

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

JUN 4 3 32 PM '97

**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 Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-1-7

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Sewage Systems

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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.


Joan E. Ohl, Secretary

\$1270

Commenters
Proposed Rule - Sewage System Rules, 64 CSR 9
Division of Health, Department of Health and Human Resources

Bricker, Robert C., Jr.
Gene's Septic Tank Cleaning & Maintenance Services, F. E. Duckworth, Owner
Hamilton, Gary L.
Hayman, Tate, Registered Sanitarian
Mid-Ohio Valley Health Department, Bonna K. Goodnight, Registered Sanitarian
Monongalia County Health Department, Sally Taylor, Executive Director and Arthur W. Adams,
Director, Environmental Health Division
Mountain Country Properties, David Curtis
Randolph-Elkins Health Department, Warren L. Elmer, Registered Sanitarian
West Virginia Manufacturers Association, Karen S. Price, President

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MAY 12 1997

REGULATORY DEVELOPMENT

May 10, 1997

Robert C. Bricker, Jr.
P.O. Box 573
Morgantown, WV 26507
phone: (304)296-3827

To: Regulatory Development, WVDHHR
RE: Comments on proposed emergency rule amending 64 CSR 9

Please consider the following comments addressing specified paragraphs in the proposed rule.

4.10. The definition of Individual Sewer System is generally limited to residences up to 3-4 bedrooms. This definition should be changed, or another added, concerning flows over 1,000 gal/day subsurface discharge from establishments, i.e. restaurants, bed & breakfasts, motels, etc., or from residential 'cluster systems'.

4.26. Amend as follows: "Water containing human, animal, or domestic waste from dwellings or establishments."

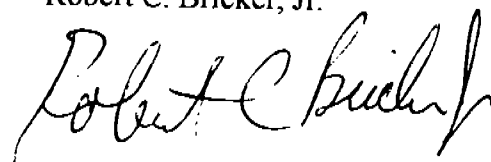
10.10. Add paragraph restricting use of land area for drainfield reserve that has a percolation rate of less than 5 minutes per inch.

10.10. Add paragraph restricting use of land area for drainfield reserve that has been filled over floodplain in order to build above flood elevation.

10.10.d. If slow perc rate restriction is lowered from 60 min./inch to 90 min./inch, then some consideration should be given to requiring a minimum amount of soil above the restricting layer in order to avoid breakouts during moderately heavy-to-heavy precipitation events.

Overall, there appears to be an attempt to exempt business establishments (usu. those having subsurface discharge greater than 1000 gal./day) from this rule or at least allow exclusion of their compliance by ignoring them in this rule. Protection of water (both groundwater and surface water) from contamination by human pathogens and excessive nutrients is not considered an undo burden on business in surrounding states, and neither should it be in West Virginia which is the area of origin for several major rivers. The quality of life for all residents and business persons in the state should not be compromised by catering to persons unwilling to wait a few days for review of their application or an inspection of their property.

Sincerely,
Robert C. Bricker, Jr.



Gene's Septic Tank Cleaning & Maintenance Services

PO Box 62
Mineral Wells, WV 26150

Phone (304) 489-2011

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May 08, 1997

MAY -9 1997

REGULATORY DEVELOPMENT

Regulatory Development
Department of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Attn.: Kay Howard

Dear Ms. Howard:

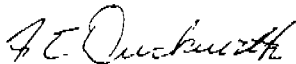
In regards to the Proposed Title 64, I would like to make a formal request to the West Virginia Division of Health & Human Resources in reference to the current problem of having enough available cost efficient waste disposal areas for sewage disposal companies such as my own.

Even though, my company currently has a proper location to dispose of waste, I feel this is a growing problem for my colleagues. The rising cost of disposing of waste and the lack of enough adequate locations has forced several small business in this field out of business. I feel with your agency's help we can correct this situation, if we were provided with several proper locations throughout the state for disposal at a reasonable cost.

Another area of concern with the Proposed Title 64 is in regards to our five (5) year permit. I feel changing this to an annual permit would be costly to all of us in this field. I strongly oppose this change.

My last request pertains to Individual sewer systems in reference to new homeowners. Please advise why a new homeowner must first install a leach bed type sewage system and this system must fail before he can install an aeration type sewage treatment system. This rule requirement proves costly to the homeowner.

Sincerely,



F. E. Duckworth
Owner

Gary L. Hamilton
4811 7th Avenue
Vienna, WV 26105
May 8, 1997

Attn.: Kay Howard
Regulatory Development
DHHR
Building 3, Room 265
Capitol Complex
Charleston, WV 25305

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MAY 12 1997

REGULATORY DEVELOPMENT

Dear Ms. Howard:

Thank you for this opportunity to comment on 64 CSR 9: Sewage Systems Rules that were filed as an emergency rule and became effective on March 14, 1997. I believe that the new rule contains many improved sections, but there exists provisions that are unnecessarily confusing and restrictive.

In the Definitions section, 4.11. Individual Sewer System Installer is defined to include "an individual installing, extending or altering a system for his or her own use who has demonstrated knowledge of the rules by passing the applicable installer certification exam(s)." For an individual to install, extend or alter a specific type of sewage system on his own property, he will now be faced with taking at least one and possibly two different general installer's examinations dealing with rules and design standards encompassing many different types of sewer systems. These examinations were prepared for an installer who is in the business to install a variety of systems. Indeed, the wording of the rule would require a property owner to take the test(s) or hire a contractor to perform even simple alterations, resulting in additional expense to that property owner.

Suggestion: change the wording to "...whose qualifications are acceptable to the director." This would allow more pertinent and specialized testing or demonstration of knowledge.

The subdivision section of the rule is complicated and places unnecessary and severe restrictions upon individuals who have larger tracts of land. A subdivision is essentially defined as the division of any piece of land into two or more pieces for dwelling or establishment development (64-9-4.25):

- There is no longer any disclaimer for lots exceeding two acres with an average frontage of 150 feet, as exempted in 16.1.7. of the Code of West Virginia and previous rule. Technically, a 200 acre tract split into two 100 acre tracts constitutes a subdivision. To even associate the word - subdivision, to a farmer giving a tract to his son, will likely create animosity and defensiveness. To that farmer, the subdivision word belongs to city

folks and suggests increased property taxes through a different classification of the land.

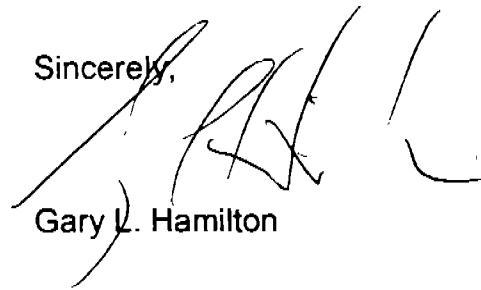
- The subdivision section of the new rule is more confusing since it establishes different limitations on lots in subdivisions based on four periods of time: pre-July 1, 1970, pre-May 12, 1983, May 12, 1983 till June 14, 1997 and June 14, 1997 to the present. As one consequence, lots in subdivisions created prior to July 1, 1970, which may have been eligible for subsurface sewage disposal system permits prior to this rule, will no longer be eligible for permits if they do not contain sufficient area to install a suitable replacement area in addition to the initial system (64-9-10.8 and 64-9-5.1). Further, the requirement for 10,000 square feet being reserved on all new lots (64-9-10.10.a. and 64-9-10.f.) for installation of a soil absorption sewage disposal systems is based on standards imposed in the March 12, 1983 rules and does not reflect changed technology; such as, the prevalent use of "chamber soil absorption systems" that require approximately 40% less area for installation.
- The provision of requiring all tracts exceeding two acres to set aside 10,000 square feet for the installation of standard or alternative soil absorption system(s) will present added expense and complicity to those property owners with larger tracts of land. According to 64-9-10.10.f., "no development or structures shall be permitted on this on-site disposal area other than those comprising the individual sewer system(s)." When large tracts of land are involved, there may not be any practical method to accurately set aside the specific reserve area that meets all requirements for an on-site sewer system short of a professional survey. Since 64-9-10.3 requires that written approval be obtained from the director for all subdivisions in which individual sewer systems are proposed, it appears that the director will have to demand additional documentation that was not required on larger tracts of land in the previous rules.

The rule does not recognize the great improvement in sewage treatment technology. Today, home aeration sewage treatment units are available that meet the stringent testing standards of National Sanitation Foundation, Inc., a widely recognized and respected testing and certification company. With reasonable maintenance and service as provided in 64-9-9.3 of this rule, NSF Class I home aeration treatment units with surface discharge could provide new homes with an efficient and safe method of treating the sewage discharge. Such aeration units are currently used and widely accepted to correct existing health hazards from dwellings that lack adequate property for on-site subsurface disposal systems. This rule's authorization of such technologically advanced

units would allow economic development and growth on properties that are not amenable to on-site subsurface discharge. According to the Soil Survey issued by the USDA Soil Conservation Service for my home county, over 90% of the soils are rated as severe for disposal of septic tank systems using subsurface methods. A common practice of accommodating the demand for house building in this county relies on large subsurface disposal systems that frequently fail within a few years, and are replaced with NSF Class I home aeration systems with surface discharge. This installation of large subsurface disposal systems and subsequent replacement with aeration units places a high financial burden on the property owner and creates anger and dissatisfaction directed toward the health department. To inhibit a possible over-reliance on home aeration units in dense housing situations, the rule could limit their use to less dense housing, i.e. lots exceeding 2 acres.

Please, lets not compound the confusion of our rules and further restrict our citizenry in being able to use their private land for home building when the technology and means exists to safely treat sewage from individual homes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary L. Hamilton', is written over the typed name.

Gary L. Hamilton

c: Ronald K. Forren, RS, Director
Public Health Sanitation Division
Max Fisher, RS, Assistant Director
Kearneysville District Office

May 7, 1997

Regulatory Development
DHHR
Building 3, Room 265
Capitol Complex
Charleston, WV 25305
Attn: Kay Howard

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MAY 12 1997

REGULATORY DEVELOPMENT

The emergency filed sewage system rules in my opinion do not clarify, make certain provisions less rigid nor relieve any undue hardships on economic development in West Virginia. The emergency amended legislative rule makes several issues more restrictive and confusing to the public, health departments and sewage system installers.

The subdivision definition is extremely confusing. There are four different time periods as I see to contend with when trying to apply subdivision regulations. Pre 1970, between 1970 and 1983, 1983 to 1997 and from March 1997 to the present. Why not set up the rule across the board regardless of the time frame involved and then give some flexibility for individual cases to local health department directors? This would establish uniformity and consistency for everyone involved. If a lot was not developed and no previous contact and/or documentation was filed with the health department then the new emergency filed rule would apply. If the health department was contacted or documentation was previously made then the applicant could be worked with under the previous rules. In this case, the flexibility and professional judgment by the health department could determine what could be approved and applicable for that particular lot.

Do health departments charge both a subdivision and individual on-site sewage application fee since all lots regardless of size fall under the definition of a subdivision? If not, what size lot requires the subdivision fee to be paid? This should be spelled out in writing from either the state or local health department.

Under the amended rule which requires a 10,000 square foot reserve area on all lots, what type of documentation is required for this reserve area? Does the 10,000 square feet reserve area have to be surveyed and designated for no further development? Can this area be changed at a future date? Does this area need to be staked out and measured by the sanitarian? Can the 10,000 square area be designated on the current application form or will a separate form be required? Would a signature be sufficient to designate on the sewage application the 10,000 square foot reserve area? Who would be required to sign? The installer, property owner, surveyor? If a 10,000 square foot reserve area is required, then procedures on how and where to document such an area needs to be contained within this rule.

