

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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JUN 21 2 02 PM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: ~~Bureau of the Environment DEP~~  
Environmental Quality Board TITLE NUMBER: 46

RULE TYPE: Procedural; CITE AUTHORITY W.Va. 29-B-1 et seq. & 29-3-3

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Rules on Requests for Information  
(FOI)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 21, 1995 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Environmental Quality Board  
Attn: Fran Hunter  
1615 Washington Street, East-Suite 301  
Charleston, WV 25311-2126

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Frances E. Hunter

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5.00

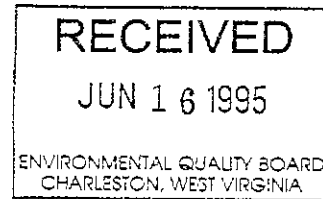


**BUREAU OF ENVIRONMENT**  
10 McJunkin Road  
Nitro, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.  
COMMISSIONER

June 16, 1995



Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
Charleston, West Virginia 25305

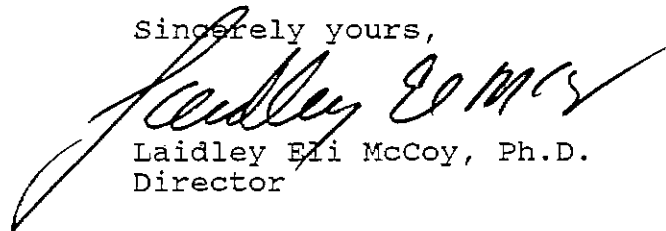
RE: 46 CSR 8 - "Regulations on Request for Information -  
Freedom of Information Act"

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule as a proposed amendment to an existing procedural rule.

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

Sincerely yours,



Laidley Eli McCoy, Ph.D.  
Director

LEM;RTH:cc

Attachment

CIRCUMSTANCES REQUIRING AMENDMENTS TO 46 CSR 8

This rule has not been updated since its original promulgation in 1982. The amendments to the fee schedule are necessary due to increasing photocopy costs. In addition, updates are necessary to reflect the reorganization of agencies under the DEP Bill.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Rules on Requests for Information (FOI)

Type of Rule:  Legislative  Interpretive  Procedural

Agency Bureau of the Environment, Environmental Quality Board

Address 1615 Washington Street, East, Suite 301

Charleston, WV 25311-2126

**1. Effect of Proposed Rule**

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

**2. Explanation of above estimates:**

**3. Objectives of these rules:** To establish procedures to be followed by the public to inspect and obtain information and records generated, developed or held by the Environmental Quality Board.

Rule Title: Rules on Requests for Information (FOI)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated.

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

None anticipated.

C. Economic Impact on Citizens/Public at Large.

Any requests for information made by a member of the public will be subject to the fees established in this rule.

Date: June 21, 1995

Signature of Agency Head or Authorized Representative

Frances E. Mentzer

SUMMARY OF PROPOSED AMENDMENTS TO 46 CSR 8

The amendments proposed herein include updating the fee schedule, changing names to reflect the reorganization of agencies under the DEP Bill, and other minor housekeeping changes.

FILED

JUN 21 2 02 PM '95

TITLE 46  
PROCEDURAL RULES  
STATE ENVIRONMENTAL QUALITY WATER RESOURCES BOARD OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE

SERIES 8  
RULES REGULATIONS ON REQUESTS FOR INFORMATION

§46-8-1. General.

1.1. Scope. -- These rules prescribe the procedures under which the public may inspect and obtain information and records generated, developed or held by the ~~Division of Water Resources and the State Water Resources~~ Environmental Quality Board. These rules do not apply to the disclosure of information to any officer, employee or authorized representative of the State or Federal government.

1.2. Authority. -- W. Va. Code 29B-1 et seq., and 29A-3-3 ~~and 29-5A-3~~.

1.3. Filing Date. -- ~~April 7, 1982~~

1.4. Effective Date. -- ~~May 7, 1982~~

§46-8-2. Definitions.

2.1. For the purpose of these rules:

(a) "Act" means the Freedom of Information Act, Chapter 29B, Article 1 of the West Virginia Code. ~~-1-1 et seq.~~

(b) "Board" means the ~~State Water Resources~~ Environmental Quality Board located at 1615 Washington Street, East, Charleston, West Virginia 25311-2126.

~~(c) "Division" means the Division of Water Resources, State Department of Natural Resources.~~

~~(c)~~(d) "Record" means any books, papers, maps,

photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics which are in the possession of ~~possessed by the Division or Board, but,~~ ~~The term~~ does not include materials that are the personal property of ~~legally owned by a Division or Board employee in his or her personal capacity~~ and does not include materials which are copyrighted or are readily available to the public such as books, journals, and periodicals, ~~available through a reference library.~~ ~~Nor does the term include documents that have been advertised as being available to the public, such as applications or draft permits, draft plans, laws and regulations or other reports and brochures which may be obtained without a written request.~~

(d)(e) "Request" means a written request made in accordance with these rules of procedure to inspect or obtain a copy of one or more records.

(e)(f) "Requestor" means any person, including any natural person, corporation, partnership, firm or association, who has submitted a request to the ~~Division or Board.~~

§46-8-3. Policy on Disclosure.

(a) All ~~Division and~~ Board records shall be available to the public unless they are exempt from the disclosure requirements of the Act.

(b) All nonexempt records shall be available to the public upon request regardless of whether any justification

or need has been shown by the requestor and regardless of whether or not the request cites the Act.

