

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 31 10 10 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY 20-13-4

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Awarding of West Virginia Stream
Partners Program Grants Rule

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

\$6.60



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

July 24, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

RE: 60CSR4 - "Awarding of West Virginia Stream Partners Program
Grants Rule"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office and Legislative Rule-Making as an agency-approved rule.

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Carrie Chambers
Jennifer Pauer

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 31, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Division Environmental Protection,
#10 McJunkin Road, Nitro, WV 25143-2506 Phone #759-0515

LEGISLATIVE RULE TITLE: Awarding of West Virginia Stream
Partners Program Grants Rule

1. Authorizing statute(s) citation 20-13- 4

2. a. Date filed in State Register with Notice of Hearing or
Public Comment Period:

June 22, 1998

b. What other notice, including advertising, did you give
of the hearing?

DEP Public Notice Bulletin and DEP In-Depth Newsletters
Both distributed state-wide

c. Date of Public Hearing(s) or Public Comment Period ended:

July 22, 1998

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X ** No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

 July 31, 1998

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Ms. Jennifer Pauer, WV Division Environmental Protection,
#10 McJunkin Road, Nitro, WV 25143 Phone# 759-0515

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Ms. Carrie J. Chambers, Director's Office, #10 Mcjunkin
Road, Nitro, WV 25143-2506 Phone# 759-0515
Fax #759-0526

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a

** See attached Advisory Council Minutes

hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 60CSR4 – Awarding of West Virginia Stream Partners Program Grants Rule

A. AUTHORITY: WV Code 20-13-4

B. SUMMARY OF RULE:

“The Stream Partners Program grants shall be awarded by consensus of the executive committee in accordance with legislative rules promulgated by the Division of Environmental Protection pursuant to article three [§29A-3-1 et seq.]” from West Virginia Stream Partners Legislation §20-13-4.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of the rule is to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects.

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

There is no federal counterpart regulation.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), 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.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

During their meeting on July 22, 1998, the DEP Advisory Council reviewed the attached rule (60CSR4). Council members recommended the rule be filed as proposed; however, Mr. Bill Samples asked that we consider the following:

Mr. Samples asked if there could also be additional funding sources, for example contributions from supplemental environmental projects used to offset proposed penalties. After researching the Law, DEP staff determined that the fund (available for the Stream Partners Program) is a general revenue fund that is administered by the Division of Natural Resources (DNR) and cannot receive money from any other sources. However, since that program fund is administered by DNR, DNR has a gifts account whereby they can receive funds from other sources and can specifically earmark them to other projects. Therefore, there is a mechanism already in place to deal with additional funding sources that could be directed to this project. Minutes of Meeting are attached.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 60CSR4 - "Awarding of West Virginia Stream Partners Program Grant Rule

Type of Rule: ☒ **Legislative** ☐ **Interpretive** ☐ **Procedural**

Agency WV Division Environmental Protection

Address #10 McJunkin Road
Nitro, West Virginia 25143-2506

1. Effect of Proposed Rule NA

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$	\$ 0	\$	\$
PERSONAL SERVICES	0				
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

There will be no expenses as a result of this proposed rule. The Stream Partners grant money is already budgeted out of the General Revenue Fund. This rule just gives guidance to how these funds will be distributed.

3. Objectives of these rules:

This rule is to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects.

Rule Title: "Awarding of West Virginia Stream Partners Program Grant Rule"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 22, 1998

Signature of Agency Head or Authorized Representative

Gavin J. Chambers

TITLE 60
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
DIRECTOR'S OFFICE

FILED

JUL 31 10 10 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4
AWARDING OF WEST VIRGINIA STREAM PARTNERS PROGRAM GRANTS RULE

\$60CSR4-1. General.

1.1. Scope. -- The purpose of this rule is to provide Stream Partners Program grant requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects.

1.2. Authority. -- WV Code 20-13-4

1.3. Filing Date.--

1.4. Effective Date.--

\$60CSR4-2. Definitions.

