

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

FILED

2011 NOV 22 PM 2:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150

CITE AUTHORITY: W. Va. Code 24-1-1, 24-2-1, 24-2-2, 24-2-5, 24-2-7, 24-2-8, 24-2-9, 24-3-2, 24-3-5, 16-13A-2, 16-13A-9

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code 24-1-7, 16-13A-1

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: 35

TITLE OF RULE BEING PROPOSED: Rules Governing Innovative, Alternative Sewer Systems

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS January 23, 2012

  
Authorized Signature

APPENDIX B  
***FISCAL NOTE FOR RULES***

Rule Title: **150 C.S.R. 35, Rules Governing Innovative, Alternative Sewer Systems**

Type of Rule:  Exempt Legislative  Interpretive  Procedural  Emergency

Agency: Public Service Commission of West Virginia

Address: 201 Brooks Street  
Charleston, West Virginia 25301

Phone Number: Richard E. Hitt, 304-340-0450 Email: rhitt@psc.state.wv.us

**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 significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of this rulemaking.

**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.

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

Rule Title: **150 C.S.R. 35, Rules Governing Innovative, Alternative Sewer Systems**

Rule Title: 150 C.S.R. 35, Rules Governing Innovative, Alternative Sewer Systems

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

Not applicable.

### 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.

The effect of this rulemaking is to allow the development of innovative, alternative sewage treatment systems in areas of the state in which traditional sewer service is not feasible. Customers receiving sewer service via any innovative, alternative system will pay for such service at rates approved by the Public Service Commission of West Virginia.

Date:

November 21, 2011

Signature of Agency Head or Authorized Representative

Michael R. Albert

## **Summary of the Rule**

The Public Service Commission of West Virginia has proposed Rules Governing Innovative, Alternative Sewer Systems, 150 C.S.R. 35. An innovative, alternative method of providing sewer service, if undertaken by an existing utility, is a public utility function and subject to Commission jurisdiction, regardless of the number of customers served by the innovative, alternative method, pursuant to W.Va. Code § 24-2-1(a). If a new entity intends to provide innovative or alternative sewer service to less than 25 customers, it is not a public utility.

Innovative, alternative sewage disposal systems are designed to meet the wastewater treatment needs of customers in remote areas where large public sewer facilities are not available. These systems rely on underground dispersal of treated wastes, small media based treatment facilities receiving effluent from customers and discharging treated effluent to either streams or to underground dispersal areas, home aeration units, on-site septic systems installed and/or maintained by a sewer utility, and other non-traditional technologies

The new proposed rules provide definitions, require certain information to be provided to the Commission and to customers, set forth billing provisions, and establish a pre-funding requirement for such systems. Because innovative, alternative systems may be used in the poorest areas in West Virginia, sustainability of such systems is an important concern.

### **Statement of Circumstances**

Pursuant to W. Va. Code § 24-2-1(a), the jurisdiction of the Public Service Commission extends to all public utilities in this state, including public utilities that provide sewer service by an innovative, alternative method, as defined by the Federal Environmental Protective Agency. An innovative, alternative method of providing sewer service is a public utility function and subject to Commission jurisdiction, as a matter of law, regardless of the number of customers served by the innovative, alternative method.

On August 2, 2010, a Work Group filed proposals to add to the Rules for the Government of Sewer Utilities, 150 C.S.R. Series 5, relating to innovative, alternative sewer service. Because the concepts under review are novel and require consideration of accompanying financial issues, at least in the initial considerations the Commission chose to review the innovative, alternative sewage treatment proposals separate from the other provisions of the existing Sewer Rules. Choosing this initial approach was purely a consideration of efficiency. The Commission invited comment on whether the provisions should be ultimately incorporated into the Sewer Rules.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22<sup>nd</sup> day of November, 2011.

GENERAL ORDER NUMBER 186.26

In the Matter of proposed Rules Governing Innovative, Alternative Sewer Systems, 150 C.S.R. Series 35.

**COMMISSION ORDER**

The Commission promulgates final rules relating to the provision of innovative sewage treatment services in its new Rules Governing Innovative, Alternative Sewer Systems, 150 C.S.R. Series 35. An innovative, alternative method of providing sewer service, if undertaken by an existing utility, is a public utility function and subject to Commission jurisdiction, regardless of the number of customers served by the innovative, alternative method, pursuant to W.Va. Code § 24-2-1(a). If a new entity intends to provide innovative, alternative sewer service to less than 25 customers, it is not a public utility.

**BACKGROUND**

On February 9, 2011, the Commission promulgated proposed rules for systems that provide sewer service in areas that cannot be economically served by traditional sewer systems and invited comments to be filed on the proposed rules. Comm'n Order at 3-4 & Att. B (Feb. 9, 2011). These systems rely on underground dispersal of treated wastes, small media based treatment facilities receiving effluent from customers and discharging treated effluent to either streams or to underground dispersal areas, home aeration units, on-site septic systems installed or maintained by a sewer utility, and other non-traditional technologies. The Commission set a schedule to receive comments on the proposed rules. Id. at 3.

On March 11, 2011, Kanawha Valley Chapter of Trout Unlimited filed comments, asking the Commission to add a provision that allows the Division of Natural Resources to require project design features to maintain stream habitat equivalent to before project installation. Ltr. at 1.

On March 14, 2011, West Virginia-American Water Company (WV-AWC) filed comments, arguing that the prefunding requirement of Rule 3.1 may limit the ability of private companies, public service districts or municipalities to serve alternative systems and suggesting instead a cash bond equal to the amount of annual revenue. Ltr. at 1-2. WV-AWC asserted that Rule 3.2 would not permit the use of single-tariff pricing, which could reduce operating efficiencies, especially for large utilities, and Rule 3.4's annual review could be a tariff rate adjustment. Id.

WV-AWC would require a certificate of public convenience and necessity only for systems with more than fifty customers, not twenty-five as the Commission proposed, because professional services are needed to prepare a certificate application and the extra costs may jeopardize funding for small projects. Id.

WV-AWC also proposed that Rule 8.3 be divided into two sections. The first part would deal with system design and require that plans be signed and sealed by a professional engineer and approved by the Department of Environmental Protection and the Bureau for Public Health. The second part would deal with construction management. Id.

On March 15, 2011, Jefferson County Public Service District filed comments, stating that utilities with centralized treatment facilities typically pay for capital replacements with large loans or grants. In contrast, a utility managing 100 individual septic systems will replace about five septic tanks per year, and pursuing loans or grants annually for that work would not be efficient. Because annual capital expenditures for alternative systems are smaller and more predictable, Jefferson County suggested that rates be established using a method that includes funds for the depreciation of decentralized systems, rather than a cash flow method. Ltr. at 1-4.