Does the emergency filed rule really relieve any aspects that are "unnecessarily interfering with economic development"? Not allowing the use of Home Aeration Units (HAU's) on new construction does. How do other states' economic development compare to West Virginia's?

Some surrounding states allow HAU's on new construction. I feel this type of system should be allowed on new construction if percolation tests cannot meet standards. Why do the new home owner a disservice by approving a conventional system to go in when there is a high chance of failure and all parties involved realize this possibility. If the lot is denied for development then the impact of improving the states' economic progress has been lost. A few years down the road when the system fails not only is it a potential public health hazard, but another large sum of money has to be spent by the home owner to repair the system. I feel by requiring a conventional system on a new site with no cost effective alternatives is a disservice and not a service to the public we are endorsed to serve.

What type of perpetual maintenance program is required for a HAU? Is a certified installer/distributor required to provide this type of maintenance? What about a homeowner? What type of records will need to be kept? Will these records be kept on file at the health department? If perpetual maintenance is required on HAU's, why not allow use of such NSF certified sewage treatment systems on new construction? These types of issues should be spelled out in the rules.

Why require a home owner to pass a Class II certification to install a HAU and other alternative systems? Sanitarians, home owners and certified installers agree a HAU requires less technical knowledge and ability to install than a conventional sewage system. The distributor sets and levels the tank, installs the motor and wires the unit. All that is required of the home owner is basically the piping. Class II certification for the homeowners does not stand to reason in light of the relative ease a system can be installed as compared to a conventional sewage system.

Once a home owner is certified will he/she be certified to help a neighbor or relative install a sewage system? What about certified contractors who hire layman to install systems under their so called "supervision". Would these workers be required to become certified? I disagree with the addition of this section to the rule.

Thank you for the opportunity to express my views. I hope that many of these issues can be addressed and resolved prior to final passing of the rule.

Sincerely,
Tate Hayman, R.S.
Tate Hayman, R.S
221 10th St. Apt. 13
Parkersburg, WV 26101



Mid-Ohio Valley Health Department

211 SIXTH STREET, PARKERSBURG, WEST VIRGINIA 26101
Phone 304/485-7374 Fax 304/485-7374

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MAY - 1 1997
REGULATORY DEVELOPMENT

James M. Bradley, Jr.
Chairperson

April 28, 1997

Joan Burdette
Vice Chairperson

Ronald D. Leach
Treasurer

Earl L. Burgess, Jr.
Executive Director

TO: Regulatory Development
DHHR
Building 3, Room 265
Capitol Complex
Charleston, WV 25305
Attention: Kay Howard

FROM: Bonna K. Goodnight, R.S. *B.K.G.*
Environmental Health - Ritchie County
407 South Spring Street
Harrisville, WV 26362

RE: Sewage System Rules - Comments

As the sole sanitarian in Ritchie County, I am glad to have the opportunity to comment on the proposed sewage system rules.

The summary contained in the Abstract states, "The substantive amendments are intended to clarify and make less rigid certain provisions of the current rules, which are unnecessarily interfering with economic development."

After reading this, one turns to the proposed amendments and discovers in Section 4.11 of the Definitions that an individual sewer system installer is one "who has demonstrated knowledge of the rules by passing the applicable installer certification exam(s)." I have worked with property owners who wish to install their own system, and I have often thought there should be some type of mandated training for the home owner before a permit is issued. However, based on the citizens of Ritchie County, I do not think requiring a home owner to pass the applicable installers exam(s) will solve many of the problems of the owner-installed sewage systems. It is my feeling that the installers exams include too many systems the individual home owner does not need to be concerned with and not enough of the practical things they need to know for their specific system. Also, there are many home owners who have the skill and talent to install their own sewage system, but lack the reading and comprehension skills to pass an exam. Conversely, there are many home owners who could pass the written test with flying colors, but lack the talent to transfer their academic comprehension to the actual physical installation. It is my feeling that a series of training videos showing the installation of specific types of systems would be more practical. An alternative solution to the home owner installation problem might be the prohibiting of them, just as home owners are not permitted to drill their own water well.

Serving: City of Parkersburg, Calhoun, Pleasants, Ritchie, Roane, Wirt & Wood Counties

I was glad to see the inclusion of Section 9.3:

"All mechanical individual sewer systems with surface discharge and all mechanical individual sewer systems where additional treatment is required for subsurface discharge shall have a perpetual maintenance program approved by the director."

This will eliminate the major problems experienced with these systems that currently occur after the previously mandated two (2) year contract expires. However, it should be made clear whether this perpetual maintenance is to be done by the manufacturer or whether the home owner will be allowed to do the perpetual maintenance. If the home owner is to be allowed to do the perpetual maintenance, then I feel the manufacturer should offer training to ensure it is done properly.

With the inclusion of Section 9.3, I was greatly disappointed to find the NSF Class I home aeration units with surface discharge were not included in Section 10.10g which lists alternative systems allowable "for new constructions on lots two acres and over." Ritchie County, along with most of the counties in West Virginia, consists of soil that is often solid red clay. Added to this, Ritchie County is also very hilly. Therefore, in many instances an NSF Class I home aeration unit with surface discharge might offer the most practical solution to sewage disposal. It does not seem to me that the exclusion of NSF Class I home aeration units with surface discharge from the approved alternative systems meets the goal of the new rule to "make less rigid certain provisions of the current rule which are unnecessarily interfering with economic development."

The above mentioned amendments are, to me, of primary concern. However, there are other amendments which I feel still need further clarification and interpretation. On April 7, 1997, sanitarians and environmental health personnel of the Fairmont/Wheeling District received a copy of responses to questions regarding the new rule which were sent to Max Fisher, R.S. I respectfully submit that these questions and responses be reviewed before the final wording of the new rule is complete, as I feel it clearly delineates the gray areas and the areas which are of concern to many, not just myself.

In conclusion, I would once again like to express my appreciation for the opportunity to have a part in making West Virginia a safer and healthier place to live and play.

Enclosures



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

MEMORANDUM

TO: All Sanitarians/Environmental Health Personnel, Fairmont/Wheeling District

FROM: Mark S. Whittaker, District Sanitarian, Fairmont District Office

MSW

DATE: April 7, 1997

RE: New Sewage Rule

I have enclosed a copy of responses to questions raised regarding the new sewage rule. These were faxed to me by Max Fisher on April 4, 1997. I am hopeful that these responses will be helpful to you and clear up some of the questions you might have.

Should you have any more questions about the Rule, direct them to Max Fisher at (304) 725-9453.

BUREAU FOR PUBLIC HEALTH
Office of Environmental Health Services
401 Guffey Street
Fairmont, West Virginia 26554
Telephone (304) 367-2751 FAX (304) 367-2755

31 MAR.97

PUBLIC HEALTH SANITATION DIVISION

**RESPONSES TO QUESTIONS RAISED CONCERNING THE EMERGENCY FILED
SEWAGE RULES EFFECTIVE MARCH 14, 1997**

1. **QUESTION.**

Since there is no use of the term "accessible" in the rule, why is it included in the Definitions section?

Note This definition was not changed from the 1983 design standards.

Response:

While developing the revised rules and design standards; regulatory services recommended one set of definitions for both documents. Since the rules and design standards are interrelated they must have the same definitions.

2. **Question.**

Why is the term "subdivider" necessary in the Definitions sections?

Response:

This definition was not changed from the 1983 rule. The word "subdivision" as found in the rule definition is used as a verb. The term "subdivision" is also used as a noun in the text.

The word subdivider defines "any person who divides a tract or parcel of land into (2) or more lots." The word person is defined as "any entity recognized by law". Without this definition we would not be able to assign legal responsibility to persons who subdivide property.

3. **Question:**

Why is the term "wastewater" necessary in the Definitions section?

Response:

Same as question 1.

4. **Question:**

Why is the term "water well" necessary in the Definitions section?

Same as question 1.

5. If "accessible" remains in the rule, why is no limiting distance specified?

Response:

This definition was not changed from the 1983 rule. There are more factors than distance to consider when the regulatory authority evaluates when a structure must connect to public sewage - (cost if a lift station must be

installed) - (drilling under an interstate highway) - (crossing adjoining properties). Further clarification from engineering will be requested.

6a. Question:
Who will administer installer exams?

Response:
Class I exams will be revised for the new rules and can be given by local health departments, by selected district offices throughout the state or at our central office. Each county can choose which option will work best. Class II Exams will only be administered by the Division of Public Health Sanitation.

6b. Question:
Who will grade Class I exams?

Response:
Use same procedure as before. Sanitarians who administer individual tests should grade the exams and review it with the individual taking the exam. If that is not possible the exams can be sent to the Division of Public Health Sanitation for grading.

6c. Question:
Is a homeowner who wants to install his own Class II system required to take the Class I and Class II Exam?

Response:
Yes

6d. Was consideration given to developing a "specialized" testing for homeowners?

Response:
No - This issue will be brought before the Sewage Advisory Board for review.

6e. Question:
When and how often will certification training courses be held?

Response:
Presently we are trying to conduct one Class II course in each district each year. This does not prevent local health departments from conducting Class I courses. Some counties have video taped installer training. Class II Exams can be scheduled through the Bureau of Public Health Sanitation as requested.

6f. Question
If a homeowner passes the certification exam will they be West Virginia certified installers for five years?

Response:

Only if they file an application for certification, obtain a West Virginia Department of Labor Contractor's License, and demonstrate that they have adequate skill in making installations. Otherwise they need only to pass the applicable exam(s) to install their own system. (Ref. Sec. 4.11, 13.4, 13.6)

6g. **Questions:**

Will a homeowner who takes and passes the installer exam be included on the list of certified installers for five years?

Response:

Same as 6f.

7. **Question:**

Define "brute force" - does this include use of backhoe, shovel, and pick?

Response:

The definition of "Rock Strata" was requested for those counties which have limestone bedrock which dips, peaks, and runs in ledges. The definition came from an engineering text book and counsel with a soil scientist. The definition itself defines "brute force" as "drilling" or "blasting" - it excludes stones or boulders which are surrounded by a minimum of 3' of soil. Certainly a back hoe with a jack hammer attachment would be considered "brute force". Using a back hoe to remove loose stones from the drainfield area would not necessarily be a problem, but would require professional sanitarian judgement.

8. **Question:**

Based on the definition of a subdivision and the change in requirements for reserve area on all lots in subdivisions (section 64-9-10), will every subdivision of property for dwelling or establishment development require a subdivision application and approval, regardless of lot size, as well as the appropriate fee that has been adopted by the majority of county health departments?

Response:

We will be requesting an interpretation of your question from the Attorney Generals office since this might be in conflict with 16-1-7 of the code. Until clarification is received, I recommend that you continue to process subdivisions as before; however on all lots two acres and over a 10,000 sq. ft. sewage reserve area is required prior to issuing the sewage permit. The present fee rule does not include subdivisions where all lots are 2 acres and over and meet frontage requirements.

9. **Question:**

Section 4.26 implies that these rules pertain to water containing animal waste. Is it implied that we will be authorized to regulate the disposal of waste from all

animals in this rule?

Response:

The definition of sewage has included animal waste in solution since 1983. The state health department has issued permits for water carried animal waste facilities such as liquid manure systems which use water as a flushing agent. The state health department engineering section in conjunction with the Department of Agriculture has worked together to permit several such systems since 1970.

10. **Question:**

Section 4 27 defines a heat pump well as a water well, possible suggesting that our department regulates such installations. Is this true? By what means?