§46-8-4. Form of Request.

A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location, and should be addressed to the ~~Public Information Office of the Division at 1201 Greenbrier Street, Charleston, West Virginia 25311 for Division records and to the State Water Resources Board, 1205 Greenbrier Street, Environmental Quality Board, 1615 Washington Street, East, Suite 301, Charleston, West Virginia 25311-2126.~~ for the Board records

§46-8-5. Requests Which Do Not Reasonably Describe Records Sought.

If the description of the records sought in the request is not sufficient to allow the ~~Division or Board~~ to identify and locate the requested records, the requestor will be notified within five working days that the request is denied ~~cannot be further processed~~ until additional information is provided in an amended request. Until such additional information is provided, ~~the five-day time limit under Section 7 shall not begin~~ the Board has no further obligation to fulfill the request.

§46-8-6. Misdirected Requests; Oral Requests.

The ~~Division and Board~~ cannot assure that requests received in a manner inconsistent with these rules ~~by offices other than those referenced in Section 4~~ will be answered in a

timely fashion. The five-day period, as provided for in these rules of procedure in Section 7, Public Information Office or the shall begin at the time the Board receives the request. Oral or phone requests for the records may be honored if followed by a written request. ~~The written request may be hand delivered if previous arrangements for an appointment or to receive copied material have been made by phone.~~

§46-8-7. Responsibilities of ~~Public Information Office~~ and the Board.

(a) ~~The Public Information Office or~~ Board shall, upon receipt of a written request, mark the request with the date of receipt and begin to identify and locate the requested information or ask for a more specific request ~~under Section 5 if necessary.~~

(b) ~~The Public Information Office and~~ Board shall respond in writing to the requestor within five working days of the receipt of the request. Such response shall:

(i) Furnish copies of the requested information;

(ii) Advise the requestor of the time and place at which he/she may inspect and copy the information; or

(iii) Deny the request in accordance with these rules of procedure; or stating in writing the reasons for such denial.

(iv) Notify the requestor that the records require more than five days to assemble, and identify an

approximate date of completion of the request.

§46-8-8. Denials of Requests.

(a) Denials of requests may be issued only in the following circumstances:

(i) the requested record is not known to exist;

(ii) the record is not in the ~~Division's or~~ Board's possession;

(iii) the record is exempt from disclosure under the Act.; or

(iv) the description of the record sought in the request is not sufficient for the Board to identify and locate the record.

(b) Written notification ~~A letter~~ informing the requestor of the denial must be sent within five days of the Board's receipt of the request. ~~the time period specified in Section 7.~~ The notification shall state the following:

(i) the reason for the denial;

(ii) that the agency's responsibility to provide information is at an end; and

(iii) that the requestor may pursue injunctive or declaratory relief in the circuit court in the county where the public record is kept. ~~The letter must clearly state the basis for the denial. The denial notice shall inform the requestor that he or she may appeal the agency's action in accordance with the provisions of Chapter 29B.~~

§46-8-9. Exemptions.

The following categories of information are specifically exempt from disclosure under the provisions of the Act:

(a) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors; provided that in no case shall effluent data submitted pursuant to ~~Chapter 20, Article 5A~~ Chapter 22, Article 11 of the West Virginia Code be considered trade secrets under this paragraph;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance; provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(c) Test questions, scoring keys and other examination data used to administer a licensing examination,

examination for employment or academic examination;

(d) Records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(e) Information specifically exempted from disclosure by statute;

(f) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(g) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

(h) Internal memoranda or letters received or prepared by any public body.

§46-8-10. Partial Disclosure.

If a requested record contains both exempt and nonexempt material, to the extent practicable, the nonexempt material shall be disclosed after the exempt material has been

deleted.

§46-8-11. Fees.

Fees will be charged requestors for searching for and reproducing requested records, in accordance with the following:

(a) Copying costs including the certification of the record to circuit court, shall be ~~thirteen cents (\$0.13)~~ twenty five cents (\$0.25) per page provided that if the total cost is less than ~~\$5.00~~ \$2.50, there shall be no charge.

(b) The charge for copying materials that must be reproduced outside the ~~Division's or Board's~~ facilities shall be the actual cost of such copying.

(c) A ~~search~~ fee of ~~five~~ twenty five (\$25.00) dollars ~~(\$5.00)~~ per hour or fraction thereof shall be charged for the agency's time spent in ~~trying to locate~~ locating and duplicating the requested records beyond the initial ~~half~~ quarter hour used to locate such records.

(d) An invoice for the total amount of fees will be sent to the requestor. Payment shall be made by check or money order made payable to the ~~Department of Natural Resources for Division records and to the State Water Resources~~ Environmental Quality Board for Board records.

(e) Total or partial prepayment may be required if the ~~Division or~~ Board determines that the unpaid fees attributable to one (1) or more requests by the same requestor exceed or will exceed ~~fifteen dollars \$15.00~~ ten dollars

(\$10.00).

(f) The Board may waive the fees prescribed by these rules upon written request by a person requesting documents who shall state that he or she is unable to pay such fees. Any ~~requestor who cannot afford to pay the fee(s) established under this section may file an affidavit with the Division or Board stating that the requestor is pecuniarily unable to pay such fee's. Upon the filing of any such affidavit, the Division or the Board shall process the request in accordance with these rules and as if the fee(s) had been paid.~~