Jefferson County asserted that the proposed rules should facilitate the acquisition of existing systems. Although the required engineering data is appropriate to construct new facilities, such data likely would not be available for most existing systems. Jefferson County suggested, therefore, that proposed Rules 2.2 and 2.3 apply only to new systems. Id.

Jefferson County argued that the Rule 3.1's pre-funding requirement -- twelve months of revenue per customer deposited in a reserve fund -- was excessive and would be a barrier to the development of innovative systems. Jefferson County asserted that customers to be served by innovative systems likely could not afford the regular security deposit plus the amount for the pre-funded reserve. Because utility rates are set by the Commission to be sufficient, but not more than sufficient, to provide service to existing

customers, Jefferson County also argued that most utilities would lack revenues to pre-fund the reserve requirement. Jefferson County suggested that the Commission set rates that designate revenue to be placed into depreciation accounts to address capital expenditures of decentralized systems. Id.

Instead of requiring Commission approval of each contract to acquire an innovative system, as called for by proposed Rule 8.4, Jefferson County suggested that utilities file acquisition contracts only if they contain substantive terms that differ from a previously approved contract. Under this approach, utilities would get an initial form contract approved by the Commission and use it without discrimination until another agreement is approved by the Commission.

On March 16, 2011, Ashco-A-Corporation filed comments, asserting that the Commission was trying to infringe upon private business and had excluded the participation of members in the industry. Ltr. at 1.

On March 17, 2011, the National Parks Conservation Association filed comments, asserting that alternative, innovative systems are important to reduce pollution in the New River Gorge National River. All 53 miles of the main stem of the Lower New in the national park are impaired with fecal coliform. Ltr. at 1-2.

The Association asked the Commission to include source separation and grey water reuse or recycling technologies and specifications within the definition of alternative, innovative sewer systems. Cluster system design guidelines could benefit from source separation options, and grey water systems reduce land area requirements that are so challenging for septic and cluster systems to meet in southern West Virginia. Id.

The Association echoed other comments regarding the difficulty of utilities and customers to pre-fund a reserve account and suggested that Rule 3.1 become a “pre-funding option” with the discretion left to the responsible management entity. Id. Further, the Association argued that the pre-funding reserve requirement does not address the root cause of non-payment among customers and a more sustainable plan to fund operation and maintenance expenses in low-income communities was needed. The Association suggested that the Commission consider sewer billing as part of property tax liability or a state- or federally-funded program to provide assistance to low-income families to pay sewer bills. The Association also proposed that the management entity be able to partner with community watershed organizations to develop and implement customer education programs and that such partnerships be reflected as a budget line item to be paid to the local watershed organization. Ltr. at 1-2.

On April 4, 2011 Cerrone Associates, Inc. filed comments, stating that the provision of maps and drawings in the .pdf format (which is not alterable) is the industry standard and should remain so. Ltr. at 1-2. The electronic file formats required by the proposed rules (CAD and esri) are of an open structure and can be changed by any person

with access to the proper software. If the data on the files is changed, either maliciously or inadvertently, the professional documents could be altered in ways that would cause those relying upon the original accuracy to suffer economic or physical harm.

On June 13, 2011, the Wildlife Resources Section of the Division of Natural Resources filed comments, stating that it does not have or desire the statutory authority to mandate "design features" or "approve projects" for activities associated with sewer systems, as Kanawha Valley Chapter of Trout Unlimited Chapter recommended. Ltr. at 1-2. Utility line crossings are typically approved by the Corps of Engineers, through the Clean Water Act and under Nationwide Permits. DNR coordinates closely with the Corps of Engineers and the West Virginia Department of Environmental Protection Office of Water and Waste Management to formulate state specific water quality conditions that, if followed, minimize impacts to the aquatic resources when it is necessary to cross a stream with a utility line.

### DISCUSSION

We have reviewed the filings and appreciate the comments provided for our consideration. The Commission will adopt the proposed rules with several modifications.

The National Parks Conservation Association asked the Commission to include source separation and grey water reuse or recycling technologies and specifications within the definition of alternative, innovative sewer systems. Because Rule 1.7.c's definition includes "other non-traditional technologies designed to meet the wastewater treatment needs of customers in remote areas where large public sewer facilities are not available," it is not necessary to revise the definition.

Cerrone urged the Commission to require that professional drawings and documents required by Rules 2.2 and 2.3 be filed in the unalterable .pdf format. The Commission agrees that it is important to public health and safety that the data contained in such maps and drawings be unaltered. We will revise Rules 2.2 and 2.3 in this regard.

Jefferson County suggested that the required engineering data is appropriate to construct new facilities, but such data likely would not be available for most existing systems. Whenever a utility acquires or agrees to operate an innovative system, it is essential that adequate information be available about that system. We have not been persuaded, therefore, that Rules 2.2 and 2.3 should apply only to new systems.

WV-AWC, Jefferson County and the National Parks Conservation Association opposed the pre-funding reserve requirement in Rule 3.1. Sustainability of innovative systems is a key concern for the Commission because these systems are likely to be used in rural, low-income areas of our state where private sewer facilities have failed or are failing. Upon consideration of the comments, we find it reasonable to take more into

account the considerable experience of existing sewer utilities, particularly large utilities, in providing service under a myriad of conditions. The Commission will revise Rule 3.1 so that it applies only to sewer utilities that do not currently provide sewer service.

For utilities that do not yet provide sewer service, the Commission concludes that a reserve is necessary to assure that the utility will have sufficient funds to operate the system during start up. The reserve should be taken into account during the funding of innovative projects, similar to a pre-funded debt reserve. We have been persuaded that a reserve equal to twelve months of revenue per customer may be difficult to achieve and, as a result, could hamper the installation or operation of innovative systems. We will, therefore, reduce the required level of funding to six months of revenue for each customer to be served by the Innovative, Alternative Sewage Disposal Service.

We have not been persuaded that a cash bond equal to the amount of annual revenue or depreciation funding would be sufficient to maintain and operate these systems, in lieu of the pre-funding reserve requirement contained in Rule 3.1. Nor have we been persuaded that the pre-funding requirement should be made optional, with the discretion left to the responsible management entity of the innovative system. Id.

WV-AWC suggested that our requirement for a separate accounting of the reserve would prevent the use of single-tariff pricing. That is incorrect. Rule 3.2 only addresses accounting, it does not relate to Commission-approved rates.

WV-AWC suggested that an annual review of the pre-funding reserve is required, but that also is not correct. Rule 3.4 calls for a review of the activity in the reserve account in the context of the filing of a rate case by the utility or upon motion of the Commission.