Response:

Heat pump wells have been included within the definition of "Water Well" since 1989 and require a permit for drilling. The Sewage Design Standards requires 100' separation between water wells and soil absorption systems. This includes heat pump wells. (64 CSR 19 section 3.7)

11. **Question:**

Section 5.1 seems to contradict 16-1-9 of the State Code. If there is no sewage evidenced, can there be a violation? According to section 5.4, it seems that we do not issue a notice until a person is constructing, installing, extending, altering, maintaining or operating a toilet facility or sewer system...and says nothing of advance construction of the dwelling or establishment.

Response:

The enforcement of section 5.1 is found in section 15.1 of the rule which references West Virginia code 16.1.18. Section 5.4 would only apply if a person was constructing, installing, extending, altering, maintaining, or operating a toilet facility or sewer system which is not in compliance.

12. **Question:**

What is "replacement area?"

Response:

The intent of this section was to insure that all new dwellings or establishments which propose subsurface discharge systems have area to install the initial system and enough (reserve) area to replace that system.

13. **Question:**

Referring to 5.6, will there be specific approved 'manners' of disposal provided to the sanitarian?

Response:

There are many cases where package sewage plants are removed, refurbished and offered for sale. This section could also apply to composting toilets, chemical toilets and septic tanks. Further clarification will be requested.

14. Question:

Section 5.8 requires a recorded easement or authorization for off-site disposal of sewage or effluent requiring the use of or crossing of adjacent property. What if that adjacent property is WVDOH right-of-way and they no longer routinely issue permits for such? What if the discharge runs onto an adjacent property for an extremely short distance, and then onto other property before a discharge stream - do we not need additional easements?

Response:

This section was not significantly changed from the 1983 rule. It requires a recorded easement for all properties which require the use of or crossing of for off lot disposal. To correct existing failures, a policy is being considered concerning the use of highway ditch lines when no other discharge point is available. This will be co-ordinated with the Department of Highways.

15. Questions:

Does the allowing of a transfer of a permit (6.10) establish the possibility of a local health department charging a fee for the transfer like we are able to do for the initial permit?

Response:

This section was not significantly changed from the 1983 rule. If a transfer fee was legal under the 1983 rule, it would be legal now.

16. Question.

In section 6.11, annual inspections was felt to be too frequent. Does the local health departments or the state inspect sewage tank cleaners? The original intent in the setting of the fees for such permits was predicated upon a five-year permit - will this fee schedule now be reevaluated? Has the new application with approved DEP disposal sites been included?

Response:

The on-site committee felt an annual permit for pumpers was needed. Too much can change in five years. This issue will be referred to the advisory board.

At present, local health departments inspect and permit pumpers. Remember local health departments can access any fee up to the maximum allowed by the fee rule. This allows a lower annual fee to be accessed if desired.

17. Question:

Can an individual property owner or relative do his or her own percolation tests?

Does he have to be certified as an installer or pass a certification process in order to conduct the test? The text would indicate that "the person conducting the tests will certify to the accuracy of the results...."

Response:

Section 7.3 was not changed from the 1983 rule. The qualifications of persons doing percolation tests are left to the director. This allows local "Health directors" flexibility. It is recommended that all percolation testing be conducted by someone who has taken and passed the Class I Septic Installer Exam and have demonstrated knowledge of how a percolation test is conducted.

18. **Question:**

One of our sanitarians opposed the removal of 7.5 requiring the holder of the permit to notify the director when construction or installation is to begin. The submitted objection read:

"I disagree with the removal of this section. Notification of when the construction or installation is to begin allows the sanitarian the opportunity to arrange his or her schedule for the final inspection. Also, in the case of a homeowner installation, prior notification allows the sanitarian to arrange time to stop at the site in order to ensure installation is being done correctly before reaching the point of final inspection."

Response:

The on-site committee felt this should not be part of the rule. It was not enforceable. This does not prevent a local health department from including a similar statement on individual permits.

19. **Question:**

Section 8.1 changes the director shall to may make, or cause to be made, as many inspections..., is this a loophole for actual inspections by inspectors not being made? Section 8.3 reinforces this notion since it removes the word inspection, in favor of "approved in writing".

Response:

This section was changed to protect local health departments from lawsuits if the director could not inspect systems due to extenuating circumstances.

20. **Question:**

Section 8.6 of the rule requires immediately effective orders on a sewer system, while 16-1-9 of the State Code gives thirty days. Does this Rule conflict with the Code?

Response:

The 1983 version of this only required "an order revoking the construction permit". This did not always ensure that the deficiency would be corrected.

Since enforcement of this particular section refers to the rule and not 16.1.9, there is no conflict. Keep in mind that the way this section reads does not prevent giving a 30-day notice. Will request attorney review.

21

Question:

The requirement for a "perpetual maintenance program" for all mechanical individual sewer systems lacks specifics as to the requirements of the entity providing that service. There appear to be no standard or minimum requirements to determine the appropriateness of the entity that services the system. Is the State health department going to establish such guidelines for consistency throughout the state?

Response:

Everyone involved with mechanical sewage systems recognizes the need for "perpetual maintenance". This section was purposely written nonspecific, so as allow time to review several options and choose one which will work in West Virginia.

Possible options:

- All units taken over and operated by P.S.D.
- Require operating permit which would require documentation that unit was being maintained by certified maintenance contractors.
- Allow home owners to inspect and maintain their own units and submit documentation to local health department to be included in individual files.
- Any other procedure that would ensure these systems are maintained.

This question will be addressed by the Sewage Advisory Board.

22

Question:

Section 10.5 on property subdivision by wills raised the question of reasonableness when the property may have been platted and recorded and the executor is "out of the picture". If we are confronted with several individual tracts, with individual owners, and sewer systems can be installed in compliance with appropriate design standards on a case by case basis, can we not issue individual permits in those situations without an actual available subdivider?

Response:

This section did not change much from the 1983 rule. To prevent any type of title insurance problem for each individual lot the executor is responsible for obtaining subdivision approval for all lots included in the will.

23.

Question:

Please explain the necessity of the duplication of sections 10.10.a. and 10.10.f. when the definition of a subdivision and the requirement of 10,000 square feet

seem to cover both sections with less wording.

Response:

Section 10.10.a is very specific for the 10,000 sq. ft. reserve area on lots less than 2 acres in size in that it must be approved for standard systems. 10.10.f. requires the 10,000 sq. ft. sewage reserve area on lots over two acres which can be approved for standard or alternative systems.

24 **Question:**

Section 10.10.d allows use of land with percolation rates to 90 minutes an inch. Is this 90 minutes an inch percolation rate acceptable for previously divided lots? Will we now be able to install a single field-conventional soil absorption system for land between 60 and 90 minutes an inch? Why does this section refer to 10.10.1 - no such section exists?

Response:

The 60 - 90 minute percolation rate which allowed dual fields became effective in 1983 and applied to all non subdivision lots. (See section 8.0-page 132 in the 1983 design standards)

The emergency filed rule will allow all lots created since its effective date to qualify for approval if the percolation rate is between 60 - 90 min/inch average.

The design standard have not been changed and still require dual fields for percolation rates between 60 90 min/inch. (400 sq. ft./bedroom for each field.)

Section 10.10.1 was changed to 10.10.a. by stylistic editing at legislative services.

25. Does section 10.10.g "unique systems designed for specific situations" allow the permitting of home aeration units on lots greater than 2 acres? Are home aeration units with surface discharge going to be permitted for new houses under any conditions?

Response:

Home Aeration Units can be considered for any application when followed by a standard drainfield.

Home Aeration Units may be considered on lots over two acres when discharging to an alternative soil absorption system.

Home Aeration units can not be approved for new construction with surface discharge. We have requested a D.E.P. representative to sit on the advisory board which should help address the concerns of surface discharge systems for less than 600 gallons per day for new construction.

26. **Question:**

Section 12.1. seems to restate provisions of 6.11., but indicates a statewide permit Enforcement by local health departments is hindered in such a case. Did the committee consider individual county permits for sewage tank cleaners - who is

responsible for permitting and inspection of a sewage tank cleaner - particularly when the operation is based in another state or a county that does not have an active permitting program for sewage tank cleaners?

Response:

Both sections in question have minor changes from the 1983 rule. Section 12.1 requires a permit for collecting, removing, transporting, or disposing. Section 6.11 requires certain items of compliance to obtain a permit. Any county can inspect a sewage pumper. The county where majority of work should permit the truck. If that is not possible, the pumper must find another county willing to issue a pumper permit. This will be referred to the Sewage Advisory Board for further review.

27. **Question:**

Section 12.9 requires the sewage tank cleaner to send in quarterly reports to the director - is this the state, the home county or the county health department that issued the original permit, or to all county health jurisdictions in which they worked? Are these forms to contain detailed directions to the job sites?

Response:

Quarterly reports for sewage cleaners have not been finalized as yet. They should be sent to the primary county who permits and inspects the truck.

28. **Question:**

The director may set up an advisory board? (14.1.) For what purpose? What power does this board have?

Response:

This board is made up of representatives from the state government, county government, and the sewage industry. As its name implies, members of this board after consensus will make recommendations and advise the director on a wide range of technical, procedural, and other issues relating to West Virginia Sewage Program.

Normal meeting schedule would be quarterly (one day), meeting location - Bridgeport. Terms for members and operating procedures will be developed at the first meeting.

Duties of the board will include, but not be limited to:

- Serve as a review/sounding board for new technology and its application for West Virginia.
- Develop "fact sheets" to supplement our design standards.
- Develop MOU(s) with the Division of Environmental Protection as needed.
- Review training needs for sanitarians and industry.
- Review and update as necessary the Procedure Manual policies relative to the sewage program.

- **Review complaints/concerns with Sewage Rules and Design Standards.**
- **Other sewage program issues as needed.**

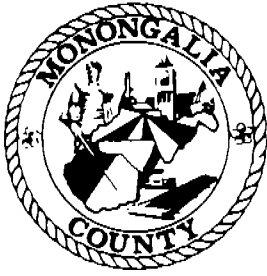
29. **Question:**
Section 4 10 defines an individual sewer system as a system with a daily design flow not to exceed 1000 gallons per day. Who will permit systems over 1000 gallons - state or county?

Response:
Domestic sewage systems less than 3000 gallons/day with subsurface discharge are still county permitted, however; district and state staff are available for assistance when requested.

30. **Question:**
The revised rules and design standards increased the area required for drainfields. What about lots created prior to the rules which cannot meet the new requirements? If we cannot permit them, would this not be considered "taking" their land?

Response:

- **If undeveloped (existing) lots have a prior health department approval or permit, they would not be affected by the new rule.**
- **If an undeveloped lot existed prior to 1983 and does not have a system and replacement area; it would be treated no different than the same lot which has zero percolation or a seasonal water table to within 12" of the ground surface. We can not legally approve the development of property which does not have adequate space to treat its wastewater on site and have a minimum replacement area.**
- **At this time surface discharge is not an option for a replacement system.**
- **We cannot legally approve new systems which do not meet the rules.**



Monongalia County Health Department

453 Van Voorhis Road, Morgantown, WV 26505-3408
Phone 304/598-5100 FAX 304/598-5199

7 May 1997

RECEIVED

MAY 12 1997

REGULATORY DEVELOPMENT

West Virginia Department of Health and Human Resources
Regulatory Development
ATTN: Kay Howard
State Capitol Complex
Building 3, Room 256
Charleston, WV 25305

Dear Ms. Howard:

This letter is to be evaluated as a public comment regarding the Department of Health and Human Resources, Sewage System Rules, 64 CSR 9 (SSR).

