

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

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Water Resources
DEP-Division of Water and Waste Management TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 59

TITLE OF RULE BEING AMENDED: Monitoring Well Rules

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 273

SECTION §64-3-1(o), PASSED ON March 13, 2010

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 9, 2010


Authorized Signature

FILED

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATER RESOURCES

2010 APR -9 PM 2:01

OFFICE OF THE VIRGINIA
SECRETARY OF STATE

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 -- April 9, 2010

1.4. Effective Date -- April 9, 2010

§47-59-2. Definitions.

2.1. "Application" means the 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 data. Boreholes are also referred to as "drill holes."

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

2.4. "Design standards" means those specifications, drawings and other details promulgated by the Secretary to ensure proper location, design, construction, completion and abandonment of monitoring wells.

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.

2.7. "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.

2.10. "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 Secretary of the West Virginia 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 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. An application for certification as a monitoring well driller shall be made in writing to the Secretary on a form prescribed by the Secretary. Information required on the form may include, but not be limited to, the applicant's name, address, education, experience, business name and references.

4.4. In addition to filing an application for becoming a certified monitoring well driller, the applicant must pass an oral or written examination to assure the 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 Department of Environmental protection or their appointees. An applicant must obtain a passing grade of seventy per cent (70%) in order to become certified. An applicant who has failed an examination must wait thirty (30) days before retaking the examination.

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

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

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 subsection 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 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:

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 Secretary.

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

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

7.1. The 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 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 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 who desire a contested case hearing to determine any rights, duties, interests or privileges shall 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.