Upon further consideration, the Commission has decided to delete the \$3 maximum monthly meter charge in Rule 4.2.c. Generally, the amount of a monthly meter charge is determined in a rate proceeding. A utility that provides alternative sewer service and wishes to assess a monthly meter charge should be subject to Commission review of the proposed meter charge in a rate proceeding.

WV-AWC would require a certificate of public convenience and necessity only for systems with more than fifty customers, not twenty-five as the Commission proposed in Rule 7.1, because professional services are needed to prepare a certificate application and the extra costs may jeopardize funding for small projects. Considering that these systems will provide utility service via innovative or alternative means, the Commission is not inclined to relax the general requirement for Commission review in a certificate proceeding. Upon review, we will revise Rule 7.1 to require any utility or entity that will serve a total of 25 or more customers through innovative facilities to apply for a certificate for the construction and operation of those facilities, but we will allow a Class A sewer utility to petition the Commission for a determination of whether a proposed innovative system is an ordinary extension of the existing system in the usual course of

business. Pursuant to W.Va. Code § 24-2-11(a), it is not necessary to obtain a certificate for the construction of ordinary extensions of existing utility systems in the usual course of business.

WV-AWC proposed that Rule 8.3 be divided into two sections, one dealing with system design and the other with construction management. We find this suggestion to be reasonable and will adopt it.

Instead of requiring Commission approval of each contract to acquire an innovative system as called for by Rule 8.4, Jefferson County suggested that a utility could get a form contract approved by the Commission and use it without discrimination until another agreement is approved by the Commission. At this time, and in recognition that innovative, alternative systems likely will differ substantially one from the other, the Commission will not adopt the form approach. Our decision today does not, however, preclude a utility from requesting approval of a form contract if appropriate circumstances arise.

We share the concern of the Kanawha Valley Chapter of Trout Unlimited that stream crossings cause as little disruption as possible to aquatic habitats. The Commission is not, however, authorized to create a responsibility to be undertaken by another state agency. The Kanawha Valley Chapter may wish to explore whether its comments would be relevant to the review of the nationwide permits under the Clean Water Act.

We do not have the authority to undertake the alternatives suggested to us by the National Parks Conservation Association, i.e., sewer billing as part of property tax liability, a state- or federally-funded program to provide assistance to low-income families to pay sewer bills, or funding of community watershed organizations. These ideas require exploration and action by other bodies.

Ashco-A-Corporation suggested that the Commission had excluded the participation of members in the industry, but Ashco-A-Corporation appears to be misinformed about Commission processes. Although manufacturers of innovative systems did not participate in the informal Work Group, statewide notice was published of this proceeding, which included the opportunity to file comments on the rules proposed by the Commission. The Commission did not in any way limit who may participate in this rulemaking proceeding.

### **FINDINGS OF FACT**

1. On February 9, 2011, the Commission promulgated proposed rules for systems that provide sewer service in areas that cannot be economically served by

traditional sewer systems and set a schedule to receive comments on the proposed rules. Comm'n Order at 3-4 & Att. B (Feb. 9, 2011).

2. The Commission received comments on the proposed rules on March 11, March 14, March 15, March 16, March 17, April 4, and June 13, 2011.

### CONCLUSIONS OF LAW

1. Because Rule 1.7.c's definition includes "other non-traditional technologies designed to meet the wastewater treatment needs of customers in remote areas where large public sewer facilities are not available," it is not necessary to revise the definition to include the technologies suggested by the National Parks Conservation Association.

2. It is important to public health and safety that the data contained in professional maps and drawings be unaltered.

3. Whenever a utility acquires or agrees to operate an innovative system, it is essential that adequate information be available about that system.

4. Sustainability of innovative systems is a key concern for the Commission because these systems are likely to be used in rural, low-income areas of our state where private sewer facilities have failed or are failing.

5. It is not necessary to require a pre-funding reserve for innovative systems that are constructed or operated by utilities that already provide sewer service.

6. It is reasonable to require a pre-funding reserve amount equal to six months of revenue for each customer to be served by innovative systems that are constructed or operated by utilities that do not yet provide sewer service.

7. Rule 3.2 addresses accounting and does not relate to Commission-approved rates.

8. Rule 3.4 does not require an annual review of the pre-funding reserve.

9. Rule 3.4 calls for a review of the activity in the reserve account in the context of the filing of a rate case by the utility or upon motion of the Commission.

10. The amount of a monthly meter charge should be determined in a rate proceeding.

11. Considering that these systems will provide utility service via innovative or alternative means, the Commission should not relax the general requirement for Commission review of a project in a certificate proceeding.

12. It is reasonable to allow a Class A sewer utility to petition the Commission for a determination of whether a proposed innovative system is an ordinary extension of the existing system in the usual course of business.

13. At this time, and in recognition that innovative, alternative systems likely will differ substantially one from the other, the Commission should not adopt the form approach to review proposed system acquisitions.

### ORDER

IT IS THEREFORE ORDERED that the Executive Secretary of the Commission shall submit the final Rules Governing Innovative, Alternative Sewer Systems, 150 C.S.R. Series 35, that appear in Attachment A, to the Secretary of State.

IT IS FURTHER ORDERED that the final rules shall be effective January 23, 2012.

IT IS FURTHER ORDERED that Attachment B is a blackline version, showing changes to the Rules Governing Innovative, Alternative Sewer Systems, 150 C.S.R. Series 35, comparing the proposed rules to the final rules.

IT IS FURTHER ORDERED that the rules submitted to the Secretary of State shall be accompanied by the required Form No. 5, "Notice of Agency Adoption of a Procedural or Interpretive Rule or a Legislative Rule Exempt from Legislative Review."

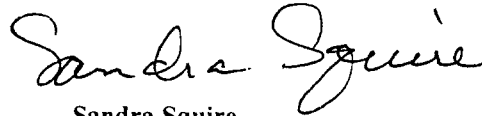
IT IS FURTHER ORDERED that the Executive Secretary cause a true and accurate copy of the final rules to be posted upon the Commission website.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this Order by electronic service on **all sewer utilities operating in West Virginia** that have filed an e-service agreement, by United States First Class Mail on all sewer utilities that have not filed an e-service agreement, and on Commission Staff by hand delivery.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste:

A handwritten signature in cursive script that reads "Sandra Squire".

Sandra Squire  
Executive Secretary

CLW/sek  
go18626c.doc

2011 NOV 22 PM 2: 16

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**SERIES 35  
RULES GOVERNING  
INNOVATIVE, ALTERNATIVE SEWER SYSTEMS**

**§150-35-1. General.**

1.1. Scope. - These rules govern the operation and service of Innovative, Alternative Sewage Disposal Service systems subject to the jurisdiction of the Public Service Commission pursuant to W. Va. Code §24-2-1.

