



**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 26, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Environmental Protection  
Division of Water and Waste Management  
601 57th Street SE  
Charleston, WV 25304

LEGISLATIVE RULE TITLE: Monitoring Well Rules

1. Authorizing statute(s) citation W.Va. Code §22-12-5(d)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 11, 2009

b. What other notice, including advertising, did you give of the hearing?  
Class I legal ad in the Charleston Gazette and Charleston Daily Mail  
Agency Mailing list  
Agency website

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 16, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2009

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Daniel T. Arnold  
Program Manager  
601 57th Street SE  
Charleston, WV 25304  
304-926-0499 Ext. 1341  
Fax: 304-926-0496

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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BEFORE THE WEST VIRGINIA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

PROPOSED 2010 RULES  
47CSR59 - Monitoring Well Rule

**TRANSCRIPT OF PROCEEDINGS** had or testimony adduced in the above-entitled matter, on the on the 16<sup>th</sup> day of July, 2009, commencing at 6:06 p.m. and concluding at 6:07 p.m., at 601 57<sup>th</sup> Street, S.E., Charleston, Kanawha County, West Virginia, pursuant to notice to all interested parties.

BEFORE: DIANA HAID  
Public Information Office.

**ORIGINAL**

**NANCY MCNEALY**  
CERTIFIED COURT REPORTER  
Post Office Box 13415  
Charleston, West Virginia 25360-0415  
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

1           MS. HAID:           Good evening. My name is Diana  
2 Haid and I am with the West Virginia Department of  
3 Environmental Protection's Public Information Office.  
4 Welcome to the public hearing on proposed rule changes to  
5 47CSR59, Monitoring Well Rule.

6                       Revisions to the rule are to add new  
7 language to incorporate "high" and "low" risk boreholes,  
8 experience requirements for those persons applying for  
9 monitoring well driller certificate, recertification and  
10 training requirements for monitoring well drillers, and  
11 definitions. Technical revisions and corrections are made  
12 throughout.

13                      Please make sure you have signed in and have  
14 indicated whether you are going to make a comment. If you  
15 have written comments, please provide them to me when you  
16 speak, or at the close of this hearing.

17                      If everyone is ready, the floor is now open  
18 for comments. I have the sign-in sheet and the record  
19 shows that no one is here to make comments for this rule.  
20 So I guess we will conclude the public hearing on proposed  
21 rule 47CSR59, Monitoring Well Rule.

22                      The public comment period ends tonight. The  
23 agency will review all comments and take them into  
24 consideration for the rule.

1

(WHEREUPON, the hearing was concluded.)

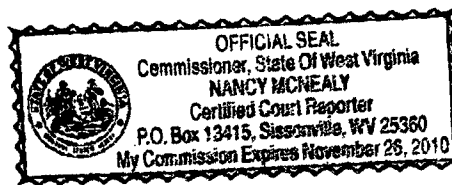
BEFORE THE WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION


STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Commissioner of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 17<sup>th</sup> day of July,  
2009.

My commission expires November 26, 2010.



  
\_\_\_\_\_  
Certified Verbatim Reporter  
Commissioner of West Virginia

# Sign In Sheet Public Hearing

Proposed revisions to 47CSR59, Monitoring Well Rule  
Thursday, July 16, 2009, 6 p.m.

Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
Daniel T. Arnold	601 5th Street SE Charleston, WV 25304	WVDRP	926-0444 x1341	Daniel.T.Arnold@wv.gov	No
Ellen R. Herndon	601 5th St SE Charleston, WV 25304	WVDRP	926-0444 x1600	Ellen.R.Herndon@wv.gov	Do
Margaret W. Kaufman	P.O. Box 1791 Charleston	ROBINSON McELWEE	(304) 347-8330	MWK@RAMLAW. COM	NO

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BRIEFING DOCUMENT**

**Rule Title:** Monitoring Well Rules

- A. AUTHORITY:** W. Va. Code §22-12-5(d).
- B. SUMMARY OF RULE:** Promulgated in 1994 session. Revisions to the rule are to add new language to incorporate “high” and “low” risk boreholes, experience requirements for those persons applying for monitoring well driller certificate, recertification and training requirements for monitoring well drillers, monitoring well advisory board membership requirements and definitions. Typographical and grammatical revisions and or corrections will be included.
- C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:** A definition for “high risk” borehole was needed, as were grammatical corrections and changes to reflect the current structure of the West Virginia Department of Environmental Protection. In an effort to ensure certified monitoring well drillers maintain acceptable knowledge of the applicable regulations, requirements for minimum drilling activity were recommended by the Monitoring Well Drillers Advisory Board Meeting on May 7, 2009. These requirements were added as a prerequisite to recertification of drillers within 30 days of their current certification expiration.
- D. FEDERAL COUNTERPART REGULATIONS – INCORPORATION BY REFERENCE / DETERMINATION OF STRINGENCY:**
- There is no federal counterpart regulation; thus, no determination of stringency is required.
- E. CONSTITUTIONAL TAKINGS DETERMINATION**
- In accordance with W. Va. Code §§ 22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.
- F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**
- At its meeting on June 3, 2009, the Environmental Protection Advisory Council discussed the proposed rule. See attached minutes for Council’s discussion.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Monitoring Well Rules

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Department of Environmental Protection

Address: 601 57th Street S.E.  
Charleston, WV 25304

Phone Number: 304-92-0499 Ext. 1341 Email: Daniel.T.Arnold@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no cost associated with this rule change.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Monitoring Well Rules

- 3. Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

There will be no cost associated with this rule.