2.1. "Broad-based community organization" means an organization comprised of local individuals from a cross section of the community. Examples include representatives from: industry, environmental organizations, agriculture, local government, tourism, recreation, land owners, etc.

2.2. "Grant" means the money awarded to the broad-based community organization. The amount of the grant to be decided by the review team, not to exceed \$5,000.

2.3. "Grantee" means the broad-based community organization that has been awarded the grant to complete a watershed improvement project.

2.4. "In-kind services" means goods and services donated to the organization to help complete the watershed improvement project and to match 20% of the awarded grant.

2.5. "Review Team" means a team consisting of two members of each of the four agencies that jointly administer the program. These agencies include: West Virginia Divisions of Environmental Protection, Forestry, Natural Resources, and the West Virginia State Soil Conservation Agency.

2.6. "Watershed" means a topographically (lay-of-the-land) defined drainage system which directs rainfall, spring outflows,

and other surface water sources to a common collection area such as a hollow watercourse, a stream, or a river. Watersheds can and do vary in size from several acres to thousands of square miles.

2.7. "Watershed improvement project" means a project that enhances the identified stream or streams and educates the citizens in the area of that stream or streams about the benefits of restoring, protecting and enhancing the quality of life within the watershed.

\$60CSR4-3. Applicability.

3.1. In accordance with W.Va. Code 20-13-5, grants may be used by broad-based community organizations that includes citizens, industry, environmental groups, sportsmen, local government, and land owners from the geographic area immediately surrounding the identified stream, that are interested in improving the quality of life in the stream within the watershed.

3.2. In accordance with W.Va. Code 20-13-5, grants will be made for a period not greater than one (1) calendar year. Within that year the applicant must demonstrate the ability to achieve the specific improvement project that enhances the identified stream within the watershed.

3.3. In accordance with W.Va. Code 20-13-4, grants will be awarded on a 20% matching basis. The amount of the grant will be determined by a required watershed improvement project budget, not to exceed \$5,000.

3.4. In accordance with W.Va. Code 20-13-5, applicant must evidence a commitment to educate the citizens in the area of the identified stream about the benefits of restoring, protecting, and enhancing the stream within the watershed in a responsible manner.

\$60CSR4-4. In-kind Services.

4.1. Credit will be given for any in-kind services contributed to the watershed improvement project when determining the 20% match of the grant.

4.2. Volunteer services will be valued at the minimum hourly wage unless the applicant can demonstrate that such services would normally be valued above that wage in the area served by the applicant's program.

4.3. Donated equipment will be valued at its fair market

value pro-rated over the life of the grant.

\$60CSR4-5. Authorized Uses of Grant Funds.

5.1. Grants may be used for the following types of watershed improvement projects:

5.1.a. Fish and wildlife habitat enhancement;

5.1.b. Stream bank stabilization, and erosion and sediment control;

5.1.c. Education on the importance of protecting streams within the watersheds;

5.1.d. Water monitoring and watershed assessments which include stream classification, its natural meanders, land uses, etc.;

5.1.e. Improved land use practices; and

5.1.f. Clean-up projects when done in conjunction with above-mentioned projects. Removal of in-stream or stream bank materials that are beneficial to fish and wildlife habitat and stream bank stabilization will not be funded.

5.2. Authorized uses of grant within the watershed improvement project may include the following:

5.2.a. Production, copying and mailing of public information and educational materials to promote the protection of streams within the watershed not to exceed 20% of the grant in total within the grant year;

5.2.b. Implementation and materials for the completion of the watershed improvement project;

5.2.c. General operating expenses of the organization, which can include acquiring and maintaining non-profit status in accordance with Federal 501 (c) (3), of the IRS Tax Code guidelines, not to exceed 20% of the grant in total within the grant year;

5.2.d. Equipment and supplies for the watershed improvement project that will belong to the organization not to exceed 20% of the grant in total within the grant year;

5.2.e. As match for state, federal and local watershed projects;

5.2.f. Travel expenses for watershed association members to be approved by Stream Partners Program Coordinator and Administrator, for educational training programs, not to exceed 20% of the grant in total within the grant year; and

5.2.g. Office equipment and supplies to support the watershed association, outreach efforts and the watershed improvement project not to exceed 20% in total within the grant year.