Health departments constantly interact with the public by providing education and enforcement of the public health laws and rules. Clearly written, sensible rules are prerequisites to accomplishing that mission. Two specific areas of the SSRs which should be reconsidered are subdivisions (64-9-10 et seq.) and sewage tank cleaning (64-9-12 et seq.).

The subdivision section is confusing and unnecessary. The current regulations have caused tremendous confusion for the public and the emergency filed SSRs provide little improvement. The regulations must have a purpose and be clear. Subdivision regulation is a planning and zoning issue which have little impact on public health unless lot size is inadequate for establishing and supporting wastewater disposal facilities. It is recommended that the subdivision section be eliminated entirely. It should be replaced by requiring every lot that is to be developed to be evaluated on its own merit. Lots which are to be used for building or dwelling purposes should contain 10,000 sq. ft. of acceptable area reserved for installing on-site sewage systems. The only exception to this should be for previously approved parcels or lots served by public sewerage systems. This concept is clear and could be easily explained to the public. Enforcement of such legislation would be easier because lots would meet either the requirements or they would not. Developers would be encouraged to plan developments in advance to maximize the effective use of land but the public would not be hampered by trying to follow confusing, unnecessary regulations.

The sections involving sewage tank cleaning should be transferred to the Division of Environmental Protection (DEP). In 1993, regulation of sewage sludge was legislatively transferred from the Bureau for Public Health to the DEP but sewage tank cleaning was left

"COMMUNITY HEALTH IS COMMUNITY WEALTH"

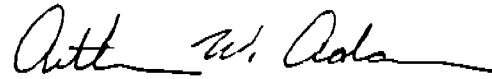
under the regulation of health departments. Logic would place the trucks that haul waste to DEP approved disposal sites under DEP's jurisdiction. An option would be to return the responsibility for disposal sites to health departments. Regardless, both responsibilities should reside with the same agency.

Thank you for the opportunity to evaluate and respond to the emergency filed rules. Reevaluating the areas noted above will resolve our major concerns.

Sincerely,



Sally Taylor, Ed. D.
Executive Director



Arthur W. Adams, Director
Environmental Health Division

SMT/AWA/lsc

MOUNTAIN COUNTRY PROPERTIES

Post Office Box 7 • Slatyfork, West Virginia 26291 • 304-572-3900

May 9, 1997

Regulatory Development,
Department of Health and Human Services
Building 3, Room 265 Capitol Complex
Charleston, WV 25305
Attention: Kay Howard

RECEIVED

MAY 12 1997

REGULATORY DEVELOPMENT

Dear Ms. Howard,

I am a real estate broker, a land developer, and a native West Virginian and have been in business for the past 20 years. This letter is in reference to the emergency rule proposed, Title 64, West Virginia Legislative Rule Division of Health Series 9, Sewage systems. I have major concerns with 64 CSR 9 10.10.f as related to the minimum on-site disposal area of 10,000 square feet. I feel this would restrict many families in Pocahontas and other counties within the state from affordable housing, since much of the topography would prohibit new housing starts because of this regulation.

Another concern would be the related economic impact that would take place within the building industry and other related industries such as equipment operators, real estate sales, building material suppliers, etc. West Virginians have a difficult time now without more regulations being imposed upon them.

I have inquired as to the problem with failed septic systems within Pocahontas County and cannot document a problem exists with certified installed systems. It seems to me with current and future technology, i.e., small package plants and other systems will be more than adequate to handle future problems without removing scarce usable land that can not be put to productive use.

Another important factor to keep in mind is the tax base that supports our schools, our health departments, and other government services that will be adversely affected by this change, since this will severely limit subdivisions of low tax base properties that could produce many times over its current tax base. And in the case of Pocahontas County, it will have an adverse effect on the tourism industry with less places for out of state people to spend their money, not only on goods and services, but real estate and related taxes and they pay when they buy primary, second home or retirement property.

And last but not least we need to consider how these new rules, if put into law, will affect existing subdivisions that have been platted and recorded prior to these new regulations. Otherwise, I fear we all may be involved in expensive, time consuming lawsuits to nobodys' benefit but the attorneys who make up the rules to start with. Thank you for a way to respond to this situation and I will look forward to a reply at your earliest convenience.

Sincerely,



David Curtis

RANDOLPH-ELKINS HEALTH DEPARTMENT

Mary S. Boyd, MD
Medical Director

201 Henry Avenue
ELKINS, WEST VIRGINIA 26241
Telephone 636-0396
Fax 304-637-5902

Sandra Grahame, Chair
Board of Health

Ronald E. LaNeve, MPH
Administrative Director

Mary Heineman
Loy McAtee
Gene Smith
Victor Thompson

May 12, 1997

RECEIVED

MAY 13 1997

REGULATORY DEVELOPMENT

Kay Howard
Regulatory Development
Department of Health & Human Resources
Building 3, Room 265
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

I am writing in reference to the new West Virginia Sewage Regulations. For the most part, the regulations have greatly improved, but there are a few problems with some of the revisions.

The requirement for all persons to take the installers test needs to be modified. I agree with many sanitarians beliefs that a homeowner test should be developed. The idea that the individual homeowner has to pass the installers test in order to install his or her own septic system creates an undue hardship on them.

In some areas of the state, like Randolph County, it's hard enough to get them to install the septic system under permit. An easier test with the option of allowing the individual sanitarian to decide a homeowners capabilities in septic system installation should be allowed. If an individual homeowner demonstrates the ability to install his particular system, then this should be satisfactory.

I have some doubts about the 10,000 square feet rule on lots two acres or larger. For the most part, I agree with this rule. It leaves an option even on large two acre lots that are steep and have only one small area to install the system and no room for replacement.

I believe that lots two acres and greater in size should have some latitude in the reserve area requirement. We have several subdivisions in Randolph County that possess 4-5 acres and greater lots, but leave just enough for a drainfield and to replace it. This makes it difficult to explain to an individual that their lot isn't acceptable. For example: if they have enough to install and replace the proposed drainfield, but only possess an 8,000 square feet reserve area.


WIC Elkins-Petersburg-Buckhannon
636-8100

Dental Unit—Elkins
636-7823

For the most part, I was very skeptical when first reading these new regulations. I have found out after trying them on the public, it hasn't been too difficult except in the two areas I have addressed.

Please reconsider the homeowners testing requirements and 10,000 square feet rule on lots two acres or greater.

Sincerely,


WARREN L. ELMER
Registered Sanitarian



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@citynet.net

May 13, 1997

Ms. Joan E. Ohl
Secretary
Department of Health and Human Resources
State Capitol Building
Charleston, WV 25305

Dear Ms. Ohl:

The West Virginia Manufacturers Association has briefly reviewed your department's proposed emergency rule regarding Sewer Systems, 64CSR9, and we believe there is a need for clarification. We do not believe the rule is intended to affect manufacturers, but the language could be interpreted to unintentionally place additional requirement on manufacturing facilities. The attached correspondence from our legal counsel to the chairman of the WVMA Environmental, Safety and Health Committee identifies and describes the potential problems and concerns.

If, after reviewing our concerns, you wish to discuss this issue in more detail, please call me at 342-2123 or Bob Foster, chairman of our ES & H committee at 342-0161. We are quite interested in this issue and will make ourselves available at your convenience.

Sincerely,

Karen S. Price
President

Encl.

Board of Directors

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DAVID L. YAUSSEY
DIRECT DIAL NO. (304) 347-8358
E-MAIL dly@ramlaw.com

April 28, 1997

Mr. Robert L. Foster
Vice-President Environmental Affairs
Charles Ryan Associates, Inc.
1012 Kanawha Boulevard, East
P. O. Box 2464
Charleston, WV 25329

Re: Title 64, Series 9 - Sewage Systems

Dear Bob:

I have reviewed the emergency rule filed by the Division of Health, Department of Health and Human Resources, amending 64 C.S.R. 9, Sewage Systems. The rule does not appear intended to affect manufacturers, but this should be made a little clearer. Note that in Sections 5.2 and 5.3 the owner of each establishment must provide toilet facilities and a sewer system. A "sewer system" is defined in Section 4.20 as "a system . . . which receives and treats sewage and provides for the disposal of effluent and sludge therefrom. Included in this definition are individual sewer systems and public sewer systems." This suggests that every facility owner must provide a system for treating sewage, whereas many manufacturers probably have their sewage running to a POTW. I assume the Division of Health does not intend to have this rule applied to anyone who merely provides toilet facilities and pipes the waste to a treatment works that it does not own, but that is not clear in the rule.

Even if a manufacturer does treat its sewage, it is not clear how or whether the Division of Health intends to regulate large individual sewer facilities. Section 4.10 defines "individual sewer systems" as those with flows that do not exceed 1,000 gallons per day with subsurface discharge, or 600 gallons per day with a surface discharge. I believe that some manufacturers will have sanitary sewer flows greater than 600 gallons per day with a surface discharge. If so, such plant owners are presumably not subject to the requirement in Section 5.1 that individual sewer systems have a sewage disposal installation permit from the Division of Health. The situation is further confused by the fact that Section 6.1 requires a disposal permit for all sewer systems, while Section 6.2 mentions only individual and public sewer systems (both of which are separately defined, and neither of which includes large individual sewer systems) when describing the sewer systems that must be

ROBINSON & MCELWEE LLP

Mr. Robert L. Foster

April 28, 1997

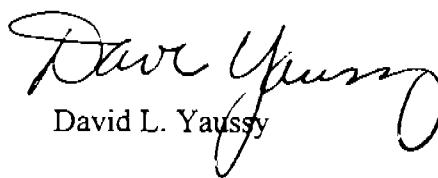
Page 2

permitted and constructed in accordance with Division guidance and rules. This inconsistency between references to the broad category of "sewer systems", and the narrower references to "individual sewer systems", recurs throughout the rule.

As it is unclear how the Division of Health intends to regulate those sanitary sewer systems that are tied into a POTW, or how it intends to regulate individual sewer systems with flows that exceed the regulatory definition in Section 4.10, I hesitate to provide alternative language. I suggest we raise these concerns with the Division of Health, as I suspect they will be willing to clarify the rule in the manner we find acceptable.

Please let me know if there is any other that you would like us to take with regard to the rule.

Sincerely yours,


David L. Yaussy

DLY:shb

Date: June 4, 1997

To: Legislative Rule-Making Review Committee

From: Kay Howard, Director
Regulatory Development
Department of Health and Human Resources

Re: Sewage Systems, 64 CSR 9

1. Authorizing statute(s) citation: W. Va. Code §16-1-7
 2. a. Date filed in State Register with Notice of Hearing: April 7, 1997
April 18, 1997 (Extension)
 - b. Other notice, including advertising, given of the hearing: A press release was given to a number of newspapers. Advertisements announcing the public comment period were placed in newspapers serving 10 major cities in the State. Copies were sent to local health departments for their use and for circulation to affected parties.
 - c. Date public comment period ended: May 12, 1997
May 14, 1997 (Extension)
 - d. List of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____
 - e. Date of filing in State Register the Agency-Approved proposed Legislative Rule following public hearing: June 4, 1997
 - f. Name and phone number of agency contact person: Kay Howard, 558-3223
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 hearing for the taking of evidence and a general description of the issues to be decided.
 - b. Date of hearing:
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
 - d. Attach findings and determinations and reasons:

**Discussion of Public Comments Received
Concerning the Proposed Amended Rule
Sewer Systems, Sewage Treatment Systems and Sewage Tank Cleaners
64 CSR 9**

This proposed rule amends and retitles the Division¹ of Health's rule for Sewage Systems, 64 CSR 9. The title is proposed to be amended to more accurately reflect the contents of the rule. The purposes of the proposed amendments are to upgrade the rule to incorporate present day technology being utilized in the on-site sewage disposal industry, to relax some unnecessarily rigid standards, and to generally bring the rule into accordance with current acceptable standards. These amendments should also better facilitate the Division's responsibilities under the provisions of the State groundwater protection law (Article 12, Chapter 22 of the W. Va. Code).