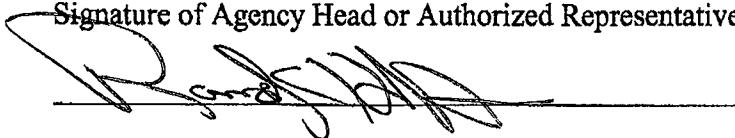
### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule is being submitted for the sole purpose of updating definitions and specifying training and recertification standards.

Date: 6/01/09

Signature of Agency Head or Authorized Representative



TITLE 47  
LEGISLATIVE RULES  
DIVISION DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF ENVIRONMENT  
WATER RESOURCES

RECEIVED  
2009 JUL 27 PM 3:04  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

SERIES 59  
MONITORING WELL RULES

**§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 §22-12-5(d).

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

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

~~1.4.1. Compliance with sections 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" means the state division Department 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. "Borehole" means a circular hole, deeper than it is wide, constructed in earth material for the purpose of obtaining geological- or groundwater-related data. Boreholes are also referred to as "drill holes."

~~2.2.~~ 2.3. "Certified monitoring well driller" means an individual granted a written certificate by the director Secretary to drill, construct, alter or abandon monitoring wells and who meets the requirements of this rule.

~~2.3.~~ 2.4. "Design standards" means those specifications, drawings and other details promulgated by the director secretary 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. "High risk borehole" means a borehole that is on a site that currently contains or contained in the past solid or hazardous waste, hazardous materials or their by-products; or that may be affected by solid or hazardous waste, hazardous materials or their by-products; or at sites known or suspected to be contaminated by hazardous waste, hazardous materials or their by-products, unless the contamination is

determined to be innocuous: or in situations where water quality in one water-bearing zone may be detrimental to another water-bearing zone.

~~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 that 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 or a high-risk borehole.

~~2.9. "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.~~

~~2.9.~~ 2.10. "Piezometer" means a groundwater monitoring well sealed below the water table that is installed for the specific purpose of determining the potentiometric surface or the physical, chemical, biological or radiological properties of groundwater, or both.

2.11. "Secretary" means the Secretary of the Department of Environmental Protection or his or her lawful designee.

### **§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~~ Secretary of the West Virginia ~~Division~~ Department 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 or high-risk borehole.

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~~ meet one of the following criteria:

4.2.a. Have a minimum of two (2) years of monitoring well drilling experience under the supervision of a West Virginia certified monitoring well driller; or

4.2.b. Have six (6) months of monitoring well drilling experience that includes properly installing at least fifteen (15) monitoring wells and properly abandoning at least ten (10) monitoring wells under the supervision of a West Virginia 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.~~ 4.3. An application for certification as a monitoring well driller shall be made in writing to the ~~director~~ Secretary on a form prescribed by the ~~director~~ Secretary. Information required on the form may include, but not be limited to, the applicant's name, address, education, experience, business name and references.

~~4.5.~~ 4.4. In addition to filing an application for becoming ~~certified to drill, construct, alter or abandon monitoring wells~~ a certified monitoring well driller, the applicant must pass an oral or written examination to assure the ~~director~~ Secretary that the applicant is thoroughly familiar with all requirements of applicable laws, regulations, and design standards pertaining to monitoring well drilling and construction and borehole abandonment. Examinations shall be administered by personnel of the West Virginia ~~Division~~ Department of Environmental protection or their appointees. An applicant must obtain a passing grade of seventy per cent (70%) ~~before becoming in order to become~~ certified. An applicant who has failed an examination must wait thirty (30) days before ~~again~~ retaking the examination ~~again~~.

~~4.6.~~ 4.5. Certification is not transferable or assignable and shall automatically become invalid upon suspension or revocation.

~~4.7.~~ 4.6. Certification expires one (1) year after date of issuance and may be renewed thirty days (30) before the expiration date. In order to renew certification, a certified monitoring well driller must demonstrate continued familiarity with all requirements of applicable laws, regulations, and design standards pertaining to monitoring well drilling, construction and abandonment and borehole drilling and abandonment, by submitting documentation to the West Virginia Department of Environmental Protection for twelve (12) events, either installation or abandonment of monitoring wells or boreholes in the previous 36 months or sign an affidavit attesting to having read 47 CSR 59, 47 CSR 60 and the training guidance document used for initial training and testing.

4.7. If a certified monitoring well driller allows his or her certification to expire without seeking renewal, he or she must be retested in accordance with the provisions of section 4.4 above in order to receive recertification under this rule.

**§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 monitoring wells or boreholes.

**§47-59-6. Advisory Board.**

6.1. The ~~director~~ Secretary 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

6.2.a. Three (3) members shall be certified monitoring well drillers;

6.2.b. One (1) member shall be from the State Bureau for Public Health;

6.2.c. One (1) member shall be from the Department of Environmental Protection; and

6.2.d. One (1) member shall be from the West Virginia Geological & Economic Survey.

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

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

**§47-59-7. Denial, Suspension or Revocation of Certification.**

7.1. The ~~director~~ Secretary 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~~ Secretary 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~~ Secretary 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 and boreholes.

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 §22-12-11.

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

Those persons adversely affected by the enforcement of this rule ~~desiring~~ who desire a contested case hearing to determine any rights, duties, interests or privileges shall ~~do so~~ proceed in the manner prescribed in W. Va. Code §22-12-11.

**§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 that can be given effect without the invalid provisions or application and, to this end, the provisions of this rule are declared to be severable.