1.2. Authority. - W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-2-5, 24-2-7, 24-2-8, 24-2-9, 24-3-2, 24-3-5, 16-13A-2, 16-13A-9, and 8-18-23.

1.3. Filing Date. - November 22, 2011.

1.4. Effective Date. - January 23, 2012.

1.5. General.

1.5.a. These Rules for the Government of Innovative, Alternative Sewer Systems, 150CSR35 (Innovative, Alternative Sewer System Rules), supplement the current Commission Rules for the Government of Sewer Utilities, 150CSR5 (Sewer Rules). Whenever there is any conflict between the Sewer Rules and the Innovative, Alternative Sewer System Rules for matters relating to Innovative, Alternative Sewage Disposal Service systems, the more specific provisions of the Innovative, Alternative Sewer System Rules, 150CSR35, shall apply. For matters relating to Innovative, Alternative Sewage Disposal Service systems that are not addressed in the Innovative, Alternative Sewer System Rules, the provisions in the Sewer Rules shall apply.

1.5.b. These rules are intended to insure adequate service to the public via Innovative, Alternative Sewer Disposal Service systems, to provide standards for uniform and fair charges and requirements by the utilities and their customers, and to establish the rights and responsibilities of both utilities and customers.

1.5.c. The adoption of these rules in no way precludes the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility or standard, either upon complaint or upon its own motion, or upon the application of any utility.

1.5.d. These rules will not relieve in any way a utility from any of its duties under the laws of this State.

## 1.6. Application of rules.

1.6.a. These rules apply to all public utilities as defined in Sewer Rule 1.7, 150CSR5-1.7.

1.6.b. If hardship results from the application of any Innovative, Alternative Sewer System Rule or if unusual difficulty is involved in immediately complying with any Innovative, Alternative Sewer System Rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions. Provided, that no application for modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

## 1.7. Definitions.

1.7.a. "Available Innovative, Alternative Sewage Disposal Service" – the utility, private or public, has installed and/or agreed to maintain such systems for a fee based on metered water usage when available or a flat rate.

1.7.b. "Cluster" – a small group of customers located in a remote area served by a single Innovative, Alternative sewage disposal system.

1.7.c. "Innovative, Alternative Sewage Disposal Service" – a system that relies on underground dispersal of treated wastes, small media based treatment facilities receiving effluent from customers and discharging treated effluent to either streams or to underground dispersal areas, home aeration units, individual onsite septic systems installed and/or maintained by a sewer utility and other non-traditional technologies designed to meet the wastewater treatment needs of customers in remote areas where large public sewer facilities are not available. Innovative, Alternative Sewage Disposal Service may be provided to an individual customer or a cluster. Relating to the application or interpretation of the Innovative, Alternative Sewer System Rules, the terms "Innovative," "Alternative" and "Innovative, Alternative" may be used interchangeably.

1.7.d. "User Agreement" – a written agreement between the sewer utility and the customer who receives Alternative, Innovative Sewage Disposal Service from the sewer utility.

## **§150-35-2. Maps and records.**

2.1. Entire layout required. – In addition to the requirements of Sewer Rule 2.6, 150CSR5-2.6, each utility shall keep on file suitable maps, plans, and records showing the entire layout, with the location, size and capacity of each Innovative, Alternative treatment facility, septic tank, underground dispersal area, reserve or set-aside installation area used to provide Innovative, Alternative Sewage Disposal Service.

2.2. Electronic and paper copies required. – Because of the unique nature of Innovative, Alternative Sewer Disposal Service and to maintain the currency of the system mapping, the sewer utility shall be required to submit to the Commission as-built electronic data files for all projects, in addition to the paper copies. To comply with this requirement, the sewer utility may provide the Commission with materials that the sewer utility receives from the project designer. The electronic file must be submitted with the original reproducible drawing when the project is substantially complete. A digital representation of all structures, gravity sewers, force main sewers, septic tanks, drain fields, treatment facilities and parcels where ownership or rights of way are acquired shall be delivered in .pdf format and use the appropriate North American datum (NAD) as specified by the utility.

2.3. Specific information requirements. – The following information shall be submitted to the Commission on a computer disk in .pdf format. Each type of Innovative, Alternative sewer infrastructure shall be included. All gravity sewer lines are to begin and terminate at each manhole, all force main sewers shall include clean outs appropriately spaced, and all septic tanks shall be clearly identified as to type, age and size.

- a. Roads (street names)
- b. Buildings and other structures
- c. Property lines
- d. Sanitary sewer details, including
  - 1. Manholes
  - 2. Gravity sewer lines and force mains
  - 3. Laterals and clean outs
  - 4. Valves, plugs, and pump stations
  - 5. Septic tanks and drain fields
  - 6. Service lines and tap locations
- e. Water system details, including those being constructed by the sewer utility
  - 1. Water mains
  - 2. Service lines between the main and the meter
  - 3. Water valves
  - 4. Fire hydrants and hydrant valves
  - 5. Water meters
  - 6. Air release valves
  - 7. Blow-offs and plugs
  - 8. Wells
- f. Easements
- g. Other underground utilities

The requirements of this rule to file information in .pdf format shall not preclude Commission Staff from requesting data in other formats.

2.4. Pre-requisite for initiation of service. – All designs, location information and installation certifications shall be submitted to the Commission prior to initiation of Innovative, Alternative Sewage Disposal Service.

**§150-35-3. Reserve account.**

3.1. Pre-funding requirement. – All sewer utilities that do not provide sewer service on the effective date of these Rules and seek to provide Innovative, Alternative Sewage Disposal Service shall provide to the Commission in the certificate of public convenience filing to construct and operate such a system evidence of the pre-funding of a reserve account equal to six (6) months of revenue for each customer to be served by the Innovative, Alternative Sewage Disposal Service. Such reserve must be segregated and maintained separately from other funds of the utility. The requirement for a reserve account, or the exemption for active utilities already providing sewer service, may be waived or modified by the Commission for good cause.

3.2. Separate accounting. – Any utility required to establish a pre-funding reserve account will keep a separate subsidiary ledger of the revenues and expenses incurred in providing Innovative, Alternative Sewage Disposal Service.

3.3. Access to reserve account. – The reserve account may be accessed to provide revenue to the sewer utility in the event that the revenues collected from customers receiving Innovative, Alternative Sewage Disposal Service are less than the projected incremental revenue levels approved by the Commission.

3.4. Commission review. – The Commission shall review the activity in the reserve account in the context of the filing of a rate case by the utility or upon motion of the Commission. If the account falls below the six-month (6-month) required revenue requirement level at the end of any year, the Commission may consider the use of a surcharge or other means to restore the reserve account to the six-month (6-month) revenue requirement level.