The rule as proposed for public comment, with one (1) exception, was filed and is presently in effect as an emergency rule. The new section requiring certification of individual sewage tank cleaners which was proposed for public comment was not included in the emergency rule. Please note, as indicated below in this discussion, that the Division has decided to withdraw this proposed addition to the rule. The existing requirement requiring a permit for businesses engaging in sewage tank cleaning has been retained.

A public comment period was held from April 7, 1997 to May 14, 1997. The comments received are summarized and discussed below. The number to the left of each comment indicates the part of the rule to which the comment refers, based on the public comment version. A few changes have resulted in renumbering. Comments which do not refer to a specific section are indicated as "Gen."

In addition to responding to comments, the Division has deleted some ambiguous language such as "instructions issued by the director," and has made some non-substantive stylistic revisions which are not discussed below, although they are marked with strike-through and underlining. The Division has attempted to clarify the definition of "subdivision" which was used as a noun throughout the rule, but defined as a verb. The definition of "subdivider" was deleted; the term was not used. Sections 9.1, 10.2 and 10.9 were deleted as redundant. Clarifying language was added to subsection 12.1. Language in Section 15 which was beyond the division's statutory authority has been deleted and the section has been simplified by referring to rather than restating the applicable statute.

Some modifications required renumbering. Also Sections 1, 2 and 3 have been combined, and the numbering now corresponds with current Secretary of State requirements.

1) §4.10. **Comment:** Definition of individual sewer system needs modified to include systems

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

with flows over 1,000 gallons/day or another definition developed for systems 1,000 gallons/day and over.

Response: Agreed. Definition of public sewer system was modified (Section 4.17) to include systems exceeding 1,000 gallons per day design flow.

2) §4.26. **Comment:** Amend definition of waste from dwellings or establishments to exclude animal waste.

Response: Disagree. This would exclude the regulation of animal waste water from feed lots, liquid manure systems, dog kennels and similar facilities.

3) §10.10. **Comment:** Add paragraph restricting use of land for drainfield that has a percolation rate of five minutes per inch or faster.

Response: This issue has been addressed in the proposed design standards which prohibit a standard septic tank soil absorption system from being installed where percolation test results average less than five minutes per inch.

4) §10.10. **Comment:** Add paragraph restricting use of land for drainfield that has been filled over floodplain to build above flood elevation.

Response: The proposed design standards prohibit the installation of an individual sewage system in any filled area or where seasonal flooding occurs without written approval of the director.

5) §10.10.d. **Comment:** If perc rate restriction is lowered from 60 min/inch to 90 min/inch, a minimum amount of soil should be required above the restricting layer in order to avoid breakouts during heavy precipitation events.

Response: The 60 - 90 minute percolation soils have been used successfully since the 1983 design standards. The proposed design standards require a minimum of three (3) feet of unsaturated soil between the bottom of a standard drainfield to a restrictive layer or a seasonal water table.

6) §4.10. **Comment:** There appears to be an attempt to exempt business establishments over 1,000 gallons/day with subsurface discharge from this rule. This could affect quality of ground water and surface water in West Virginia.

Response: (See response to Comment #1) The rule requires all sewage systems including commercial systems regardless of size to obtain Division approval prior to installation. See 6.1 of the rule.

7) §12.7. **Comment:** Requests Division of Health to provide cost efficient waste disposal sites for septic tank pumpers firms.

Response: This is beyond the authority of the sewage system rules.

8) §6.11. **Comment:** Object to annual permit for sewage tank cleaners due to cost.

Response: The operating permit for sewage tank cleaners was reduced from a five (5) year permit to a one (1) year permit to allow local health departments a yearly review of the industry operating in their respective counties. The permit fees are discretionary on the part of the local health departments.

9) Gen. **Comment:** Why does a new homeowner have to install a soil absorption system and have it fail before a home aeration unit can be installed? This is costly to the homeowner.

Response: Home aeration units are an option available to local health departments for correcting health hazards. The Department of Environmental Protection will not allow the Division of Health to issue permits for home aeration units with surface discharge for new construction.

10) §4.11. **Comment:** Object to requiring homeowners who want to install their own sewage system from taking the applicable installer certification exam(s).

Response: Agree. Individuals installing sewage systems must be knowledgeable of the rules and design standards regulating sewage systems. Section 4.11 has been revised.

11) §10.10. **Comment:** Object to requiring subdivision approval of lots over two (2) acres.

Response: Disagree. Requiring all property which is proposing on-site sewage disposal systems to have approved sewage disposal areas prior to selling protects the consumer and will prevent lots from being created which cannot be served by sewer systems. Previous to this requirement, property could be divided and sold without any review of the suitability of individual lots for sewage disposal.

12) §10. **Comment:** The subdivision section of the new rule is more confusing since it establishes different limitations on lots based on four periods of time.

Response: Disagree. This rule eliminates confusion by requiring a 10,000 sq. ft. sewage reserve area on all lots created after the effective date of the rule. Lots with previous Division/Department of Health approval would not be affected. Undeveloped lots prior to 1983 rule would be required to have sufficient area to install the initial system and a suitable replacement area. Lots created between the 1983 rule and the effective date of this rule would be required to have a 10,000 sq. ft. sewage reserve area if the lot was less than two (2) acres. Lots over two (2) acres would need enough area to install the initial system and a suitable replacement area.

The subdivision review process is the only mechanism to provide the health department with water and sewage information before a lot is recorded and sold. The proposed subdivision review procedure is intended to ensure that each lot proposed for a dwelling or establishment can have an approved means of sewage disposal.

13) §10.10.a. **Comment:** The 10,000 sq. ft. sewage reserve area in the new rule does not take into account new technology which allows for a reduction in drainfield size, such as chamber systems

that require 40% less area for installation.

Response: The 10,000 sq. ft. on-site sewage reserve area is reasonable. On large homes (four bedrooms) - it provides enough area for the initial system and a replacement system. The technology that provides for a 40% size reduction will be reviewed by the Sewage Advisory Board to determine if the technology is acceptable.

14) Gen. **Comment:** How will fees be charged for subdivision lots over two (2) acres?

Response: Environmental health service and permit fees are not a part of this rule.

15) §10.10.a. **Comment:** How will the 10,000 sq. ft. sewage reserve area be designated and who will be responsible for such designation?

Response: The present guidelines on subdivisions will be modified to include all lots developed after the effective date of this rule. The designation is the responsibility of the property owner/developer as presently required.

16) §9.3. **Comment:** What type of perpetual maintenance program is required for a H.A.U.?

Response: The rule allows the director to establish perpetual maintenance programs. This issue will be submitted to the sewage advisory board for review and recommendations.

17) §10.10.g. **Comment:** Recommends home aeration units with surface discharge be approved for new construction on lots two (2) acres and over.

Response: The State Department of Environmental Protection regulates surface water discharges. The present policy only allows surface discharge of home aeration units to correct existing failures creating a health hazard.

18) §12. **Comment:** All sections involving sewage tank cleaning should be transferred to the Division of Environmental Protection.

Response: The Division of Environmental Protection has requested that the Division of Health continue to regulate septic tank cleaners and equipment. The Division of Environmental Protection is regulating the disposal of septage.

19) §10.10.a. **Comment:** The 10,000 sq. ft. minimum on-site disposal area will restrict many families from affordable housing and will have an adverse effect on the tourism industry.

Response: The 10,000 sq. ft. reserve area has been a requirement since 1983 for lots less than two (2) acres. The 10,000 sq. ft. minimum on-site disposal area is reasonable to insure all new property can safely treat its wastewater on-site. Properties which do not have a suitable on-site disposal area may ultimately discharge partially treated wastewaters to streams, thereby creating a public health hazard.

20) §13. **Comment:** Eliminate the section requiring certification of sewage tank cleaners.

Response: Agree. Many of the sewage tank cleaners are currently certified by the Division as sewage system installers and they are also regulated by the Division of Environmental Protection relative to the disposal of septage. The proposed would thus appear to be an instance of overregulation.

ABSTRACT/SUMMARY
PROPOSED DIVISION OF HEALTH LEGISLATIVE RULE

**

64 CSR 9

Summary: This proposed amended legislative rule sets forth standards for sewer systems; for sewage treatment or disposal plants which serve public sewer systems; and persons who engage in the business of collecting, removing, transporting, or disposing of the contents of sewage tanks. The Division¹ proposes to retitle the rule to more accurately reflect its contents. The purposes of the proposed amendments are to upgrade the rule to incorporate present day technology being utilized in the on-site sewage disposal industry, to relax some unnecessarily rigid standards, and to generally bring the rule into accordance with current acceptable standards. A new advisory board is established. These amendments should also better facilitate the Division's responsibilities under the provisions of the State groundwater protection law (Article 12, Chapter 22 of the W. Va. Code). The promulgation authority for this rule is W. Va. Code § 16-1-7.

The rule contains sections related to definitions, general requirements, permits, construction and installation requirements, inspections, maintenance and operation, subdivisions, correction of health hazards, sewage tank cleaning, individual sewer systems installers certification, sewage advisory board, penalties, and administrative due process.

The rule as proposed for public comment, with one (1) exception, was filed and is presently in effect as an emergency rule. The new section requiring certification of individual sewage tank cleaners which was proposed for public comment was not included in the emergency rule. Please note, as indicated below in this discussion, that the Division has decided to withdraw this proposed addition to the rule. The existing requirement requiring a permit for businesses engaging in sewage tank cleaning has been retained.

For further information contact: Ron Forren, Director, Division of Public Health Sanitation, Bureau for Public Health, telephone (304) 558-2981, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 518, Charleston, West Virginia, 25305; or the Office of Regulatory Development, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

Copies of the proposed rule may be purchased from the Administrative Law Division of the Office of the Secretary of State, State Capitol Complex, Building 1, Suite 157K, Charleston, WV 25305-0771, phone (304) 558-6000.

6/4/97

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Sewage Systems, 64 CSR 9

Type of Rule: Legislative Interpretive Procedural

Agency: Bureau for Public Health (For the Division of Health)
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The proposed amendments will not require additional general funds.

3. Objectives of this rule:

Summary: This proposed amended legislative rule sets forth standards for the regulation of sewage systems and the certification of sewage tank installers and cleaners. The promulgation authority for this rule is § 16-1-7. Proposed amendments clarify and make less rigid certain provisions of the current rule, which are unnecessarily interfering with economic development., and add a new section relating to the certification of sewage tank cleaners. The Division of Health believes the new rquirements for the certification of sewage tank cleaners are necessary for the protection of the public health.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

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

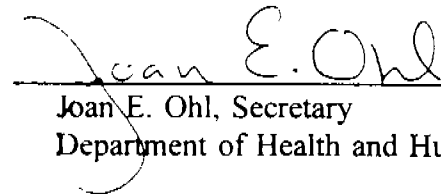
The clarified and less rigid standards should be financially beneficial.

C. Economic Impact on Citizens/Public at Large.

The clarified and less rigid standards should be financially beneficial.

