



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

July 8, 1996

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

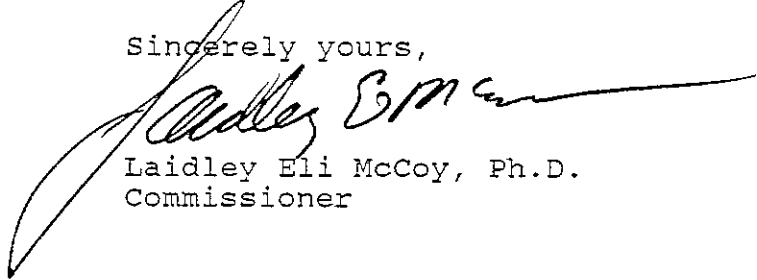
RE: 38CSR10 - "Office of Environmental Advocate"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-referenced rule as Notice of Public Hearing and Comment Period on a proposed rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Mark A. Scott at 759-0515.

Sincerely yours,


Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

FILED
Jul 9 11 38 AM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: Office of Environmental Advocate

A. AUTHORITY: WV Code 22-1-3, 22-1-3a, 22-20

B. SUMMARY OF RULE:

The Office and Environmental Advocate position is authorized under Chapter 22, Article 3 of the Code of West Virginia which becomes effective on June 10, 1994. The proposed regulations establish the duties and responsibilities for the Office of Environmental Advocate. The Office of Environmental Advocate will improve public access to the DEP and its various regulatory program offices, as well as assist the agency in its public outreach efforts. Legislative Auditor's office has required that this be filed as a legislative rule.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE

This rule is mandated by WV Code 22-20 which authorizes the creation of the position of Environmental Advocate within DEP. This Office will serve the public in a direct way to enhance access to DEP by the public and to allow DEP to assess public interest in environmental programs.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no counterpart regulation.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

The Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America. The Director further finds that this rule is consistent with the Declaration of Policy provided for in 22-11-2 of the WV Code.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

This proposed rule (or amendment to a rule) will be reviewed by the Council at its meeting on July 17, 1996. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 30, 1996 filing with the Secretary of State's Office and Legislative Rulemaking Review

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Office of Environmental Advocate

Type of Rule: XX Legislative Interpretive Procedural

Agency WV Division of Environmental Protection

Address 10 McJunkin Road

Nitro, WV 25143

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 66,600	\$ -0-	\$ 66,600	\$ 66,600	\$ 66,600
PERSONAL SERVICES	50,000	-0-	50,000	50,000	52,000
CURRENT EXPENSE	16,600	-0-	16,600	16,600	16,600
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

This rule requires the appointment of an Environmental Advocate position within DEP. The agency has adequate office space, supplies and equipment, but will be required to pay an estimated salary of \$40,000, a half-time assistant salary of \$10,000 and estimated operating expenses of \$16,600.

3. Objectives of these rules:

This rule is mandated by WV Code 22-20 which authorizes the creation of the position of Environmental Advocate within DEP. This Office will serve the public in a direct way to enhance access to DEP by the public and to allow DEP to assess public interest in environmental programs.

Rule Title: Office of Environmental Advocate

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Cost to pay estimated office expenses of \$66,600.00.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

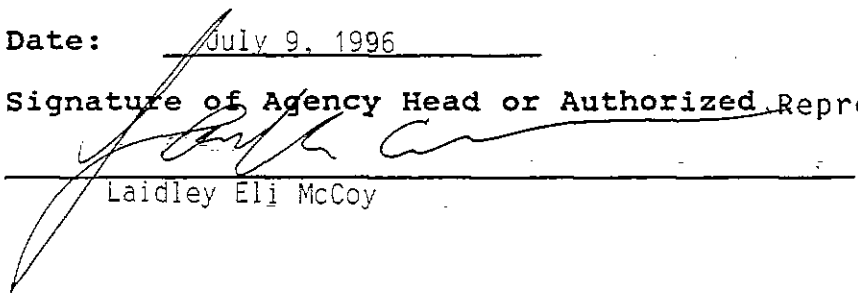
None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 9, 1996

Signature of Agency Head or Authorized Representative


Laidley Eli McCoy

TITLE 38
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF ENVIRONMENT

SERIES 10
OFFICE OF ENVIRONMENTAL ADVOCATE

FILED
JUL 9 11 37 AM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§38-10-1 General

1.1. Scope - This legislative rule governs and controls the qualifications, powers, and duties of the position of Environmental Advocate within the Division of Environmental Protection.