**§150-35-4. Billing.**

4.1. Calculating the bill. – All bills for Innovative, Alternative Sewer Disposal Service shall state whether the charge is based upon quantities of water consumed at the premises, flat rate or other basis.

4.2. No public water. – When public water is not available to the customer, the sewer utility may issue a flat rate bill or install a water meter on the customer's water well or water supply system to the premises being served and issue a bill based upon quantities of water consumed.

4.2.a. If the utility elects to install a water meter, it must first acquire rights of way from the customer that allow the utility to access the metering equipment and inspect the customer facilities. The rights of way shall be recorded in the real property records at the Court House in the County in which the customer property is located.

4.2.b. Any water meter installed by the sewer utility pursuant to this rule shall be subject to the calibration requirement in the Commission Rules for the Government of Water Utilities, 150CSR7. The meter shall be calibrated and maintained by the utility.

4.3. Public service district and municipal sewer utility customers who do not connect. – Customers of public service sewer districts and municipal sewer utilities who are not connected to Available Innovative, Alternative Sewage Disposal Service after appropriate notice has been given shall be billed based on actual water consumption or the average monthly water consumption based upon the owner's, tenant's, or occupant's specific customer class.

**§150-35-5. Notice of availability of Innovative, Alternative Sewage Disposal Service.**

5.1. Public service districts and municipal sewer utilities.

a. Publication and personal service required, generally. – When Innovative, Alternative Sewage Disposal Service is made available to customers in an area that has not previously been served by the municipal sewer utility or public service district, the municipal sewer utility or public service district shall publish a notice in a newspaper of general circulation in the area affected and provide notice by personal service to customers in the area affected.

b. When publication is not required. – Publication is not required when Innovative, Alternative Sewage Disposal Service is extended to a single customer at the customer's request.

c. Notice by publication. – The municipal sewer utility or public service district shall publish notice of the availability of Innovative, Alternative Sewage Disposal Service once a week for two consecutive weeks, with the second notice being published at least thirty (30) days prior to the date that the municipal sewer utility or public service district intends to begin billing for services.

d. Notice by personal service. – The municipal sewer utility or public service district shall provide notice to all potential customers either by certified mail, return receipt requested, by personal service with signed and dated receipt, or by posting a notice on the premises. If the premises to be served is not inhabited by the owner, notice shall be given to the owner by certified mail, return receipt requested, in addition to giving notice to the inhabitant of the premises. In the event that the municipal sewer

utility or public service district is not able to effect personal notice after a good faith effort, or if the municipal sewer utility or public service district believes that the requirements of this section create an undue hardship, the municipal sewer utility or public service district may petition the Commission for a waiver of the requirements to provide personal notice.

e. Notice requirements. – Both the published and personal notice shall state, at a minimum, the following information:

1. that sewer services are available
2. the date that the municipal sewer utility or public service district will begin billing for sewer services
3. the municipal sewer utility's or public service district's rates
4. that the municipal sewer utility may petition the circuit court to compel connection to the sewer system, or that W. Va. Code §16-13A-9 authorizes the public service district to petition the circuit court to compel connection to the sewer system,
5. the location and telephone number of the municipal sewer utility's or the public service district's business office
6. the amount of the bill to be rendered by the municipal sewer utility or by the public service district as provided by W. Va. Code §16-13A-9, in the event a customer does not connect to the system.

5.2. Utilities other than public service districts and municipal sewer utilities – All of the publication and personal service provisions set forth above apply, except that the publication and personal notice shall not state that the sewer utility may petition the circuit court to compel connection to the sewer system.

#### **§150-35-6. Customer User Agreement and educational outreach.**

6.1. User Agreement required. – Any provider of Innovative, Alternative Sewage Disposal Service shall require all new customers to sign a User Agreement accepting for at least 10 years the type of Innovative, Alternative Sewage Disposal Service to be provided and the method by which billing will occur. If the facilities include on-site treatment of effluent, the User Agreement shall define all of the requirements and responsibilities of the customer with the appropriate charges noted. The User Agreement shall be recorded in the real property records at the Court House in the County in which the customer property is located.

6.2. Educational outreach required. – Any provider of Innovative, Alternative Sewage Disposal Service that files a certificate of public convenience and necessity application for facilities to provide such service must submit a customer education and outreach plan as a part of the certificate application.

6.3. Customer education and outreach plan requirements. – The customer education and outreach plan must include, at least, the following:

a. If septic tanks are a component of the collection and treatment system, an outlined method for disseminating information regarding septic system maintenance, prohibited waste stream discharges and customer responsibilities. The plan should clearly define the charges that the sewer utility will assess if a customer fails to follow the tank maintenance requirements. The plan also should clearly delineate septic tank ownership and maintenance responsibilities (including regular pumping of tanks and associated costs) and the replacement schedule. If existing septic tanks are to be incorporated into the new collection and treatment system, and a cost-sharing arrangement is to be implemented for tank and/or onsite system maintenance activities, the education and outreach plan must provide a complete detail of related costs and responsibilities.

b. The education and outreach plan information shall be presented to the customer when the customer applies for Innovative, Alternative Sewage Disposal Service.

c. Customer outreach and education will occur thereafter at least every 2 years.

d. The customer education and outreach plan and all related information must be available at the sewer utility's business office during normal business hours.

#### **§150-35-7. Certificate of Public Convenience and Necessity.**

7.1. Certificate required. – Any utility or entity that will serve a total of 25 or more customers through Innovative, Alternative Sewage Disposal Service facilities must apply for a certificate of public convenience and necessity for the construction and operation of those facilities. A Class A sewer utility may petition the Commission for a determination of whether a proposed Innovative, Alternative Sewer Disposal Service facility is an ordinary extension of the existing system in the usual course of business.

7.2. Designation of area served. – Innovative, Alternative Sewage Disposal Service facilities may only be installed in accordance with the certificate approved by the Commission.

**§150-35-8. Installation; Acceptance of facilities; Initiation of service.**

8.1. Utility service pipe when septic tanks are used. – For Innovative, Alternative Sewage Disposal Service facilities using septic tanks, the point of service shall be the customer inlet pipe to the septic tank. If the septic tank is located on an adjacent property, the point of service is the customer's property line with any adjoining customers.

8.2. Standard installation for systems with on-site effluent treatment. – For Innovative, Alternative Sewage Disposal Service facilities using septic tanks with individual on-site effluent dispersal fields or other on-site effluent treatment technologies, the sewer utility shall adopt standard methods of installation where practicable that meet, as a minimum, all existing West Virginia Bureau for Public Health requirements. Such methods shall be set out with written descriptions and drawings to provide a clear understanding of the requirements, all of which shall be submitted to the Commission. The customer using the on-site system shall also be provided with written information outlining the care of the tank and dispersal field and the charges for violation of those practices.

