

Form #2

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 60CSR6 – “Administrative Procedures and Civil Administrative Penalty Assessment—Water Resources Protection Act”

A. AUTHORITY: W.Va. Code §22-1-6(d)(3); 22-26-3(m); 22-26-6(b)

B. SUMMARY OF RULE:

This rule establishes a process for resolution of disagreements concerning interpretations or calculations made in the completion of a water use survey or registration. It also establishes a civil administrative penalty and enforcement procedure that applies when a person fails to complete the survey, falsifies information on the survey or fails to submit other required information.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This rule is required to inform persons withdrawing waters of the State how the Department is going to handle initial submissions of survey and registration information when the agency disagrees with the approach used by the person submitting the information. The rule explains that a person who submits information in good faith will be given an opportunity to correct the information should the agency disagree, before the agency proceeds with enforcing the rule or assessing an administrative penalty. The rule also provides details as to how the agency will exercise its discretion when it becomes necessary to enforce the survey and registration requirements, including the imposition of administrative penalties and issuance of notices of violation and orders.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Administrative Procedures and Civil Administrative Penalty Assessment
Water Resources Protection Act

Rule Title:

Type of Rule:

☐ Legislative ☐ Interpretive ☒ Procedural

Agency:

WV Department of Environmental Protection/Secretary

Address:

601 57th Steet, S.E.
Charleston, WV 25304

Phone Number:

(304) 926-0499 (ext.1280) Email: mstratton@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

This rule sets forth a process for the resolution of disagreements concerning interpretations or calculations made in the completion of a water use survey. It also establishes a civil administrative penalty and enforcement process that applies when a person fails to complete the survey, falsifies information on the survey or fails to submit other required information.

There will be no impact on costs of State government associated with this rule because implementation will occur within the existing framework and resources of the agency. Although difficult to estimate, there may be a small amount of increase in revenues to the State due to assessment of civil administrative penalties pursuant to the rule.

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.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	9,000.00	4,500.00

Rule Title:

Administrative Procedures and Civil Administrative Penalty Assessment
Water Resources Protection Act

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

There will be no costs to State government to administer this rule above the costs associated with the current implementation of agency programs.

Respecting revenues, there may be a fairly small increase in the revenues coming into the DEP as a result of the implementation of the civil administrative penalty process. Although difficult to estimate, the agency has made the following rough assumptions in deriving approximate revenue amounts to be included in this fiscal note (see page 1):

A total regulated community of about 1200 sources;

A noncompliance rate of 1/2 of 1%; and

An average penalty of \$1500.00

The agency expects the amount of violations and associated penalties to be greatest in fiscal year 2006 based on the survey and registration deadlines. The amount should be less in subsequent fiscal years.

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.

As stated on page 1, there will be no fiscal impact from this rule on costs to State government because the implementation of the administrative procedures and penalty process established by the rule will be absorbed into existing operations of the DEP.

Date: March 1, 2005

Signature of Agency Head or Authorized Representative

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**TITLE 60
PROCEDURAL RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SECRETARY'S OFFICE**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 6
ADMINISTRATIVE PROCEDURES AND CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT
WATER RESOURCES PROTECTION ACT**

§60-6-1. General.

1.1. Scope. – This rule establishes administrative procedures related to survey and registration requirements under the Act and a procedure for assessment of a civil administrative penalty for failure to complete the survey or register, providing false or misleading information on the survey or registration, or failure to provide other information as required by the Act.

1.2 Authority. – W. Va. Code § 22-1-6(d)(3); 22-26-3(m); 22-26-6(b).

1.3. Filing Date. –

1.4. Effective Date. –

§60-6-2. Definitions.

2.1. "Act" means the Water Resources Protection Act, W. Va. Code § 22-26-1 et seq.

2.2. "Person" means an individual, public and private business or industry, public or private water service and governmental entity.

2.3. "Secretary" means the secretary of the department of environmental protection or his or her designee.

§60-6-3. Applicability.

3.1. This rule applies to any person withdrawing 750,000 gallons from the waters of the state in any month during a calendar year, beginning in 2003.

§60-6-4. Survey and Registration Response—Secretary's Determination

4.1. Persons subject to this rule shall complete the survey and registration requirements established by the Secretary in accordance with the Act. If a good faith effort has been made to comply, a penalty shall not initially be assessed when the Secretary disagrees with any interpretations or calculations made in completing the survey or registration.

4.2. When the Secretary disagrees with any interpretations or calculations submitted in a survey or registration, he or she shall issue a written determination explaining why the agency disagrees and establishing the appropriate calculations and interpretations to be used in the survey or registration.

4.3. The written determination shall be sent by certified mail and shall notify the person of the requirement to correct the information within thirty (30) days. The determination shall also inform the person that if the corrected information is not submitted within thirty (30) days of receipt, or some greater time designated by the Secretary, the person will be considered to be in violation and the Secretary will assess a penalty in accordance with this policy.

4.4. A nonconfidential version of each written determination issued by the Secretary shall be posted on the Water Resources Protection Act web page. These determinations shall be the governing documents for interpretations and calculations for all future surveys or registrations.

§60-6-5. Civil Administrative Penalty Assessment.

5.1. Upon failure of a person to submit the corrected information as required by a written determination within the specified time frame, a notice of violation shall be sent to the violator by certified mail. The notice will include the specifics of the violation, a requirement to respond within thirty (30) days, and will assess a civil administrative penalty of \$1,000.

5.2. Any person who fails to complete a survey or registration, provides false or misleading information on the survey or registration, or fails to provide any other information than that required in a written determination under section 4, shall be sent a notice of violation by certified mail. The notice of violation will contain the specifics of the violation and provide thirty (30) days from receipt to respond and/or correct the violation. The notice of violation will also inform the violator that civil administrative penalties of up to \$5,000 may be assessed in the future for each thirty (30) days of continuing noncompliance.

5.3. Upon failure to respond to any first notice of violation issued under subsection 5.1 or 5.2, a second notice of violation will be sent by certified mail noting the continuing noncompliance. This second notice of violation will include the specifics of

the violation, a requirement to respond within thirty (30) days and will assess a civil administrative penalty of up to \$5,000.

5.4. Every thirty (30) days after the initial imposition of a civil administrative penalty, another penalty may be assessed in an amount up to \$5,000 if the information is not provided.

§ 60-6-6. Additional Enforcement.

6.1. If, after issuance of the notices of violation specified in section 5, a person fails or refuses to submit the required information or pay the civil administrative penalty imposed by such notice, the Secretary shall issue an order requiring that the information be submitted and the penalty be paid.

6.2. Such order shall be sent by certified mail to the person and shall include findings of fact upon which the Secretary based his or her determination to issue the order and a specific time limit for the completion of the action.