Date: April 7, 1997

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

PROPOSED RULE

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES

**SEWER SYSTEMS, SEWAGE TREATMENT SYSTEMS,
AND SEWAGE TANK CLEANERS**

TITLE 64, SERIES 9

199__

**Agency-Approved Rule
For Filing with the Legislative Rule-Making Review Committee
June 4, 1997**

**PROPOSED
WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES
SEWER SYSTEMS, SEWAGE TREATMENT SYSTEMS,
AND SEWAGE TANK CLEANERS
TITLE 64, SERIES 9**

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PROPOSED

TITLE 64

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE ~~RULE~~ 3 32 PM '97
SERIES 9

SEWER SYSTEMS, SEWAGE TREATMENT SYSTEMS,
AND SEWAGE TANK CLEANERS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-9-1. General.

1.1. Scope. -- ~~These legislative rules establish~~ This legislative rule establishes minimum requirements for sewer systems, to sewage treatment or disposal plants which serve public sewer systems and the certification of sewage tank cleaners.

1.2. Authority. -- W. Va. Code §16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

~~§64-9-2. Supersession and Repeal of Former Regulations.~~

~~These regulations supersede and repeal West Virginia Board of Health Regulations Chapter 1, Article 10 "Small Sewage and Exereta Disposal System Regulations"; and Chapter 1, Article 11 "Sewage Regulations."~~

1.5. This rule amends, retitles and reenacts Sewage System Rules, 64 CSR 9, effective May 12, 1983.

~~§64-9-3. Application and Enforcement.~~

1.6. Application. -- ~~These legislative rules apply~~ This rule applies to all sewer systems in West Virginia; to sewage treatment or disposal plants which serve public sewer systems; and persons who engage in the business of collecting, removing, transporting, or disposing of the contents of sewage tanks.

1.7. Enforcement. -- ~~Enforcement of these legislative rules is vested with~~ This rule is enforced by the director of the West Virginia ~~department~~ division of health.¹ ~~or his lawful designee.~~

§64-9-2. Definitions.

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

2.1. Acceptable Application. -- Application Completed forms, plans, specifications, fee, if required, and other data as specified by ~~the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47.~~ or by instructions issued by the director.

2.2. Accessible. -- Sewers are considered accessible when a public sewer system is located adjacent to, or available by right-of-way, to a particular lot, and sewage can discharge thereto by gravity ~~or other means approved by the director.~~

2.3. Approved. -- A procedure of operation or construction which is in accordance with design standards, specifications and instructions promulgated by the ~~state board of health~~ division of health ~~or instructions issued by the director.~~

2.4. Chief, ~~Division Office~~ of Water Resources. -- The chief ~~of the Division office~~ of water resources ~~of the Department of Natural Resources~~ division of environmental protection.

2.5. Design Standards. -- Application procedures, design requirements, specifications and construction standards promulgated by the ~~state board of health~~ division of health.

2.6. Director. -- Director of the ~~state department~~ West Virginia division of health or his or her lawful designee.

2.7. Dwelling. -- A building, structure or place used or intended to be used for human occupancy as a single family or multi-family residence. The term "dwelling" ~~shall be construed to mean and include the terms "house and housing".~~ This definition also includes, but is not limited to: house, housing, mobile homes, vacation homes and cabins.

2.8. Effluent. -- Liquid discharge from a sewage treatment or disposal system.

2.9. Establishment. -- Any building, structure or place used or intended to be used for multiple dwelling units, or for manufacturing, commercial, religious, institutional, educational or recreational purposes.

2.10. Individual Sewer System. -- ~~A system serving a single dwelling or establishment for the collection, treatment and disposal of sewage.~~ A sewer system with a daily design flow not to exceed one thousand (1,000) gallons per day with subsurface discharge or not to exceed six hundred (600) gallons per day design flow with surface discharge. The system is owned by and maintenance is performed by a single entity.

2.11. Individual Sewer System Installer. -- Any person engaging in the construction, installation, modification, extension, alteration and location of an individual or on-site sewer system, sewage tank, or an excreta disposal system ~~or modification thereof,~~ excepting an individual installing, extending, or altering a system for his or her own use who has demonstrated knowledge of the rules by passing the an applicable installer certification exam(s) examination.

2.12. Lot. -- A tract or parcel of land or part of a subdivision used as or intended to be used as a site for a dwelling or establishment ~~whether immediate or future.~~

2.13. Municipal Sewer System. -- A sewer system or a group of sewer systems which, as a whole, receives sewage from more than one (1) dwelling or establishment and is operated and maintained by an incorporated municipality, or public service district, or sanitary board.

2.14. Percolation Test. -- A test method described in the ~~design standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47, by which the soils in a particular area are evaluated for subsurface effluent disposal.

2.15. Permit. -- A written document issued by the director giving the holder permission to construct, install, extend, alter or operate an approved sewer system, or method of sewage disposal, or to collect, remove, transport or dispose of sewage.

2.16. Person. -- Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, or any entity recognized by law.

2.17. Public Sewer System. -- ~~A sewage collection system or systems with or without treatment facilities and serving more than one dwelling or establishment, which are not individual systems. Ownership of the system is held by and maintenance performed by a single entity. This definition includes municipal sewer systems.~~ A sewage collection system or systems with or without treatment facilities with a daily design flow exceeding one thousand (1,000) gallons per day with sub-surface discharge or exceeding six hundred (600) gallons per day with surface discharge serving one (1) or more dwellings or establishments. The system is owned by and maintenance is performed by a single entity. This definition includes municipal sewer systems.

2.18. Rock Strata - A formation of indurated (hardened) material either above or below the ground surface that requires drilling, blasting or other methods of brute force for excavation.

2.19. Sewage. -- Any excreta or liquid waste containing animal or vegetable ~~and/or mineral~~ matter in suspension or solution including, but not limited to, waste from ~~water closets~~ commodes, urinals, lavatories, bathtubs, laundry tubs, washing machines, drinking fountains, sinks, kitchen equipment, and other sanitary fixtures or facilities.

2.20. Sewer System. -- A sewer system, whether publicly or privately owned, which receives and treats sewage and provides for the disposal of effluent and sludge therefrom. ~~Included in~~ This definition ~~are~~ includes individual sewer systems and public sewer systems.

2.21. Sewage Tank. -- A water-tight receptacle designed and constructed to receive and retain sewage solids. Sewage tanks ~~shall~~ include, but are not ~~be~~ limited to, septic tanks, aeration type sewage treatment systems, privy ~~pits~~ and vaults, holding tanks or receptacles and self-contained excreta disposal facilities.

2.22. Sewage Tank Cleaner. -- Any person engaged in the collection, removal, transportation or disposal of sewage.

2.23. Standard Soil Absorption System - A system designed to receive effluent from a septic tank to be disposed of at soil depths ranging from eighteen (18) to thirty-six (36) inches from the

original ground surface.

~~4.22. Subdivider—Any person who divides a tract or parcel of land into two (2) or more lots.~~

2.24. Subdivision. -- ~~The partition or division~~ A tract of land which has been divided into two (2) or more lots, tracts, parcels, plats, sites, areas, units, interests or other division ~~any of which are less than two acres in size~~ for the purpose of dwelling or establishment development and including the division of land by deed, metes and bounds description, lease, map, plat or other instrument, or by act of construction.

2.25. Wastewater. -- ~~The spent water exclusive of industrial wastes from one or more dwellings or establishments.~~ Water containing human, animal, or domestic waste.

~~2.26. Well—An artificial excavation that derives water from the gaps or intervals of the rocks or soil which it penetrates.~~ Water Well. -- Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: a water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage, and recovery of coal, oil, and gas, and other mineral resources which are regulated under W. Va. Code §§ 22-1-1 et seq., 22A-1-1 et seq., or 22B-1-1 et seq..

§64-9-3. General Requirements.

3.1. The owner or his or her authorized agent shall obtain a permit for a sewer system prior to the construction or installation of any dwelling or establishment which will require a sewer system. Where subsurface discharge systems are used, there shall be sufficient area to install the initial system and a suitable replacement area.

3.2. Every dwelling or establishment whether publicly or privately owned, where persons reside, assemble, or are employed, shall be provided with toilet facilities, and a sewer system ~~as set forth in the an approved plan~~ approved by the director.

3.3. ~~It shall be~~ is the duty of the owner of ~~such~~ the dwelling or establishment to provide toilet facilities and a sewer system ~~constructed and installed in compliance with an approved plan approved by the director.~~

3.4. When, upon investigation, the director finds a person is constructing, installing, extending, altering, maintaining or operating a toilet facility or sewer system which does not comply with applicable provisions of ~~these regulations~~ this rule, said person shall be notified of the fact in writing, and if said person shall fail to abate or correct the condition within a period of time not to exceed thirty (30) days after the receipt of the written notice, said person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished according to the penalty set forth.

3.5. All sewer systems shall be designed, constructed, installed, maintained and operated in

such a manner that excreta or sewage contained therein or effluent discharged therefrom:

3.5.a. Not create a health hazard affecting the public; and

~~5.4.2. Shall not endanger or contaminate any surface or subterranean body of water, which is used as an individual or public water supply or for recreational purposes.~~

~~5.4.3. Shall not cause an odor or unsightly appearance.~~

3.5.b. Shall not violate any federal, state or local laws, rules or regulations governing water pollution or sewage disposal.

3.6. The owner or operator of a sewer system to be abandoned shall abandon ~~such~~ the system in the following manner:

3.6.a. ~~General~~— The contents of the sewage tank shall be removed by a licensed septic tank cleaner, or by means approved by the director. ~~The tank or excavation filled with earth or a similar inert material, and the excavation, if any, shall be filled to eliminate any physical hazard. If the tank is in useable condition it may be removed and the excavation filled to eliminate any physical hazard; removed it shall be disposed of in a manner approved by the director. Sewage treatment lagoons (ponds) shall be abandoned in a manner approved by the director and the chief, office of water resources;~~

3.6.b. ~~Electrical Service~~—Any electrical service to the system shall be terminated, and electrical service boxes, switches, meters, and similar equipment, removed or rendered harmless;

3.6.c. ~~Water Service~~—Any water service to the system shall be disconnected; and

3.6.d. ~~Hazardous Equipment~~— Any other potentially hazardous equipment associated with the system shall be removed or rendered harmless.

3.7. The owner and any person or persons installing or modifying a sewer system shall be jointly responsible for compliance with all applicable provisions of ~~these regulations~~ this rule.

3.8. Off-lot disposal of sewage or effluent requiring the use of or crossing of adjacent property shall require a recorded easement or authorization. ~~for said purposes. Such rights to be~~ These rights are This recorded document must shall be binding to the heirs and assigns of the properties involved.

§64-9-4. Permits.

4.1. In accordance with ~~Chapter 16, Article 1, Section 9, of the West Virginia Code of 1931, as amended W. Va. Code §16-1-9,~~ no sewer system or method of sewage or excreta disposal shall be installed or established without first obtaining a written permit from the director.

4.2. Individual and public sewer systems shall be permitted and constructed only after an acceptable application for, and plans and specifications of, the proposed system, as prepared in

accordance with ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47, have been reviewed and approved by the director. Where applicable, a discharge permit ~~must~~ shall be obtained from the chief ~~Division of the office of~~ water resources in conformance with Chapter 20, Article 5A of the West Virginia Code of 1931, as amended W. Va. Code §22-11-1 et seq. prior to construction.