8.3. Acceptance of facilities. – Prior to acceptance of any Innovative, Alternative Sewage Disposal System facilities, the sewer utility shall require from its Engineering Department and/or its contracted Engineer or Engineering Inspector a certification stamped with the seal of a Registered Professional Engineer stating that all construction and/or installation requirements per the Engineering drawings have been met and meet any and all current Bureau for Public Health or the Department of Environmental Protection standards that apply to each installation and/or part of the system. The certification shall include record photographs of all valve installations, video records of at least fifty percent (50%) of each size of total pipe length installed prior to burial, video records of all tank installations prior to initiation of service, concrete strength reports, water tightness testing of all tanks and manufacturers and/or vendor certifications that all materials supplied meet all pertinent standards.

8.4. Construction management. – A designated employee of the sewer utility, a member of the Bureau for Public Health or a contract inspector hired by the utility with at least five years of pertinent utility construction experience shall review and approve all video recordings of the new installation prior to release of any construction payments. The sewer utility may supply a full time inspector to review all construction installations prior to burial to meet the review requirement.

8.5. Approval by the Commission – The sewer utility shall file each contract for Commission review and receive approval from the Commission before the sewer utility may take ownership of any Innovative, Alternative Sewage Disposal Service facility.

8.6. Initiation of service. - Prior to initiation of service of any Innovative, Alternative Sewage Disposal Service facility, the sewer utility shall receive a complete set of as-built drawings in both hard printed copy and fully executable electronic AutoCad files. The utility shall also receive all electronic files from any aerial photography, geologic studies and any other files required to complete the installation.

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**SERIES 35  
RULES GOVERNING  
INNOVATIVE, ALTERNATIVE SEWER SYSTEMS**

**§150-35-1. General.**

1.1. Scope. - These rules govern the operation and service of Innovative, Alternative Sewage Disposal Service systems subject to the jurisdiction of the Public Service Commission pursuant to W. Va. Code §24-2-1.

1.2. Authority. - W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-2-5, 24-2-7, 24-2-8, 24-2-9, 24-3-2, 24-3-5, 16-13A-2, 16-13A-9, and 8-18-23.

1.3. Filing Date. - November 22, 2011.

1.4. Effective Date. - January 23, 2012.

1.5. General.

1.5.a. These Rules for the Government of Innovative, Alternative Sewer Systems, 150CSR35 (Innovative, Alternative Sewer System Rules), supplement the current Commission Rules for the Government of Sewer Utilities, 150CSR5 (Sewer Rules). Whenever there is any conflict between the Sewer Rules and the Innovative, Alternative Sewer System Rules for matters relating to Innovative, Alternative Sewage Disposal Service systems, the more specific provisions of the Innovative, Alternative Sewer System Rules, 150CSR35, shall apply. For matters relating to Innovative, Alternative Sewage Disposal Service systems that are not addressed in the Innovative, Alternative Sewer System Rules, the provisions in the Sewer Rules shall apply.

1.5.b. These rules are intended to insure adequate service to the public via Innovative, Alternative Sewer Disposal Service systems, to provide standards for uniform and fair charges and requirements by the utilities and their customers, and to establish the rights and responsibilities of both utilities and customers.

1.5.c. The adoption of these rules in no way precludes the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility or standard, either upon complaint or upon its own motion, or upon the application of any utility.

1.5.d. These rules will not relieve in any way a utility from any of its duties under the laws of this State.

## 1.6. Application of rules.

1.6.a. These rules apply to all public utilities as defined in Sewer Rule 1.7, 150CSR5-1.7.

1.6.b. If hardship results from the application of any Innovative, Alternative Sewer System Rule or if unusual difficulty is involved in immediately complying with any Innovative, Alternative Sewer System Rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions. Provided, that no application for modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

## 1.7. Definitions.

1.7.a. "Available Innovative, Alternative Sewage Disposal Service" – the utility, private or public, has installed and/or agreed to maintain such systems for a fee based on metered water usage when available or a flat rate.

1.7.b. "Cluster" – a small group of customers located in a remote area served by a single Innovative, Alternative sewage disposal system.

1.7.c. "Innovative, Alternative Sewage Disposal Service" – a system that relies on underground dispersal of treated wastes, small media based treatment facilities receiving effluent from customers and discharging treated effluent to either streams or to underground dispersal areas, home aeration units, individual onsite septic systems installed and/or maintained by a sewer utility and other non-traditional technologies designed to meet the wastewater treatment needs of customers in remote areas where large public sewer facilities are not available. Innovative, Alternative Sewage Disposal Service may be provided to an individual customer or a cluster. Relating to the application or interpretation of the Innovative, Alternative Sewer System Rules, the terms "Innovative," "Alternative" and "Innovative, Alternative" may be used interchangeably.

1.7.d. "User Agreement" – a written agreement between the sewer utility and the customer who receives Alternative, Innovative Sewage Disposal Service from the sewer utility.

## **§150-35-2. Maps and records.**

2.1. Entire layout required. – In addition to the requirements of Sewer Rule 2.6, 150CSR5-2.6, each utility shall keep on file suitable maps, plans, and records showing the entire layout, with the location, size and capacity of each Innovative, Alternative treatment facility, septic tank, underground dispersal area, reserve or set-aside installation area used to provide Innovative, Alternative Sewage Disposal Service.

2.2. Electronic and paper copies required. – Because of the unique nature of Innovative, Alternative Sewer Disposal Service and to maintain the currency of the system mapping, the sewer utility shall be required to submit to the Commission as-built electronic data files for all projects, in addition to the paper copies. To comply with this requirement, the sewer utility may provide the Commission with materials that the sewer utility receives from the project designer. The electronic file must be submitted with the original reproducible drawing when the project is substantially complete. A digital representation of all structures, gravity sewers, force main sewers, septic tanks, drain fields, treatment facilities and parcels where ownership or rights of way are acquired shall be delivered in ~~either computer-aided design (CAD) or Esri shapefiles~~ .pdf format and use the appropriate North American datum (NAD) as specified by the utility.