\$60CSR4-6. Unauthorized Uses of Grant.

6.1. Grant may not be used for expenditures deemed not related to the watershed improvement project.

6.2. Grant may not be used for the following:

6.2.a. Purchasing of office furniture;

6.2.b. Land acquisitions;

6.2.c. Lobbying for or against a candidate for political office; and

6.2.d. Salaries exceeding 20% of the grant money in total within the grant year.

\$60CSR4-7. Review, Evaluation, and Award.

7.1. Each application will be reviewed by a review team consisting of two members of each of the agencies that sponsor the program.

7.2. Each application will be scored and ranked utilizing the following criteria:

7.2.a. Show how the organization is a broad-based community organization, and the members represent diverse areas and organizations within the community. Also provide an overview of the organization's history [20 points];

7.2.b. Define the issues that affect the stream or streams within the watershed [15 points];

7.2.c. Explain the organizations vision, mission, long-term goals, short-term goals, and the effect the project will have on the community [20 points];

7.2.d. Describe the watershed improvement project that will enhance the quality of the stream and the watershed [25 points];

7.2.e. Supply a budget for the watershed improvement project which includes: how you plan to spend the grant, in-kind services, and the 20% match [10 points]; and

7.2.f. Explain plans to provide education and outreach to the community about the importance of watershed protection and restoration [10 points].

7.3. Grants will be awarded to the highest ranking applicants, up to \$5000 with the discretion of the review team.

\$60CSR4-8.1. Grant Withdraw.

8.1. The review team reserves the right to withdraw a grant upon determination of unsatisfactory program compliance with either this rule or the specifications of the program.

\$60CSR4-9. Unexpended Funds.

9.1. All unexpended funds remaining at the end of the grant year will be handled as follows:

9.1.a. If the applicant applies for a grant for the following grant period, and the Stream Partners Program review team approves said application, unexpended funds will be netted against the amount from which the applicant is eligible to receive; and

9.1.b. If the applicant does not apply for a grant for the following grant period, unexpended funds may be used for future watershed improvement projects under the following conditions:

9.1.b.1. The applicant files statement of the intended use of the grant;

9.1.b.2. The applicant sets a target date for the completion of the watershed improvement project by the end of the grant period;

9.1.b.3. The applicant submits a final report when the project is completed; and

9.1.b.4. The applicant submits a final budget of how the grant was spent.

\$60CSR4-10. Reporting.

10.1. The grantee must provide a mid-grant year report, and a final report that will include the financial statement indicating how the grant money was spent, all in-kind services contributed and the 20% match.

10.2. The grantee must retain all receipts from expenditures of grant for three years.

10.3. Grantees that do not comply with the reporting requests will not be eligible for future funding.

Public Hearing 7/22/98
60CSR4 – Stream Partners

A hearing was held at 6:00 p.m. on July 22, 1998 for public comment on the West Virginia Stream Partners Program Legislative Rules (60CSR4). The purpose of the rules is to provide requirements and guidance concerning awarding of grants to broad-based community organizations for watershed improvement projects.

No one came to give comments and no written comments were submitted. The hearing was closed at 6:15 p.m.

MINUTES

DIVISION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 22, 1998, DIRECTOR'S CONFERENCE ROOM, NITRO HEADQUARTERS

The eleventh meeting of the DEP Advisory Council was held Wednesday, July 22, 1998, in the Director's Conference Room, Nitro Headquarters' Offices. The meeting was called to order at 1:00 p.m. by Chairman Mike Miano.

