

PUBLIC HEARING SIGN IN SHEET

2020 Proposed Legislative Rules: 33CSR20, 38CSR2, 38CSR2F, 60CSR3
 Monday, July 8, 2019 - 6 pm. • WVDEP Headquarters - Charleston, WV

The West Virginia Department of Environmental Protection asks for the information below so that agency staff may provide responses and information about decisions to you. *The information you voluntarily provide on this sheet becomes part of the public record related to this topic and may be released if requested under the Freedom of Information Act.*

| Name (PLEASE PRINT) | Mailing Address | Phone Number | Email Address | Organizations Represented | Do you wish to speak at this hearing? |
|------------------------------|---|------------------------------|-------------------------------|------------------------------|---|
| Danny Lutz | 175 Woodland Rd Charles Town, WV | 304-725-0966 304-886-5711 | p.lutz607@gmail.com | Self MP and ERDC | Yes |
| JASON BOSTIC | 200 ASSOCIATION Drive SUITE 100 CHARLESTON WV 25301 | 304-342-4153 304-610-1543 | jbostic@wvcoal.com | WV COAL ASSOCIATION | NO |
| Elizabeth T. Schindzieler | 707 Virginia St East Suite 1500, Charleston, WV | | liz.schindzieler@Dinsmore.com | | No |
| Joe Sizemore | 601 5TH ST Charleston, WV 25304 | 304-926-0499 xt 1314 | Joe.M.Sizemore@wv.gov | WVDEP | No |
| Julie Wandling | 601 5TH ST Charleston WV 25304 | 304-926-0499 x 1074 | julie.a.wandling@wv.gov | WVDEP | No |
| Angie Rossel | 3501 MacCorkle #129 Chas. WV 25304 | 304-637-7201 | arossel@wvrivers.org | WV Rivers Coalition | Yes |
| Scott Mandala | 601 5TH ST, Charleston, WV 25304 | 304-926-0440 | Scott.g.mandala@wv.gov | DEP | No |
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STATE OF WEST VIRGINIA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: PROPOSED LEGISLATIVE RULES FOR 2020

RULE 33CSR20, RULE 38CSR2, RULE 38CSR2F, RULE 60CSR3

PUBLIC HEARING

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BEFORE: TERRY FLETCHER, Chair

Scott Mandirola

John Vernon

Joe Sizemore

Julie Wandling

John Meeks

Ross Burton

Casey Korbini

HEARING: Monday, July 8, 2019

6:04 p.m.

LOCATION: WV Department of Environmental Protection

601 57th Street SE

Charleston, WV 25304

Reporter: Joseph Harmon

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OPENING REMARKS

By Chair

4 - 6

PUBLIC COMMENT

By Daniel Lutz

6 - 9

By Angie Rosser

9 - 14

CLOSING REMARKS

By Chair

14 - 15

E X H I B I T S

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CHAIR: Good evening. My name is Terry Fletcher, and I'm with the West Virginia Department of Environmental Protection's Public Information Office.

Welcome to the public hearing on the proposed legislative rules for 2020; 33CSR20, 38CSR2, 38CSR2F and 60CSR3. With me tonight is the DEP's Scott Mandirola, John Vernon with the Division of Mining and Reclamation, Joe Sizemore and Julie Wandling with our Division of Hazardous Waste, John Meeks, Ross Burton and Casey Korbini with our Office of Environmental Remediation, and court reporter Joey Harmon.

The purpose for a public hearing is to give you the opportunity to share your comments or information about the proposed rules with the DEP.

Tonight's meeting is being recorded by a court reporter so that comments you share can be taken into consideration and entered into the public record for these proposed rules.

The decision will not be made the evening. The transcript will be reviewed and considered by the staff, and you'll receive notification once a decision is made.

1 Please be advised that the public comment
2 periods for these rules ends at the conclusion of this
3 hearing. Because we are here to hear your comments and
4 get them on the record, this is not a forum to engage the
5 DEP in open discussion or debate about the rules.

6 After those who wish to speak have done
7 so, we will close the hearing and the record. If you
8 have questions you would like to ask about the rules,
9 some of the staff will stick around to try and answer
10 your questions. However, we cannot answer them during
11 the hearing portion.

12 To ensure that we successfully achieve the
13 purpose of this meeting, we ask that everyone be
14 respectful and considerate of each other by refraining
15 from using foul language, name calling, interrupting
16 others while they are speaking, and to keep your comments
17 on the topic of these rules so that our time together is
18 used --- used efficiently, excuse me.

19 I will call you up in the order we have
20 your name on the sign-in sheets. Please state your name,
21 where you live, and if you are with any groups or
22 organizations. If you have written comments that you
23 would like to submit in addition to your spoken comments,
24 please hand them to me after you speak, or at the

1 conclusion of the --- of the meeting.