2.3. Specific information requirements. – The following information layers, ~~at a minimum~~, shall be submitted to the Commission on a computer disk in .pdf ~~CAD or Esri shapefile~~ format ~~and shall be based on the CAD Layer Standards adopted by the utility if applicable~~. Each type of Innovative, Alternative sewer infrastructure shall be included ~~in a separate layer~~. ~~Structures are to be defined as points or symbol objects~~. All gravity sewer lines are to begin and terminate at each manhole, all force main sewers shall include clean outs appropriately spaced, and all septic tanks shall be clearly identified as to type, age and size. ~~Any data related to any structure or pipe shall be added to the attribute or object data of the associated object. Any text should be attached to the object data of that particular manhole or structure, not on the CAD drawing.~~

- a. Roads (street names)
- b. Buildings and other structures
- c. Property lines
- d. Sanitary sewer details, including
  - 1. Manholes
  - 2. Gravity sewer lines and force mains
  - 3. Laterals and clean outs
  - 4. Valves, plugs, and pump stations
  - 5. Septic tanks and drain fields
  - 6. Service lines and tap locations
- e. Water system details, including those being constructed by the sewer utility
  - 1. Water mains
  - 2. Service lines between the main and the meter
  - 3. Water valves
  - 4. Fire hydrants and hydrant valves
  - 5. Water meters
  - 6. Air release valves
  - 7. Blow-offs and plugs
  - 8. Wells
- f. Easements
- g. Other underground utilities

The requirements of this rule to file information in .pdf format shall not preclude Commission Staff from requesting data in other formats.

2.4. Pre-requisite for initiation of service. – All designs, location information and installation certifications shall be submitted to the Commission prior to initiation of Innovative, Alternative Sewage Disposal Service.

**§150-35-3. Reserve account.**

3.1. Pre-funding requirement. – All sewer utilities that do not provide sewer service on the effective date of these Rules and seeking to provide Innovative, Alternative Sewage Disposal Service shall provide to the Commission in the certificate of public convenience filing to construct and operate such a system evidence of the pre-funding of a reserve account equal to ~~twelve~~ six (12-6) months of revenue for each customer to be served by the Innovative, Alternative Sewage Disposal Service. Such reserve must be segregated and maintained separately from other funds of the utility. The requirement for a reserve account, or the exemption for active utilities already providing sewer service, may be waived or modified by the Commission for good cause.

3.2. Separate accounting. – The Any utility required to establish a pre-funding reserve account will keep a separate subsidiary ledger of the revenues and expenses incurred in providing Innovative, Alternative Sewage Disposal Service and segregate the funds in the reserve account from any other funds kept by the utility.

3.3. Access to reserve account. – The reserve account may be accessed to provide revenue to the sewer utility in the event that the revenues collected from customers receiving Innovative, Alternative Sewage Disposal Service are less than the projected incremental revenue levels approved by the Commission.

3.4. Commission review. – The Commission shall review the activity in the reserve account in the context of the filing of a rate case by the utility or upon motion of the Commission. If the account falls below the ~~twelve~~ six-month (6+2-month) required revenue requirement level at the end of any year, the Commission may consider the use of a surcharge or other means to restore the reserve account to the ~~twelve~~ six-month (12-6-month) revenue requirement level.

**§150-35-4. Billing.**

4.1. Calculating the bill. – All bills for Innovative, Alternative Sewer Disposal Service shall state whether the charge is based upon quantities of water consumed at the premises, flat rate or other basis.

4.2. No public water. – When public water is not available to the customer, the sewer utility may issue a flat rate bill or install a water meter on the customer's water well

or water supply system to the premises being served and issue a bill based upon quantities of water consumed.

4.2.a. If the utility elects to install a water meter, it must first acquire rights of way from the customer that allow the utility to access the metering equipment and inspect the customer facilities. The rights of way shall be recorded in the real property records at the Court House in the County in which the customer property is located.

4.2.b. Any water meter installed by the sewer utility pursuant to this rule shall be subject to the calibration requirement in the Commission Rules for the Government of Water Utilities, 150CSR7. The meter shall be calibrated and maintained by the utility.

~~4.2.c. If the sewer utility elects to install a water meter, the sewer bill may include a meter charge not to exceed \$3.00 per meter, upon Commission approval of such a charge. The Commission may review and modify this fee in a rate case.~~

4.3. Public service district and municipal sewer utility customers who do not connect. – Customers of public service sewer districts and municipal sewer utilities who are not connected to Available Innovative, Alternative Sewage Disposal Service after appropriate notice has been given shall be billed based on actual water consumption or the average monthly water consumption based upon the owner's, tenant's, or occupant's specific customer class.

#### **§150-35-5. Notice of availability of Innovative, Alternative Sewage Disposal Service.**

5.1. Public service districts and municipal sewer utilities.

a. Publication and personal service required, generally. – When Innovative, Alternative Sewage Disposal Service is made available to customers in an area that has not previously been served by the municipal sewer utility or public service district, the municipal sewer utility or public service district shall publish a notice in a newspaper of general circulation in the area affected and provide notice by personal service to customers in the area affected.

b. When publication is not required. – Publication is not required when Innovative, Alternative Sewage Disposal Service is extended to a single customer at the customer's request.

c. Notice by publication. – The municipal sewer utility or public service district shall publish notice of the availability of Innovative, Alternative Sewage Disposal Service once a week for two consecutive weeks, with the second notice being published at least thirty (30) days prior to the date that the municipal sewer utility or public service district intends to begin billing for services.

d. Notice by personal service. – The municipal sewer utility or public service district shall provide notice to all potential customers either by certified mail, return receipt requested, by personal service with signed and dated receipt, or by posting a notice on the premises. If the premises to be served is not inhabited by the owner, notice shall be given to the owner by certified mail, return receipt requested, in addition to giving notice to the inhabitant of the premises. In the event that the municipal sewer utility or public service district is not able to effect personal notice after a good faith effort, or if the municipal sewer utility or public service district believes that the requirements of this section create an undue hardship, the municipal sewer utility or public service district may petition the Commission for a waiver of the requirements to provide personal notice.

e. Notice requirements. – Both the published and personal notice shall state, at a minimum, the following information:

1. that sewer services are available
2. the date that the municipal sewer utility or public service district will begin billing for sewer services
3. the municipal sewer utility's or public service district's rates
4. that the municipal sewer utility may petition the circuit court to compel connection to the sewer system, or that W. Va. Code §16-13A-9 authorizes the public service district to petition the circuit court to compel connection to the sewer system,
5. the location and telephone number of the municipal sewer utility's or the public service district's business office
6. the amount of the bill to be rendered by the municipal sewer utility or by the public service district as provided by W. Va. Code §16-13A-9, in the event a customer does not connect to the system.

5.2. Utilities other than public service districts and municipal sewer utilities – All of the publication and personal service provisions set forth above apply, except that the publication and personal notice shall not state that the sewer utility may petition the circuit court to compel connection to the sewer system.