1.2. Authority - West Virginia Code §22-1-3, 22-1-3a, 22-20

1.3. Filing Date -

1.4. Effective Date -

1.5. Incorporation by Reference - Federal Counterpart Regulations - The Director has determined that there is no counterpart federal regulation. Due to the absence of a counterpart federal regulation, a determination of whether or not to incorporate by reference is not required, and the Director is not required to consult with the Environmental Protection Advisory Council on this rule.

1.6. Determination of Stringency - Federal Counterpart Regulations - The Director has determined that there is no counterpart federal regulation, and that the absence of a federal regulation is not the result of a specific federal exemption. This rule is not construed to be more or less stringent than federal regulations.

1.7. Constitutional Takings Determination - The Director has determined and does state that this rule does not constitute a constitutional taking of real property.

§38-10-2. Appointment, Salary, and Qualifications

2.1. Appointment - The position of Environmental Advocate will be a full-time position, will be appointed by the Director, and will serve at the will and pleasure of the Director of the Division of Environmental Protection in accordance with West Virginia Code §22-20-1.

2.2. Salary - The salary of the position of Environmental Advocate will be set by the Director and is subject to future adjustments at the discretion of the Director.

2.3. Qualifications - The Director will receive or solicit

applications for the position of Environmental Advocate from persons having the following minimum qualifications:

2.3.1. A citizen and resident of the State of West Virginia.

2.3.2. A graduate from an accredited college or university with a four-year degree in a field of study directly related to the qualifications, powers, and duties of the position as set forth in this rule.

2.3.3. A minimum of two years full-time or cumulative experience in work directly relating to environmental protection, or other public service work or experience which demonstrates the ability to carry out the powers and duties of the position as set forth in this rule.

2.3.4. A working familiarity with some of the legal requirements and programmatic functions of the Division of Environmental Protection.

2.3.5. A demonstrated ability to skillfully communicate (both written and verbal) in a public forum.

2.3.6. A demonstrated ability to use word processing software in a micro-computer environment.

2.3.7. A valid West Virginia driver's license.

§38-10-3 Assignment of Duty Station and Support

3.1. Assignment - The Environmental Advocate will be assigned by the Director to an Office within the Division of Environmental Protection.

3.2. Support - The Environmental Advocate will be provided with logistical support as follows:

3.2.1. Suitable office space within the Division of Environmental Protection Headquarters' Office.

3.2.2. Basic complement of office equipment and supplies.

3.2.3. Secretarial/clerical support as necessary to carry out the duties of the position.

3.2.4. Per-diem and travel expenses, in accordance with the rules of the Governor's Travel Management Office, as necessary to carry out the duties of the position.

3.2.5. Training and educational tuition, fees, and expenses as necessary to carry out the duties of the position.

3.2.6. Use of pool vehicles as available and as necessary to carry out the duties of the position.

§38-10-4 Powers and Limitations - The Environmental Advocate will carry out the duties of the position as set forth in this rule, and as prescribed by the Director in accordance with the following:

4.1. The Environmental Advocate will have direct access to the Director and may direct inquiries to and receive responses from the Director's executive staff and the Chief of each Office as necessary to carry out the duties of the position. The Environmental Advocate will also have access to technical information and be provided with technical assistance from DEP staff as necessary to carry out the duties of the Office. The Environmental Advocate will not request any information which is confidential, i.e., personnel records, corporate or trade secrets protected by statute, work product, etc., except as authorized by the Director. Any confidential information acquired by or in the possession of the Environmental Advocate will be kept in confidence, and the Environmental Advocate is subject to all statutes and regulations protecting such information from unlawful disclosure.