2 We will begin the hearing with our first
3 speaker. First we have Danny Lutz, followed by Angie
4 Rosser.

5 MR. LUTZ: Where do you want the remarks
6 addressed?

7 CHAIR: Just stand up here at the podium.

8 MR. LUTZ: My name is Daniel Lutz and I'm
9 representing myself. I'm also conservation district
10 supervisor from Jefferson County Eastern Panhandle
11 Conservation District, and a member of the state
12 committee of the Mountain Party, if that matters.

13 I am troubled by the way these hearings
14 have been handled. I did not --- I looked over the
15 newspapers from Eastern Panhandle. I did not see these
16 hearings posted anywhere. In fact, only by accident did
17 I even hear of them from a gentleman over here in Putnam
18 County.

19 I made a request that these hearings be
20 conducted on Skype or some other such electronic medium
21 that all people who cannot come to Charleston for such
22 hearings as this might have a chance to participate, and
23 an electronic record could be made of the comments. I
24 did not receive an answer to that request. I don't know

1 why I wasn't surprised.

2 There has been no agenda published for
3 these proceedings other than Mr. Fletcher read, which I
4 believe is a --- is to bring these regulations into ---
5 the ones to be discussed tomorrow night into compliance
6 with the federal regulations which are in the process of
7 being altered. I don't know exactly what form those are
8 going to take and that's why an agenda would've been nice
9 to see.

10 At this moment, the DEP probably would be
11 best served to be listening to the present public radio
12 broadcast marketplace at this moment because they are
13 discussing, among other things, how to handle major
14 pollutants before they get into the environment,
15 especially carbon dioxide.

16 These --- I know several firms --- I'm
17 well acquainted with several firms that are working on
18 just these programs. For --- in particular for the water
19 resources, the water quality, we need routine monitoring
20 of all discharges in West Virginia water --- waterways
21 from all sources.

22 West Virginia is a source of water for
23 herself, the District of Columbia and parts of 12 other
24 states. I know of no other state in the east which is

1 the source of more water. Some of the states in the west
2 just by virtue of their size probably produce more water.

3 The Department of Defense and FEMA have
4 contingency plans as we speak for dealing with an influx
5 of people from the west and from the south coming north
6 because West Virginia, in the next ten years, will be one
7 of the areas which has an abundance of fresh water.

8 Yes, we will lose a representative after
9 the 2020 census, but we will probably pick up three, if
10 not four, by the 2030 census because of what is unkindly
11 called the eastward northward Okie migration of the 21st
12 century.

13 People will go where there is water and
14 the sustenance of life, that's all there is to it. So as
15 West Virginias, and officials, we have the obligation to
16 make certain that we are the best stewards of these
17 resources we can possibly be, and when they leave our
18 borders to assure they are as pristine as when they
19 emerged from the ground.

20 Finally, I would like to propose that the
21 period that is going to end --- Mr. Fletcher has declared
22 at an end tonight, should be extended through the 31
23 October, 2019 period for analysis, and I should like to
24 ask the DEP and the other affected agencies to hold eight

1 public hearings around the State of West Virginia to hear
2 what experts, scientists, stakeholders, public officials,
3 have to say about the changes to these regulations that
4 are going to affect all of us for a long time to come.

5 That's the least you can do, and these
6 would --- these would be hearings with testimonies, sworn
7 testimony, and Cross Examination of competent and expert
8 witnesses. This is what we need. This way, when you
9 digest this information, you will be able to give the
10 legislature the best regulatory proposal you can possibly
11 make. Thank you for your time.

12 MS. ROSSER: Good evening. I'm Angie
13 Rosser. I'm here representing the West Virginia Rivers
14 Coalition, and we appreciate the opportunity to comment.

15 I would like to reinforce Mr. Lutz's idea
16 of streaming these hearings over the internet so that
17 people can participate remotely. I think that's a great
18 idea because traveling to Charleston is an --- an undue
19 burden and expensive for a lot of people --- of working
20 people. So I encourage the agency to look at those,
21 utilizing technology to expand public input, and also the
22 points Mr. Lutz made about doing everything possible to
23 make sure the public is aware of these regulatory changes
24 and the opportunities to comment.

1 So I will go through our comments, which
2 are --- are fairly brief on each of the rules. I'll
3 start with the hazardous waste management system rules,
4 33CSR20, where we appreciate the proposed rule addition
5 of an exclusion to certain federal regulations, and I
6 --- I just --- I'll be submitting our written comments
7 for the record that give the citation.

8 This particular exclusion we cite
9 specifies that small quantity generators cannot dispose
10 of hazardous waste --- hazardous waste in a municipal
11 solid waste landfill, or a non-municipal non-hazardous
12 waste disposal --- disposal unit. We think this a good
13 --- good idea and a good precaution.

