

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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FILED

Nov 26 4 28 PM '96

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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

AGENCY: WV Division of Environmental Protection Director's Office TITLE NUMBER: 60\*\*

CITE AUTHORITY: W. Va. Code 22-1-3, 22-1-3a, 22-20

RULE TYPE: PROCEDURAL INTERPRETIVE X

EXEMPT LEGISLATIVE RULE CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1\*\*

TITLE OF RULE BEING AMENDED: Office of Environmental Advocate (Legislative Rule-Making Review Committee requested it be filed as interpretive.)

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED:

TITLE OF RULE BEING ADOPTED:

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS December 30, 1996

\*\*THIS RULE WAS PREVIOUSLY FILED AS 38CSR10, BUT WAS CHANGED AS PART OF CLEANUP PROCESS

Wendy E. Radcliff Wendy E. Radcliff



**BUREAU OF ENVIRONMENT**  
10 McJunkin Road  
Nitro, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.  
COMMISSIONER

November 26, 1996

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

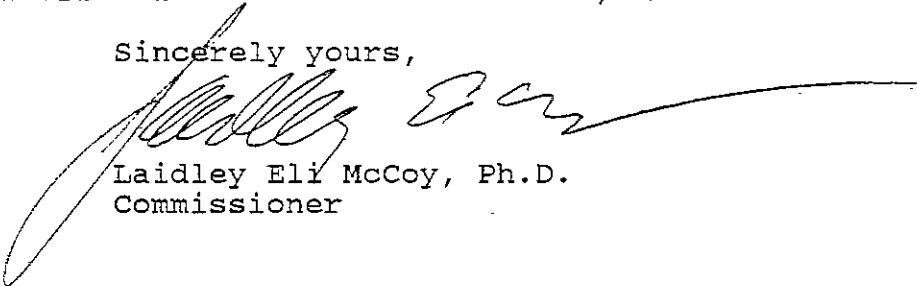
RE: 60CSR1 - "Office of Environmental Advocate"

Dear Ms. Cooper:

In response to the recommendation of Legislative Rule-Making at their meeting on November 18, we are requesting withdrawal of the above-referenced Legislative rule as it was filed in your Office on August 30, 1996. After review by the Legislative Rule-Making Review Committee (copy attached), it was determined that the rule should be refiled as an Interpretive rule.

Therefore, since this rule has gone through all appropriate rule-making procedures as a Legislative rule, we are also requesting your approval to refile 60CSR1 as an agency-adopted Interpretive rule with an effective date of December 30, 1996.

Sincerely yours,



Laidley Eli McCoy, Ph.D.  
Commissioner

LEM:cc

Attachment

cc: Mark A. Scott  
Joe Altizer  
Dr. Antonia Jones  
Joe Martin  
Wendy Radcliff  
Carrie Chambers

TITLE 60  
INTERPRETIVE RULE  
BUREAU OF ENVIRONMENT  
ENVIRONMENTAL PROTECTION DIRECTOR'S OFFICE

SERIES 1  
OFFICE OF ENVIRONMENTAL ADVOCATE

§60-1-1 General

1.1. Scope - This interpretive 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 - November 26, 1996

1.4. Effective Date - December 30, 1996

§60-1-2. 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.a. A citizen and resident of the State of West Virginia.

2.3.b. 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.c. 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.d. A working familiarity with some of the legal requirements and programmatic functions of the Division of

Environmental Protection.

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

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

2.3.g. A valid West Virginia driver's license.

#### §60-1-3 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.a. Suitable office space within the Division of Environmental Protection Headquarters' Office.

3.2.b. Basic complement of office equipment and supplies.

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

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

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

§60-1-4 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 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.

§60-1-5 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.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

DEC 30 3 56 PM 1996

FILED

TO: CARRIE CHAMBERS

AGENCY: OFFICE OF ENVIRONMENTAL ADVOCATE

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 17, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 60 OFFICE OF ENVIRONMENTAL ADVOCATE

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Wendy E. Ratliff

TITLE OF PERSON SIGNING: Environmental Advocate

DATE: December 30 1996

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\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.