4.3. An acceptable application to construct, install or modify an individual sewer system or a public sewer system shall be made in writing to the director. A permit to construct, install or modify shall be obtained prior to ~~such~~ the construction or installation.

4.4. ~~An acceptable application for a permit to construct or install a sewage system shall be made in writing to the director prior to the intended construction or installation of such facility. The director shall approve or deny any application for a permit to construct a public sewer system or an individual sewer system discharging into the surface water of the state within a period of sixty (60) forty-five (45) working days from the date an application is received. The director shall approve or deny an application for an individual onsite sewer system within a period of twenty-one (21) working days from the date an application is received. Any application found to be incomplete shall be denied.~~

~~6.5.~~ 4.11. ... (See below.)

~~6.6.—Any person operating a sewer system, except agricultural manure handling systems, shall follow the requirements set forth in the Hazardous Waste with Infectious Characteristics Rules promulgated by the state board of health.~~

4.5. The director shall deny a permit if the information on the application form is incomplete, inaccurate, false, or misleading, or indicates the applicable provisions of ~~these regulations~~ this rule cannot be met.

4.6. A permit shall be suspended or revoked by the director for failure to comply with the provisions of the permit, improper construction or operation of the sewer system, where false or misleading information was utilized in obtaining the permit, where it is determined that the applicable provisions of this rule cannot be met, or for failure to comply with a lawful order of the director.

4.7. Any person whose application for a permit has been denied or whose permit has been suspended or revoked may request a hearing. A written request ~~must~~ shall be made within thirty (30) days of the date of denial of the permit by the aggrieved party and a hearing date shall be established by the director within twenty (20) days of the director's receipt of the written request. ~~Said~~ The hearing shall be held by the director within a period of forty-five (45) days after receipt of the written request for ~~such~~ the hearing.

4.8. A permittee who wishes to dispute the conditions and restrictions of the permit may request a hearing in order to appeal its provisions. A written request ~~must~~ shall be made by the permittee within thirty (30) days of the date of issuance of the permit and a hearing date shall be established within twenty (20) days of the director's receipt of the written request. ~~Said~~ The hearing shall be held within a period of forty-five (45) days by the director after receipt of the

written request for ~~such~~ the hearing.

4.9. A permit for an individual sewer system or for a public sewer system on which construction of which has not begun within one (1) year from the date of issuance ~~shall be~~ is invalid unless a request for a renewal is approved by the director.

4.10. Permits ~~shall not be~~ are not transferable or assignable and ~~shall~~ automatically become invalid upon a change in ownership, except when application for transfer or assignment is made to, and ~~such~~ the transfer or assignment is approved by, the director. Permits shall be issued to the property owner.

4.11. A person engaging in the business of sewage tank cleaning shall receive a permit only after application has been made on a form prescribed by the director and the director has inspected, ~~or caused to be inspected,~~ all sewage tank cleaning equipment, containers, or other devices used in the collection, removal, transportation or disposal of sewage tank contents to ascertain that said the items are used, maintained and operated in compliance with all applicable provisions of ~~these regulations~~ this rule. The application shall include a list of D.E.P. approved disposal sites. ~~documentation that a disposal site approved by the department of environmental protection will be used for disposal of the sewage.~~ A sewage tank cleaning permit shall expire ~~five (5) years~~ one (1) year from the date of issuance and the permit holder shall apply to the director for renewal of the permit prior to the expiration date.

4.12. When a sewage tank cleaning permit has been suspended, or revoked, the person thereby affected shall immediately discontinue engaging in the business of collecting, "removing," transporting or disposing of the contents of sewage tanks.

§64-9-5. Construction and Installation Requirements.

5.1. The construction and installation or modification of all sewer systems shall be in accordance with ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47, or otherwise approved plans and specifications for which a permit has been issued by the director. Design standards may be obtained from the ~~central office~~ division of health, its district offices or local health department offices.

5.2. Diversion drains, ditches and curtain drains shall be installed when storm water, surface or ground water will affect the satisfactory operation of a sewer system. No foundation drains or downspouts shall be connected to the ~~sanitary~~ sewer system.

5.3. Percolation tests and other tests, as may be required for installation of ~~an individual~~ a sewer system, shall be performed by persons whose qualifications are acceptable to the director and ~~such~~ the tests shall be conducted in accordance with ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47. The person conducting the tests shall certify ~~as to~~ the accuracy of the results of ~~such~~ the tests and ~~such~~ the information shall be submitted in a form acceptable to the director.

5.4. Subsurface absorption systems shall be constructed at the site where percolation and other tests have been performed. In the event the location of the subsurface absorption system

must be changed, additional testing will be required at the proposed new location.

~~7.5. The holder of a permit shall notify the director when construction or installation is to begin.~~

§64-9-6. Inspections.

6.1. The director ~~shall~~ may make, or ~~cause to be made~~, as many inspections as ~~he deems~~ are necessary during the construction, installation, modification, or operation of sewer systems to determine compliance with the applicable provisions of ~~these regulations~~ this rule.

6.2. The owner or occupant of a dwelling, establishment, or land where a sewer system is located shall provide the director access to all parts of the property for the purpose of making ~~such~~ the inspection.

6.3. No ~~individual~~ sewer system shall be used or placed into operation until the system installation has been ~~inspected~~ and approved in writing by the director.

6.4. No part of any ~~individual~~ sewer system utilizing soil absorption disposal of effluent shall be covered until ~~said~~ the system installation has been ~~inspected~~ and approved in writing by the director. Any part of ~~such~~ the system that is covered prior to ~~such~~ approval shall be uncovered upon oral or written order of the director.

6.5. In addition to making inspections or causing inspections to be made of a sewer system, the director may collect or cause to be collected samples of sewage and effluent from the system, or conduct or cause to be conducted, such tests as ~~he deems~~ are necessary and proper to insure that the system is in compliance with all applicable provisions of ~~these regulations~~ this rule.

6.6. If the director ~~shall find~~ finds that the construction, installation, extension, alteration, or operation of a sewer system is not in compliance with the applicable requirements of ~~these regulations~~ this rule, the director may issue an order for the corrections to be made, ~~revoking the construction permit~~. The order shall be issued in writing to the owner of the sewer system and ~~such~~ the order shall be effective immediately. ~~An order revoking a permit may be appealed in accordance with the procedure set forth in Section 6.10 of these regulations.~~

§64-9-7. Maintenance and Operation of Sewer Systems, and Sewage Treatment or Sewage Disposal Systems.

~~9.1. All sewer systems shall be maintained and operated so as to be in compliance with Chapter 16 of the West Virginia Code of 1931, as amended and the provisions of these regulations.~~

7.1. Upon written request by the director, the permit holder shall submit operational data such as influent, effluent, flow data, or any operational data necessary to ascertain compliance. ~~with Section 9.3~~ with this rule.

7.2. All mechanical sewer systems with surface discharge and all mechanical sewer systems

where additional treatment is required for subsurface discharge shall have a perpetual maintenance program approved by the director.

~~9.3. The Control Tests and Operating Records of Sewage Treatment Plants Serving Public Sewer Systems.~~

7.3. Every sewage treatment or disposal plant serving a public sewer system shall be equipped with testing apparatus for making the physical, chemical, and bacteriological control tests which are considered necessary by the state ~~department~~ division of health for the safe, proper, and efficient operation of the plant. The state ~~department~~ division of health, upon written request, shall furnish a statement of the control tests necessary for a particular plant.

7.4. There shall be regularly made at each sewage treatment or disposal plant ~~such~~ any physical, chemical, and bacteriological control tests which are considered necessary by the state ~~department~~ division of health for the proper and safe operation of the plant. ~~9.3.3.~~ The frequency of making ~~such~~ these physical, chemical, and bacteriological control tests shall be determined by the state ~~department~~ division of health. ~~9.3.4.~~ The results of the control tests together with the record of sewage treatment or disposal plant operation shall be entered upon a permanent record form or ledger and maintained at the plant.

7.5. Each month, or as otherwise directed by the state ~~department~~ division of health, the operator of the sewage treatment or disposal plant shall furnish a summary of operation and control data to the state ~~department~~ division of health. The data shall be submitted on a standard form or another form acceptable to the state ~~department~~ division of health.

7.6. The state ~~department~~ division of health, by specific written direction, may waive the submission of operating reports from sewage treatment or disposal plants serving five hundred (500) or less persons.

§64-9-8. Subdivisions.

8.1. All subdivisions or housing developments originating after July 1, 1970, the effective date of the original regulations, shall be served by a method of sewage disposal approved by the director.

~~10.2. In the event it is proposed that a subdivision be served by a public sewer system, a permit for said system must be obtained from the director in compliance with the provisions of Section 6 of these regulations.~~

8.2. In the event individual sewer systems are proposed as the desired method of sewage disposal for a subdivision, the property owner shall obtain written approval ~~shall be obtained~~ from the director in compliance with the provisions of ~~these regulations~~ this rule; Chapter 16, Article 1, Section 7 of the West Virginia Code of 1931, as amended W. Va. Code §16-1-7 and the procedures set forth in ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47. In addition, a permit for each individual sewer system within the subdivision shall be obtained in compliance with Section 6 of ~~these regulations~~ this rule.

8.3. The replatting of a prior recorded plat or of a subdivision which originated prior to July 1, 1970, ~~the effective date of the previous regulations, shall not be~~ is not exempt from the provisions of ~~these regulations~~ this rule. The prior platting of a portion of a larger tract prior to July 1, 1970, ~~shall~~ does not exempt the remainder of the tract from the provisions of ~~these regulations~~ this rule.

8.4. The division of land through public or private auction sale or through the terms of a will ~~or court order shall constitute~~ constitutes a subdivision under the provisions of ~~these regulations~~ this rule. It ~~shall be~~ is the responsibility of the owner of ~~such~~ the land or ~~the~~ executor of the will to meet all requirements of ~~these regulations~~ this rule.

~~10.6. In those instances where a lot was purchased or acquired for dwelling construction, and either its deed was recorded prior to July 1, 1970, or the lot was laid out, described and designated on a map of a subdivision, which map was recorded prior to July 1, 1970, and:~~

~~10.6.a. Where a public water supply system is available, but a public sewer system is not available, no individual sewer system shall be permitted on any lot, site or area containing less than ten thousand (10,000) square feet.~~

~~10.6.b. Where neither a public sewer system nor a public water supply system is available, no individual sewer system shall be permitted on any lot, site or area containing less than twenty thousand (20,000) square feet.~~

8.5. In instances where a lot was purchased or acquired for dwelling construction, and either its deed was recorded prior to July 1, 1970, or the lot was laid out, described and designated on a map of a subdivision, which map was recorded prior to July 1, 1970 and where a public water supply system is available, but a public sewer system is not available, no individual sewer system is permissible on any lot, site or area containing less than ten thousand (10,000) square feet.

8.6. In instances where a lot was purchased or acquired for dwelling construction, and, either its deed was recorded prior to July 1, 1970 or the lot was laid out, described and designated on a map of a subdivision, which map was recorded prior to July 1, 1970 and where neither a public sewer system nor a public water supply system is available, no individual sewer system is permissible on any lot, site or area containing less than twenty thousand (20,000) square feet.

8.7. The director may waive the square footage requirements stipulated in Subsections 8.5 or 8.6 ~~of this rule provided if he or she~~ provided if he or she has been petitioned and has ascertained through a hearing, an on-site inspection, percolation tests and other requirements of ~~these regulations~~ this rule that an individual sewer system can be expected to function satisfactorily on a lot, site, or area containing less than the minimum prescribed number of square feet.