ATTENDING:

Advisory Council Members:

Michael P. Miano, Chairman
Jacqueline Hallinan
Larry Harris
William Raney
Rick Roberts
William Samples

Environmental Protection:

John Ailes	Jennifer Pauer
John Benedict	Pete Pitsenbarger
Dick Cooke	Ken Politan
Mike Dorsey	Cap Smith
Andy Gallagher	Barb Taylor
Randy Huffman	Karen Watson
Pat Park	Mike Zeto

1) Introduction of A. V. Gallagher, DEP's Chief Communications Officer.

Chairman Miano introduced DEP's new Chief Communications Officer, A. V. Gallagher. Council Members welcomed Mr. Gallagher and wished him well in his new job.

2) Review and Approval of Minutes of April 30, 1998.

The minutes of the April 30 meeting were approved with the correction of two typos. Mr. Roberts brought to everyone's attention the discussion in the April 30 minutes of AML funding issues in the last meeting, and the Council's desire to send letters to West Virginia's Congressional delegation to identify West Virginia's share of the AML funds that need to be

released by the US Congress. Separate letters would go to West Virginia's legislative leadership informing them of the problems created by not having the AML funds available, with a copy of the letters sent to the Congressional delegation attached to them.

Randy Huffman asked if the Council members would like to sign each letter individually. They each expressed their desire to do so. Pat Park, AML, distributed a copy of the draft letters to Council for their review. After several minutes of discussion, it was decided the draft letters would be edited and made available to the Council members for their signature before the end of the meeting.

Mr. Miano said that Pete Pitsenbarger would like a few minutes of the Council's time before they continued with the agenda.

Mr. Pitsenbarger informed the Council of his retirement plans for the end of August. He said he would like to express his heartfelt thanks to the Council for their letter of appreciation they had sent him thanking him for his many years of service to the State of West Virginia. Mr. Pitsenbarger said his years in state government had been a wonderful opportunity, and he will miss both the work and the people.

3) Review of Proposed DEP Rules in Accordance with WV Code §22-1-3(c).

Mr. Miano asked if there were any other issues to be discussed before continuing with the Agenda and the review of DEP proposed rules for the 1999 session.

Mr. Roberts said he would like to express his concern with the approach DEP has taken in involving the Council members in the rulemaking process -- not only this year, but in the past. He said the rules are not sent to the Council members until the last minute and they are not given adequate time to review and comment on them.

It was pointed out that the law [22-1-1(c)] specifically requires the Council to be consulted prior to the proposal of any new rule.

Mr. Raney said he would like to go on record wholeheartedly in agreement with the concerns of Mr. Roberts. He said he has great concerns with giving advice or recommendations to the Director on development of rules (or amendments to rules) the Council members were not involved in before they were filed with the Secretary of State's Office for Public Hearing and Comments. He said he believes there definitely needs to be improvement in this process in the future.

A discussion was then held on possible ways to bring the Council into the rulemaking process in an earlier stage of rule development. Several DEP staff members expressed their frustrations with the rulemaking process, and gave one example as the short period of time between the signature of bills by the Governor and the early filing date of the rules with the

Legislative Rulemaking Review Committee. Another example that was given was turnaround time with federal agencies, i.e., EPA and OSM, which are also involved in the process.

After several minutes of discussion, Mr. Huffman stated, with the Chairman's approval, that he would put together a committee to discuss the Council's concerns and get back to the Council with their recommendations by the first of September.

Mr. Miano also expressed his desire to improve the involvement of the Council in the rulemaking process, and assured the Council that everything possible would be done in the future to comply with the Council's recommendations.

[It should be noted that at this time Ms. Hallinan left the Advisory Council Meeting because of a previously-scheduled commitment].

Continuing with the agenda, Mr. Miano said that staff would be available from each program office to give a brief description of the proposed new rules or rule amendments and to answer any questions the Council members might have. If a question should come up that couldn't be answered during the meeting, we would make note of it and get back with an answer to the Council as soon as possible. The first rule on the agenda is 60CSR4, filed under the Director's Office.

