner prescribed in W Va Code § 20-5M-11

**§ 47-59-9. Severability.**

If any provisions of this rule or the application thereof to any person or circumstance are held invalid, 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.

SENATE BILL NO. 106

1 (By Senators Anderson, Grubb, Macraughlen and  
2 Howard)

3 [Introduced January 31, 1974; referred to the  
4 Committee on

5 ENVIRONMENTAL RESOURCES

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9  
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 monitoring wells.

15 Be it enacted by the Legislature of West Virginia:

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

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

21 §64-3-17. Division of environmental protection.

22 (a) The legislative rules filed in the state register on the  
23 eleventh day of October, one thousand nine hundred ninety-one,  
24 modified by the division of environmental protection to meet the

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

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

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

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

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

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

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

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

1     (h) The legislative rules filed in the state register on the  
2 twenty-eighth day of January, one thousand nine hundred ninety-  
3 three, modified by the division of environmental protection to  
4 meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the sixth day of  
6 October, one thousand nine hundred ninety-three, relating to the  
7 division of environmental protection (monitoring wells), are  
8 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 monitoring wells.

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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. 4251

(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 monitoring wells.

15 Be it enacted by the Legislature of West Virginia:

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20 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

21 §64-3-17. Division of environmental protection.

22 (a) The legislative rules filed in the state register on the  
23 eleventh day of October, one thousand nine hundred ninety-one,  
24 modified by the division of environmental protection to meet the

4251

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

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

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

22 (d) The legislative rules filed in the state register on the  
23 eighteenth day of September, one thousand nine hundred  
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6 October, one thousand nine hundred ninety-three, relating to the  
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10        .NOTE: The purpose of this bill is to authorize the Division  
11 of Environmental Protection to promulgate legislative rules  
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16 would be added.