14 We had a hard time with the citation
15 because the --- the scans provided on the DEP website
16 were --- were illegible in --- in certain lines, and so
17 if there's anything that --- that can be done to avoid,
18 --- appears they were scanned copies and because they
19 were scanned and had the draft over them, it was hard to
20 read certain changes. That's all we have on the
21 hazardous wastes.

22 Next is the voluntary remediation and
23 redevelopment rule, 60CSR3. We support the clarification
24 and strengthening of requirements for licensed

1 remediation specialists. We also support the increase in
2 licensing fees as a reasonable change, as those fees have
3 not been changed since 1997.

4 We understand the application of
5 presumptive remedies may have an advantage in saving time
6 and money, but if it is the current requirement to do
7 more site specific analysis, what information in analysis
8 is going to be lost with this change? That's our
9 question.

10 And last --- lastly, the proposed
11 revisions in this rule indicate that the de minimis
12 standards for the migration of constituents from soil to
13 groundwater would be completely removed from the rule.
14 So instead of using those hard and fast numbers in the
15 rule, applicants would have to evaluate potential for
16 exceeding de minimis standards for groundwater migration
17 using the voluntary remediation guidance manual is what
18 is implied in the rule --- in the rule revision.

19 Our question, is this evaluation method
20 already in the guidance manual, or will it need to be
21 developed? And if they need to be developed, we --- we
22 would request that these standards not be removed from
23 the rule until that method is developed and included in
24 the guidance manual. And that's all on the voluntary

1 remediation.

2 Our last comments are related to the
3 mining rules, 38CSR2, the West Virginia Surface Mining
4 Reclamation Rule. We have general concerns that the
5 proposed change will limit claims for recovery only under
6 --- under SMCRA, the Surface Mining Control and
7 Reclamation Act.

8 We are aware that there are some common
9 law property rights such as the right to lateral support
10 that are often part of subsidence claims. However, the
11 effect of the proposed provision here may prevent
12 claimants, who are property owners, from being able to go
13 after the full repair amount using such common law
14 claims.

15 So this change seems to be aimed at
16 preventing a lawsuit where property owner --- a property
17 owner can compel a company to pay for full repairs. We
18 ask the DEP to explain if it agrees that this is the
19 intention of this change, and why it is taking such an
20 approach to limit surface owners' rights to compensation
21 for material damages?

22 And the last rule we have comments on are
23 --- is the groundwater protection rules for coal mining
24 operations, 38CSR2S. So this proposed change essentially

1 appears to incorporate all of the requirements of the
2 Aboveground Storage Tank Act, as does the Surface Mining
3 Act, does place --- placing the division of mining in a
4 role of aboveground storage tank oversight.

5 This move could have benefits for better
6 protecting the environment and human health if
7 implemented well. It seems to set out that the authority
8 for overseeing compliance with the Aboveground Storage
9 Tank Act would be shared between the Division of Mining,
10 and the Division of Water and Waste, potentially
11 providing for additional capacity and efficiencies for
12 oversight and enforcement. But it will require deliberate
13 and thoughtful coordination and accountability.

14 We have a few recommendations for ---
15 preliminary recommendations for this change to work
16 effectively. It's --- it's these initial key elements we
17 see that need to be in place. One is a full training
18 program for mining inspectors on the Aboveground Storage
19 Tank Act requirement and procedures.

20 Two would be effective and timely
21 communication systems between the Division of Mining, the
22 Division of Water and Waste, and the AST Program. We
23 would expect to see clear procedures written out for how
24 violations are documented and addressed when detected by

1 Division of Mining staff for the AST Program.

2 We would also expect a mechanism for
3 oversight of mining inspectors from the AST program. And
4 finally, we would recommend that regular evaluation of
5 how this change is working among divide --- Division of
6 Mining and Division of Water and Waste be conducted on a
7 --- on a regular basis.

8 And then in our written comments, we also
9 noted what we believe to be a technical error on the
10 notice of the filing of this rule to the Secretary of
11 State, misstating the sections of code that Senate Bill
12 635 actually amended.

13 And that's all I have this evening. Thank
14 you.

15 CHAIR: Is there anyone else who did not
16 speak that would now like to speak?

17 This now concludes the public hearing on
18 our proposed legislative rules for 2020; 33CSR20, 38CSR2,
19 38CSR2F and 60CSR3. To properly receive your agency
20 response, please make sure your email address is complete
21 on sign-in --- sign-up sheet.

22 Thank you very much for your interest and
23 for taking the time to attend this hearing. Good night,
24 and drive home safely.

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HEARING CONCLUDED AT 6:18 P.M.

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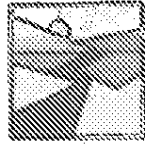
CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chair Fletcher, was reported by me on 7/8/2019 and that I, Joseph Harmon, read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 18th day of July, 2019.