**60CSR4 - "AWARDING OF WEST VIRGINIA STREAM PARTNERS PROGRAM GRANTS
RULE"**

Jennifer Pauer, AML, said 60CSR4 is a new rule that is being proposed by the West Virginia Stream Partners Program to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects. Ms. Pauer stated that the program is a joint effort of DEP, Forestry, Natural Resources, and the West Virginia Soil Conservation Agency.

A brief discussion was held concerning the source of the funding, availability of the funds, guidelines for criteria, and possible additional funding. Mr. Samples asked if there could also be additional funding sources, for example contributions from supplemental environmental projects used to offset proposed penalties. Ms. Pauer stated that as the rule now stands, it's only purpose is to distribute the funds, but she would check into the law and let the Council know if language could be added to also implement provisions for additional funding from penalty collections or other sources. Mr. Raney moved to recommend to the Chairman (in his capacity as Director of DEP) the filing of 60CSR4 with the condition that Mr. Samples' recommendation be considered. The motion was seconded and passed unanimously.

The following Air Quality rules were discussed by Karen Watson, OAQ, with assistance from John Benedict, also from the OAQ office:

45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"

45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITIES"

45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"

45CSR24 - "TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS"

45CSR36 - "CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. TO THE FEDERAL TRANSIT LAWS, TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS (TRANSPORTATION CONFORMITY)"

45CSR8 - "AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER"

45CSR9 - "RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE"

Ms. Watson gave the Council a brief explanation of the proposed OAQ rules. She explained that seven rules (45CSR33, 25, 34, 16, 36, 8, and 9) were being amended to conform to federal regulations, and 45CSR24 is a proposed new rule to adopt federal New Source Performance Standards for new and existing hospital/medical/infectious waste incinerators. This rule also incorporates by reference the federal standards, with limited exception.

Mr. Raney said he had always questioned the validity of the Appendix B Fiscal Note that is attached to each rule that is filed; in particular the section that relates to the effect of the proposed rule which usually contains all zeros.

John Benedict explained that is a question that has come up several times in the past, and the agency has always taken the position that the numbers are reflective of the cost to the state of implementing the new rule or the proposed amendments to an existing rule.

After a brief question and answer session of the OAQ rules, Mr. Raney moved that recommendation be made to the Director that all eight (8) rules be filed, as proposed, with the exception that 45CSR34, subdivision 4.1.b, be revised to clarify that 45CSR30 includes certain requirements relating to Section 112(r) of the Clean Air Act. The motion was seconded and passed unanimously by the Council.

38CSR2 - "SURFACE MINING AND RECLAMATION RULE"

John Ailes, Chief of OMR, said the amendments to this year's submission of the Surface Mining and Reclamation rule were few in number. Two new definitions were added,

“mountaintop mining operation” and “area mining operation,” and only minor cleanup to correct typographical errors and update and clarify other sections within the rule. Mr. Raney moved recommendation be made to the Chairman that the rule be filed as proposed. The motion was seconded and passed unanimously by the Council.

Mike Dorsey and Dick Cooke from the Office of Waste Management described the following Waste Management rules:

33CSR20 - “HAZARDOUS WASTE MANAGEMENT RULE”

33CSR1 - “SOLID WASTE MANAGEMENT RULE”

33CSR2 - “SEWAGE SLUDGE MANAGEMENT RULE”

Mike Dorsey explained the amendments to 33CSR20 - Hazardous Waste Management Rule. Along with other federally-required amendments to this rule, Section 11 contains a major rewrite to conform with the federal requirements of 40 CFR Part 124.

Mr. Samples asked why it takes up to 120 days to receive approval from the state to exclude a waste at a particular generating facility when EPA has already approved the petition - could the time be changed from 120 days to 60 days?

Cap Smith, Chief, OWM, said the time of 60 to 120 days is just a general number. He stated that he didn't see a problem with changing the time from 120 days to 60 days. He said it rarely takes anywhere close to that time to approve or deny the petition - it is usually taken care of in a matter of days.