#### **§150-35-6. Customer User Agreement and educational outreach.**

6.1. User Agreement required. – Any provider of Innovative, Alternative Sewage Disposal Service shall require all new customers to sign a User Agreement accepting for at least 10 years the type of Innovative, Alternative Sewage Disposal Service to be provided and the method by which billing will occur. If the facilities include on-site treatment of effluent, the User Agreement shall define all of the requirements and responsibilities of the customer with the appropriate charges noted. The User Agreement shall be recorded in the real property records at the Court House in the County in which the customer property is located.

6.2. Educational outreach required. – Any provider of Innovative, Alternative Sewage Disposal Service that files a certificate of public convenience and necessity application for facilities to provide such service must submit a customer education and outreach plan as a part of the certificate application.

6.3. Customer education and outreach plan requirements. – The customer education and outreach plan must include, at least, the following:

a. If septic tanks are a component of the collection and treatment system, an outlined method for disseminating information regarding septic system maintenance, prohibited waste stream discharges and customer responsibilities. The plan should clearly define the charges that the sewer utility will assess if a customer fails to follow the tank maintenance requirements. The plan also should clearly delineate septic tank ownership and maintenance responsibilities (including regular pumping of tanks and associated costs) and the replacement schedule. If existing septic tanks are to be incorporated into the new collection and treatment system, and a cost-sharing arrangement is to be implemented for tank and/or onsite system maintenance activities, the education and outreach plan must provide a complete detail of related costs and responsibilities.

b. The education and outreach plan information shall be presented to the customer when the customer applies for Innovative, Alternative Sewage Disposal Service.

c. Customer outreach and education will occur thereafter at least every 2 years.

d. The customer education and outreach plan and all related information must be available at the sewer utility's business office during normal business hours.

#### **§150-35-7. Certificate of Public Convenience and Necessity.**

7.1. Certificate required. – Any utility or entity ~~installing Innovative, Alternative Sewage Disposal Service facilities that will serve a total of 25 or more customers through Innovative, Alternative Sewage Disposal Service facilities~~ must apply for a certificate of public convenience and necessity for the construction and operation of those facilities. A Class A sewer utility may petition the Commission for a determination of whether a proposed Innovative, Alternative Sewer Disposal Service facility is an ordinary extension of the existing system in the usual course of business.

7.2. ~~Certificate not required. – Any utility or entity installing Innovative, Alternative Sewage Disposal Service facilities shall be exempt from the Commission's certificate of public convenience and necessity review for construction on all systems serving less than 25 customers.~~ Designation of area served. – Innovative, Alternative Sewage Disposal Service facilities may only be installed in accordance with the certificate approved by the Commission.

**§150-35-8. Installation; Acceptance of facilities; Initiation of service.**

8.1. Utility service pipe when septic tanks are used. – For Innovative, Alternative Sewage Disposal Service facilities using septic tanks, the point of service shall be the customer inlet pipe to the septic tank. If the septic tank is located on an adjacent property, the point of service is the customer's property line with any adjoining customers.

8.2. Standard installation for systems with on-site effluent treatment. – For Innovative, Alternative Sewage Disposal Service facilities using septic tanks with individual on-site effluent dispersal fields or other on-site effluent treatment technologies, the sewer utility shall adopt standard methods of installation where practicable that meet, as a minimum, all existing West Virginia Bureau for Public Health requirements. Such methods shall be set out with written descriptions and drawings to provide a clear understanding of the requirements, all of which shall be submitted to the Commission. The customer using the on-site system shall also be provided with written information outlining the care of the tank and dispersal field and the charges for violation of those practices.

8.3. Acceptance of facilities. – Prior to acceptance of any Innovative, Alternative Sewage Disposal System facilities, the sewer utility shall require from its Engineering Department and/or its contracted Engineer or Engineering Inspector a certification stamped with the seal of a Registered Professional Engineer stating that all construction and/or installation requirements per the Engineering drawings have been met and meet any and all current Bureau for Public Health or the Department of Environmental Protection standards that apply to each installation and/or part of the system. The certification shall include record photographs of all valve installations, video records of at least fifty percent (50%) of each size of total pipe length installed prior to burial, video records of all tank installations prior to initiation of service, concrete strength reports, water tightness testing of all tanks and manufacturers and/or vendor certifications that all materials supplied meet all pertinent standards. ~~A designated employee of the sewer utility, a member of the Bureau for Public Health or a contract Inspector hired by the utility with at least five years of pertinent utility construction experience shall review and approve all video recordings of the new installation prior to release of any construction payments. The sewer utility may supply a full time inspector to review all construction installations prior to burial to meet the review requirement.~~

8.4. Construction management. – A designated employee of the sewer utility, a member of the Bureau for Public Health or a contract inspector hired by the utility with at least five years of pertinent utility construction experience shall review and approve all video recordings of the new installation prior to release of any construction payments. The sewer utility may supply a full time inspector to review all construction installations prior to burial to meet the review requirement.

8.45. Approval by the Commission - The sewer utility shall file each contract for Commission review and receive approval from the Commission before the sewer utility may take ownership of any Innovative, Alternative Sewage Disposal Service facility.

8.56. Initiation of service. - Prior to initiation of service of any Innovative, Alternative Sewage Disposal Service facility, the sewer utility shall receive a complete set of as-built drawings in both hard printed copy and fully executable electronic AutoCad files. The utility shall also receive all electronic files from any aerial photography, geologic studies and any other files required to complete the installation.

~~8.6. Designation of area served. - Innovative, Alternative Sewage Disposal Service facilities may only be installed in accordance with the certificate approved by the Commission.~~

*Public Service Commission*

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Phone: (304) 340-0450  
FAX: 1-866-336-2893  
E-mail: rhitt@psc.state.wv.us

November 22, 2011

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0771

**Via Hand Delivery**

Re: Public Service Commission; Rules Governing Innovative,  
Alternative Sewer Systems, 150 C.S.R. Series 35

Dear Ms. Cooper:

Enclosed for filing is a copy of final rules in the above new series. The rules are promulgated under the Commission's existing rulemaking authority, exempt from legislative rulemaking review pursuant to W. Va. Code § 24-1-7.

Also enclosed are a notice of agency adoption, a fiscal note, a summary of the rule, and a statement of circumstances.

Because the Commission is not part of the Cabinet structure, the Commission Order is the evidence of the approval of the filing by the agency head, Chairman Michael A. Albert.

Please date stamp the enclosed three extra copies of the filing packet and return them with our messenger. If you have any questions or if there are any problems please bring them to my attention.

Sincerely Yours,

A handwritten signature in black ink that reads "Richard E. Hitt".

Richard E. Hitt  
General Counsel

cc: Cynthia L. Wilson, Law Clerk