8.8. ~~For subdivisions and lots All lots originating after July 1, 1970 prior to May 12, 1983, where individual sewer systems are proposed, shall comply with Subsection 5.1 of this rule. the minimum sizes as set forth in Section 10.6 do not apply. All lots originating after July 1, 1970 must shall comply with Section 10.9 or Section 10.10.~~

~~10.9. If a central sewage collection and treatment system is proposed to serve a subdivision,~~

~~it shall be designed in accordance with Section II and III of the "Design Standards for Sewage Collection and Treatment Systems." A permit shall be obtained prior to construction of the sewage system in accordance with Chapter 16, Article 1, Section 9 of the West Virginia Code of 1931, as amended and Section 6 of these regulations. Application for the permit shall be made in accordance with the procedures outlined in the Design Standards. There are no limitations relative to lot size for subdivisions served by a central sewage collection and treatment system.~~

8.9. ~~If individual sewage systems are proposed to serve a subdivision design of the subdivision utilizing individual sewage disposal systems shall follow the procedures and requirements outlined below. Written approval of the proposed subdivision shall be obtained prior to initiation of construction in accordance with Section 6 of these regulations. Where the use of on-site soil absorption systems is proposed, the procedures and requirements of Subdivisions 8.9.a through 8.9.g of this rule apply. The owner of the subdivision shall obtain written approval for the the proposed subdivision from the division of health prior to initiation of construction.~~

8.9.a. All lots less than two (2) acres in total surface area or lots with an average frontage of less than one hundred and fifty (150) feet shall contain a minimum on-site disposal area of ten thousand (10,000) square feet, which shall be set aside for the installation of septic tank-soil standard soil absorption system(s). Each such area shall have a minimum width of 80 feet, and no- ~~No development or structures shall be permitted~~ are permissible on this on-site disposal area other than those comprising the ~~septic tank-soil absorption~~ individual sewer system(s). The layout of each reserve area shall be such that ten thousand (10,000) square feet is usable for the installation of standard soil absorption system(s). Where multiple reserve areas are used, each shall be three thousand (3,000) square feet or more in size.

8.9.b. ~~Area consisting of land sloping in excess of twenty-five percent (25%), or land in an existing or proposed public road or land within a 25-year flood plain shall~~ may not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 8.9.a of this rule.

8.9.c. ~~Area consisting of land containing rock strata or seasonal high water table within five (5) feet of the ground surface shall~~ may not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 8.9.a of this rule. ~~Area consisting of land not in compliance with the minimum separation distances listed in the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47, shall~~ may not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 8.9.a of this rule.

8.9.d. ~~Area consisting of land which has been determined through testing to have a percolation rate slower than 60~~ ninety (90) minutes per inch shall not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 8.9.a of this rule.

8.9.e. Area where routine seasonal flooding occurs may not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 8.9.a of this rule, unless approved by the director.

8.9.f. All lots two (2) acres and over shall contain a minimum on-site disposal area of ten thousand (10,000) square feet, which shall be set aside for the installation of standard or alternative soil absorption system(s). No development or structures are permissible on this on-site disposal area other than those comprising the individual sewer system(s). The layout of each reserve area shall be such that ten thousand (10,000) square feet is usable for the installation of standard or alternative soil absorption system(s). Where multiple reserve areas are used, such areas shall be three thousand (3,000) square feet or more in size.

8.9.g. Alternative systems which may be considered for new construction on lots two (2) acres and over include low pressure systems, mound systems, shallow and elevated soil absorption systems, experimental systems, and unique systems designed for specific situations.

§64-9-9. Correction of Health Hazards.

9.1. To correct or abate public health hazards resulting from the malfunctioning of individual sewer systems, and public sewer systems which hazards are not correctable by methods set forth in ~~the Design Standards,~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47, the director may permit the installation of an experimental or nonstandard sewer system upon written petition for such ~~the~~ system.

9.2. The petition shall request the director to authorize installation of the system desired and shall contain information as to the location, reasons why a conventional system cannot be installed, information concerning the malfunctioning system, and information concerning the system desired. The director may request additional information which may include a meeting with the petitioner.

9.3. If the director determines that a potential public health hazard exists, he or she may issue a written approval authorizing installation of the system desired. The written approval shall apply only to the petitioner and the facts presented at the meeting.

§64-9-10. Sewage Tank Cleaning.

10.1. No person shall engage in the business of collecting, removing, transporting, or disposing of the contents of a sewage tank without first obtaining in the county in which the business is located a state-wide permit for ~~such~~ the activity from the director, in accordance with Section 6 of ~~these regulations~~ this rule. Out of state sewage tank cleaners shall obtain the permit from the county where most of their business is located.

10.2. Equipment, containers or other devices used in the collection, removal, transportation or disposal of the contents of sewage tanks shall be in compliance with ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47, ~~and instructions issued by the director.~~

10.3. The cleaning of sewage tanks by bailing or dipping and emptying the bailing or dipping container into a carrier tank is prohibited.

10.4. Precaution shall be taken by the sewage tank cleaner to prevent the leaking, spilling,

or dripping of the sewage tank contents during collection, removal, transportation and disposal.

10.4.a. Any leakage, spillage, or drippings shall be cleaned up immediately.

10.4.b. Provisions shall be made by the sewage tank cleaner to carry chlorinated lime or similar satisfactory disinfectant for immediately treating the areas where leakage, spillage, or dripping has occurred.

10.5. The contents of sewage tanks shall not be transported in an open bed motor carrier vehicle, or any other type vehicle, unless said sewage contents are contained within approved portable receptacles.

10.6. All facilities used for the cleaning of sewage tank cleaning equipment shall, prior to use, be inspected and approved by the director.

10.7. The contents of sewage tanks shall be disposed of in a manner that will prevent the spread of disease and avoid nuisance conditions, and said contents shall be disposed of ~~by one or a combination of the following methods:~~ in accordance with Sewage Treatment and Collection System Design Standards, 64 CSR 47.

~~12.7.1. By incinerating in an approved high temperature incinerator.~~

~~12.7.2. By burial, provided prior written approval is received from the director regarding the manner and the conditions under which said burial of sewage tank contents can take place. Sewage tank contents shall not be buried on public or private property without the written permission of the property owner or his authorized agent.~~

~~12.7.3. By discharging the contents into a public sewer manhole or at an acceptable point in a sewage treatment plant, provided, the written approval of a responsible official of the governmental entity or other entity owning or operating the public sewer system or sewage treatment plant is received prior to the use of such disposal facilities.~~

10.8. Special written permission from the director ~~must~~ shall be obtained for any method of cleaning or disposal not specifically mentioned in the ~~Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47.

10.9. All sewage tank cleaners shall keep a written record of all jobs accomplished. The record shall be on a form prescribed by the director and submitted to the director quarterly.

~~12.10. Such record shall contain, but not be limited to:~~

~~12.10.1. Name and address of the person for whom the sewage tank was cleaned;~~

~~12.10.2. Date and time the job was completed;~~

~~12.10.3. Size of sewage tank and the amount, in gallons, of the contents removed from said sewage tank;~~

~~12.10.4. Location and type disposal site utilized for the disposal of the sewage tank contents.~~

~~12.11. Said records shall be preserved for at least 12 months and upon request such records shall be readily available to the state director of health.~~

§64-9-11. Individual Sewer Systems Installers Certification.

11.1. All individual or on-site sewer system installers shall be certified for such activity by the director. An individual shall be a minimum of eighteen (18) years old to qualify for certification. ~~Provided, that certification requirements shall not apply to an individual who constructs, installs, extends, alters, operates or modifies his own individual sewer system pursuant to a permit obtained from the director and such system is constructed and inspected in accordance with the provisions of these regulations.~~

11.2. Certification is not required of a driver delivering a part or parts of a system, a manufacturer who does not install a part or parts of a system or an employee of a contractor holding a certificate, provided, that ~~such~~ the employee is under the direct on-site surveillance of a certified installer.

11.3. Certificates shall be issued to qualified installers of individual sewer systems in two classifications:

11.3.a. A class I certificate ~~shall apply~~ applies to the installation of ~~conventional septic tank~~ standard soil absorption systems, soil absorption beds, holding tanks, effluent lift stations and grey water soil absorption systems, and privies.

11.3.b. A class II certificate ~~shall apply~~ applies to those ~~individual sewer~~ systems covered by the class I certificate plus all alternative and ~~innovative~~ other individual or on-site sewer systems as set forth ~~within the Design Standards in Sewage Treatment and Collection System Design Standards, 64 CSR 47.~~

~~13.3.3. Within one (1) year after the effective date of these regulations installers shall be certified for this activity.~~

11.4. An application for certification ~~to install individual systems as an individual sewer system installer,~~ or renewal of certification ~~to install individual systems as an individual sewer system installer,~~ shall be made in writing to the director on a form prescribed by the director.

11.5. The director may deny certification if the information on the application form is incomplete, inaccurate, false or misleading.

11.6. In addition to filing an application for certification ~~to install individual sewer systems as an individual sewer system installer,~~ the applicant ~~must~~ shall pass a written examination for each classification and ~~may~~ shall be required to demonstrate that he or she possesses adequate knowledge and skill in making installations in accordance with ~~the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47.~~

11.7. Written examinations shall be administered by the director at a site and on a date designated by the director. A passing grade of seventy percent (70%) ~~must~~ shall be obtained. Any applicant who has failed an examination ~~must~~ shall wait thirty (30) days before re-examination.

11.8. Certification ~~shall not be~~ is not transferable or assignable and ~~shall automatically become~~ becomes invalid upon suspension or revocation.

11.9. Certification ~~shall expire~~ expires five (5) years from date of issuance and the certificate holder shall apply to the director for renewal of the certificate prior to the expiration date. Should the expiration date be exceeded by six (6) months, renewal cannot be issued. Renewal will shall be based on: upon recommendation of the local health department in those counties knowledgeable of the individual's work.

~~13.9.1. Evidence of construction of at least one approved system within the preceding year.~~

~~13.9.2. Recommendation of the local health department.~~

11.10. In the event any person certified is found to be violating any of the applicable requirements of ~~these regulations~~ this rule, his or her certification may be immediately suspended for a period of ~~ten (10)~~ thirty (30) days by the director. Two ~~successive~~ separate violations shall be sufficient grounds for revocation of certification.

§64-9-12. Sewage Advisory Board.

12.1. The director may establish an advisory board and designate the chairman of the board.

12.2. The advisory board membership shall consist of, but is not necessarily be limited to, the following members: two (2) representatives of the sewage industry; two (2) representatives of the division of health; one (1) representative of the division of environmental protection; and four (4) representatives of local health departments.

12.3. The duties of the advisory board shall be assigned by the director.

§64-9-13. Penalties. for Violating Provisions of Regulations.

13.1. Any person who violates any provision of ~~these regulations~~ this rule ~~or any regulation adopted by the West Virginia State Board of Health pursuant to authority granted by these regulations shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than two hundred dollars (\$200) and/or thirty (30) days imprisonment as provided in Chapter 16, Article 1, Section 18 of the Public Health Laws of West Virginia, West Virginia Code of 1931, as amended~~ is subject to the penalties provided in W. Va. Code §16-1-18.

13.2. Each day's failure to comply with any applicable provision of ~~these regulations~~ this

rule shall constitute a separate offense.

§64-9-14. Administrative Due Process.

Those persons adversely affected by the enforcement of ~~these legislative rules~~ this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in this rule and in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1. ~~West Virginia Department of Health Procedural Rules, Series 1, 1983. The aforementioned procedural rules are incorporated herein by reference.~~