4.2. The Environmental Advocate ~~will~~ may consult with and request information from other agencies of state or federal government, as necessary to carry out the duties of the position.

4.3. The Environmental Advocate may make accessible to the public any information requested except confidential information as described in subsection 4.1 of this section.

4.4. The Environmental Advocate may attend open meetings, hearings, proceedings, etc., as necessary to carry out the duties of the position.

4.5. The Environmental Advocate may take such actions as deemed appropriate on behalf of any person, provided, That such action is lawful and is not in conflict with subsections 4.9 and 4.10 of this section.

4.6. The Environmental Advocate may provide advice and counsel to any person as necessary to carry out the duties of the position.

4.7. The Environmental Advocate will in cooperation with the Public Information Office prepare and/or distribute correspondence, documents, records, reports, etc., as appropriate and necessary to

carry out the duties of the position.

4.8. The Environmental Advocate will be guided in all actions by the policy statement and the nine purposes set forth in West Virginia Code §22-1-1 (b).

4.9. The Environmental Advocate may not in any official capacity represent any person in, or file on behalf of any person, legal or quasi-legal actions, either in support of or opposed to the Division of Environmental Protection without the expressed approval of the Director, and under the supervision of the Division of Environmental Protection's General Counsel.

4.10. The Environmental Advocate may not in any official capacity organize public campaigns in support of, or in opposition to official positions taken by the Division of Environmental Protection on environmental matters, and will not in any official capacity actively participate in any such organized campaign.

§38-10-5 Duties of the Environmental Advocate Office - The Environmental Advocate will perform the duties of the position as follows:

5.1. Implement a process to evaluate public opinion on the quality and effectiveness of the functions of the Division of Environmental Protection. The evaluation process should be completed within six (6) months of the date of appointment to office and updated periodically.

5.2. Attend open meetings, public hearings, proceedings, and conferences to collect and distribute information on a range of environmental issues.

5.3. Systematically become familiar with, and acquire a working knowledge of all programmatic functions of the Division of Environmental Protection.

5.4. Provide advice and assistance to citizens seeking resolution of environmental problems. To conserve resources, the Environmental Advocate should concentrate on issues that have wide-ranging, state-wide implications, rather than on isolated or local issues unless they are of a precedent-setting nature.

5.5. Assist the Division of Environmental Protection to develop brochures outlining the services of the position, as well as other information efforts that are appropriately conducted in concert with the Public Information Office or the Director.

5.6. Participate in public service media programming on environmental issues.

5.7. Assist citizens with obtaining information, interpreting information, and directing citizens to sources of technical information.

5.8. Assist and advise citizens on how to participate in state agency processes, such as public comments on rules, statutory amendments, draft permits etc..

5.9. Write articles for publication by the Public Information Office and other print media regarding advocate activities or areas of environmental interest.

5.10. Direct citizens to appropriate public legal resources such as referral services provided by legal services associations.

5.11. Attend executive and other agency staff meetings, where appropriate, and share information as appropriate.

5.12. Cooperate with the Director and the Division of Environmental Protection in reaching negotiated settlement of issues in dispute between the Division of Environmental Protection and citizens or citizens' groups.

5.13. Develop and submit to the Director an annual action plan for the coming year of position operation which contains realistically achievable objectives. The first year plan of operation will be completed within six (6) months of appointment. Each plan will be revised quarterly to accommodate changes in focus arising from public interest or programmatic needs.

5.14. Prepare an annual statement summarizing the accomplishments of the position to be published by the Public Information Office in the Division of Environmental Protection's annual report.

5.15. The Environmental Advocate will provide the Director with current information relating to citizens' environmental concerns. Such information may be of a general nature which is important to the State but should primarily be related to issues that are precedent setting and having state-wide implications.