Joseph Harmon,
Court Reporter



WEST VIRGINIA RIVERS

July 8, 2019

WV Department of Environmental Protection
Office of Environmental Remediation
601 57th Street
Charleston, WV 25304

Hand-delivered at public hearing on July 8, 2019

RE: Comments on agency proposed revisions to 60CSR3 - Voluntary Remediation and Redevelopment Rule


We support the clarification and strengthening of requirements for licensed remediation specialists. We also support the increase in licensing fees as a reasonable change, as those fees have not been changed since 1997.

We understand the application of "presumptive remedies" may save time and money, but if it was a requirement to do more site-specific analysis, what information and analysis is going to be lost with this change?

Lastly, the proposed revisions indicate the De Minimis standards for the migration of constituents from soil to groundwater will be removed from the rule. Instead of using hard and fast numbers in the rule, applicants would have to evaluate potential for exceeding De Minimis standards for groundwater migration using the voluntary remediation guidance manual. Is the evaluation method already in the guidance manual or will it need to be developed? These standards should not be removed from the until the method is developed and included in the guidance manual.

Thank you for your consideration of and response to these comments.

Sincerely,



Angie Rosser

Executive Director

Conserving and Restoring West Virginia's Exceptional Rivers and Streams

60CSR3
VOLUNTARY REMEDIATION AND REDEVELOPMENT RULE

RESPONSE TO COMMENTS

The WV Department of Environmental Protection (DEP), Office of Environmental Remediation (OER) commenced the public comment period for proposed legislative rule 60CSR3 on June 5, 2019. The public comment period concluded on July 8, 2019, after satisfying the minimum 30-day period. A public hearing was held at the DEP Headquarters located at 601 57th Street SE, Charleston, WV, in the Coopers Rock Room on July 8, 2019, to accept oral and written comments regarding the proposed revisions to legislative rule 60CSR3. Any comments received after this time are considered *ex parte* communications and cannot be considered in accordance with WV Code Chapter 29A Article 3.

No written comments were received regarding proposed revisions to rule 60CSR3. One attendee present at the public hearing provided verbal comments. A summary of the verbal comments presented by Angie Rosser on behalf of the West Virginia Rivers Coalition are provided below, along with the response. The full comment can be found within the public hearing transcript, also part of the formal rulemaking record.

There were no changes made to 60CSR3 as a result of the comments.

COMMENT A: We support the clarification and strengthening of requirements for licensed remediation specialists. We also support the increase in licensing fees as a reasonable change, as those fees have not been changed since 1997.

RESPONSE A: OER acknowledges and appreciates the comment supporting our proposed changes to the requirements for licensed remediation specialists and the increase in fees.

COMMENT B: We understand the application of “presumptive remedies” may save time and money, but if it was a requirement to do more site-specific analysis, what information and analysis is going to be lost with this change?

RESPONSE B: The application of presumptive remedies is not a new provision to the Voluntary Remediation and Redevelopment Rule. The proposed changes are intended to clarify the use of presumptive remedies in performing risk assessments and selecting remedial actions. The current rule allows for the use of presumptive remedies and does not require that a site-specific risk assessment be conducted in lieu of implementing a more protective remedy. Many Voluntary Remediation Program applicants recognize this option and have chosen to proceed in this manner. However, OER has also witnessed numerous Voluntary Remediation Program applicants performing site-specific risk assessments in cases where a remedy is already in place and needs to be formalized through a land use covenant. This typically occurs where receptor exposure is already limited (i.e. the property is to remain in commercial/industrial use) and a

land use restriction will formally eliminate all potential exposures. The proposed changes are intended to make these already-available approaches more apparent.

COMMENT C: Lastly, the proposed revisions indicate the De Minimis standards for the migration of constituents from soil to groundwater will be removed from the rule. Instead of using hard and fast numbers in the rule, applicants would have to evaluate potential for exceeding De Minimis standards for groundwater migration using the Voluntary Remediation Program Guidance Manual. Is the evaluation method already in the guidance manual, or will it need to be developed? These standards should not be removed from the rule until the method is developed and included in the guidance manual.

RESPONSE C: Methods to predict impacts to groundwater quality based on measured soil concentrations are currently available from the U.S. EPA. These methods will be incorporated into the VRP Guidance Manual if the proposed amendment is approved. The guidance manual is a web-based document, and OER is prepared to immediately update the guidance manual to include these methods if approved. Furthermore, OER will use these established methods to publish default Migration to Groundwater values in the VRP Guidance Manual as a screening tool to assist applicants in narrowing the list of contaminants of potential concern for groundwater. Thus, the previous De Minimis Migration to Groundwater Standards will still be available for screening, and the applicant will be able to either use these benchmarks, develop site-specific Migration to Groundwater benchmarks, and/or analyze the groundwater directly.