There was some discussion as to whether this amendment should be proposed in this legislative session. The Council decided to wait until the rule is modified and filed in the 2000 Legislative Session to propose the amendment.

Dick Cooke, OWM, briefed the Council on 33CSR1. He said the revision is necessary to ensure consistency between the WV Code and 33CSR1. The emergency rule will establish criteria in determining a commercial solid waste facility's monthly tonnage limits, as required by Chapter 22, Article 15, as amended by Senate Bill No. 178.

Mike Zeto, Environmental Enforcement Office, then discussed 33CSR2 and explained the proposed emergency rule is necessary to update the Sewage Sludge Management rule to comply with mandates of Senate Bill 178. The revisions and inclusions are necessary to ensure consistency between the WV Code and 33CSR2. The emergency rule will also impose new requirements relating to the management of sewage sludge as required by Chapter 22, Article 15, as amended by Senate Bill 178, specifically as it relates to the control of off-site odors, and the protection of waters of the state.

After discussion was completed on the Waste Management rules, Mr. Raney moved to recommend that the Chairman file the Waste rules as proposed. The motion was seconded and passed unanimously.

The following Office of Water Resources rules were reviewed by Barb Taylor and Ken Politan.

47CSR31 - "STATE WATER POLLUTION CONTROL REVOLVING FUND"

47CSR33 - "STATE CONSTRUCTION GRANTS PROGRAM RULE"

47CSR3 - "POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE"

47CSR4 - "STATE CERTIFICATION OF ACTIVITIES REQUIRING NATIONWIDE PERMITS NO. 21 AND NO. 26"

Barb Taylor, Chief, OWR, explained the amendments contained in 47CSR31, 33, and 3. She said 47CSR31 is being amended to comply with the latest revisions of the Clean Water Act and current design practices; 47CSR33 is a proposed new rule which allows DEP to make grants to communities to provide adequate wastewater collection and/or treatment services; and 47CSR3 is a new proposed rule to implement the provisions of HB 4693 passed during the 1998 Session to promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitution, in-process recycling, reduction of raw material use or other source reduction opportunities.

Mr. Roberts asked if the proposed amendments to prohibit the use of closed-vessel ultraviolet disinfection and inverted siphons in "Appendix B" under "Design Standards for Collection Systems and Treatment Works" is one recommended by EPA or by the state.

Ms. Taylor replied that she would need to check with Bob Coontz in Water Resources' Construction Assistance Office who drafted the proposed rule amendments, and have Mr. Coontz get back with Mr. Roberts with an answer as soon as possible.

The last rule to be addressed by the Council, 47CSR4, was reviewed by Ken Politan from the Office of Mining and Reclamation. Ken stated that this is a new proposed rule that will establish a water certification program for surface mining operations and will implement the provisions of SB 145 passed during the 1998 Session.

Mr. Raney asked if implementation of this rule was specifically mandated in SB 145.

Mr. Politan said no, but the agency felt the proposed rule is needed to give some guidance in the implementation of the Senate bill.

Mr. Raney voiced his concern over the rule. He said he did not believe it was a workable

rule, and he had received several comments from others indicating the same concerns. He said that one of his biggest objections to the proposed rule was lack of input from outside DEP when the rule was written. Mr. Raney stated that SB 145 indicates the Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations who have an interest in water quality, before such a manual is developed and DEP staff did not do this.

After several minutes of discussion concerning 47CSR4, Mr. Raney made a motion to recommend that the Chairman file 47CSR3, 31, and 33 as proposed, with the condition that Mr. Roberts' questions are addressed in 47CSR31; that the comment period be extended after the end of the public hearing for 47CSR4, and any actions to implement the proposed rule be delayed until such time as a more workable rule can be drafted with the opportunity for input from interested parties. The motion was seconded and passed with a 3 to 1 vote.

Due to the length of time taken to review the proposed rules, there was no open discussion by the Council members. The meeting was adjourned at 5:15 p.m.