

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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DEC 16 11 24 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-1-7

AMENDMENT TO AN EXISTING RULE: YES NO

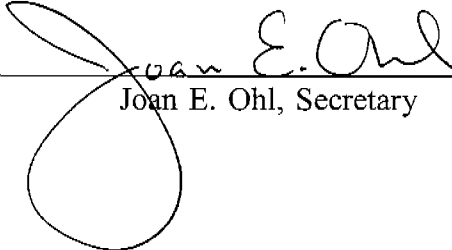
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Sewage System Rules, 64 CSR 9

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Joan E. Ohl, Secretary

\$5.20

19 the division of health (breast and cervical cancer diagnos-
20 tic and treatment fund, 64 CSR 69), is authorized.

21 (c) The legislative rule filed in the state register on the
22 first day of August, one thousand nine hundred ninety-
23 seven, under the authority of section ten, article five-j,
24 chapter sixteen of this code, modified by the director of
25 the division of health to meet the objections of the legisla-
26 tive rule-making review committee and refiled in the state
27 register on the twenty-third day of January, one thousand
28 nine hundred ninety-eight, relating to the division of
29 health (clinical laboratory technician and technologist
30 licensure and certification, 64 CSR 57), is authorized.

31 (d) The legislative rule filed in the state register on the
32 twenty-second day of December, one thousand nine
33 hundred ninety-seven, authorized under the authority of
34 section two, article thirteen-c, chapter sixteen of this code,
35 relating to the division of health (drinking water treat-
36 ment revolving fund, 64 CSR 49), is authorized.

37 (e) The legislative rule filed in the state register on the
38 fourth day of June, one thousand nine hundred
39 ninety-seven, authorized under the authority of section
40 seven, article one, chapter sixteen of this code, modified
41 by the division of health to meet the objections of the
42 legislative rule-making review committee and refiled in
43 the state register on the sixteenth day of December, one
44 thousand nine hundred ninety-seven, relating to the
45 division of health (sewage systems, 64 CSR 9), is autho-
46 rized with the following amendment:

47 On page 7, subsection 5.1. following the sentence which
48 ends "local health department offices." by inserting the
49 following: "Provided, that the director shall issue a permit
50 for the installation of a National Sanitation Foundation
51 Class I home aeration unit to be installed on a single
52 family dwelling unit when no other approved system can
53 be installed."

PROPOSED RULE

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES

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

TITLE 64, SERIES 9

199__

Modified Rule

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
DEC 16 11 24 AM '97
FILED

§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 installers.~~

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 Excreta 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 installing, 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 an 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 own use.~~

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~~ 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 the~~ 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 certified 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~~ 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~~ the items are used, maintained and operated in compliance with all applicable provisions of ~~these regulations~~ this rule. The application shall include 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. Notwithstanding any provision of the W. Va. Division of Health Legislative Rule, Fees for Permits, 64 CSR 30, any fee for authorizing an individual to engage in the business of sewage tank cleaning shall be prorated over a three-year period at \$16 (sixteen dollars) per year.

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~~ a sewer system, shall be performed by persons whose qualifications are acceptable to the director and ~~such the~~ 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~~ the tests and ~~such the~~ 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 4 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~~ the land or ~~the~~ 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~~ 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 3.1 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 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. Except as provided in Subsection 11.2 of this rule, 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. The director may grant a permit to an individual who installs, constructs, extends, alters his or her own sewer system if the individual passes an examination administered by the director which demonstrates knowledge of applicable rules.

11.3. 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.

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

11.4.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.~~

11.4.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.~~

11.5. 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.

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

11.7. 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.~~

11.8. 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 be obtained. An applicant shall attain a passing grade of seventy percent (70%) to qualify for certification.~~ Any applicant who has failed an examination ~~must~~ shall wait thirty (30) days before re-examination.

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

11.10. 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.~~

11.11. 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 constitutes 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.~~



FILED

SEP 22 10 17 AM '97

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

September 15, 1997

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Kay Howard, Director
Department of Health & Human Resources
Division of Health
Capitol Complex - Bldg. 3 - Room 265
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Sewage Systems (64CSR9)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Department of Health

Subject: Sewage Systems

CSR Cite: 64CSR9

Counsel: JAA

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 13 9 33 AM '97

FILED

PERTINENT DATES

Filed for public comment: April 7, 1997
Public comment period ended: May 14, 1997
Filed following public comment period: June 4, 1997
Filed LRMRC: June 4, 1997
Filed as emergency: Yes.

Fiscal Impact: None.

ABSTRACT

Brief Summary

The rule amends the current rule regulating sewage treatment facilities, updating the rule to provide for new technological improvements in sewage treatment processes. The rule relaxes certain standards which have hindered the development of real estate by changing minimum requirements for drainage fields. New definitions are added as well as new training and record keeping requirements. Several small and technical changes are also made to the current rule. The modified rule is currently in effect as an emergency rule.

Section Summary

Section 1.1 establishes the scope of the rule, and Section 1.6 defines the application of the rule. Both are reworded to include public sewage treatment or disposal plants and certification of sewage tank cleaners.

Section 2.10, defines "individual sewer system" and is rewritten to provide that the system cannot exceed one thousand gallons per day of subsurface discharge and six hundred gallons per

day of surface discharge. The system must be owned by a single entity.

Section 2.11, relating to individual sewer system installers is modified to require any installer or person who modifies a system must pass a competency examination.

Section 2.17 redefines public sewer system as any system which generates greater than one thousand gallons per day of subsurface discharge and six hundred gallons of surface discharge. The system must be owned by a single entity.

Section 2.18 creates a new definition for "rock strata," which is any hardened material which requires brute force for excavation.

Section 2.23 defines "standard soil absorption system" as a system designed to receive effluent from a septic tank from below the soil surface.

Section 2.26 completely rewrites the definition of "water well" to mean and excavation or penetration of the ground for the purposes of bringing water to the surface, including ground water monitoring or exploration for minerals.

Section 3.1 is added and requires that all necessary permits must be issued before beginning installation of any sewer system.

Section 3.6.a is rewritten to provide that removal or abandonment of septic tanks and sediment ponds must be approved by the Director.

Section 4.4 is amended to require that the Director approve or deny any sewage treatment system permit within forty-five days. The current rule requires a decision within sixty days.

Section 4.11 now requires that any person conducting sewage tank cleaning must certify that disposal of the sewage is at an approved location. Sewage tank cleaning permits will now expire annually. The current rule provides that these permits expire every five years.

Section 6.6 modifies the authority of the Director to revoke a sewage system construction or modification permit. The Director cannot revoke a sewage system construction permit until the permittee has been directed to make corrections and fails to do so.

Section 7.2 now requires that all sewage systems with surface discharge, which require perpetual maintenance, or are of mechanical design, shall have a maintenance program approved by the Director.

Section 8.8 provides that all lots subdivided after May 12, 1983 must meet the construction and installation requirements of this rule. Section 8.9 is amended for lots less than two acres, to allow the 10,000 foot disposal area to be divided into areas not less than 3,000 feet each. A new Section 8.9.e requires the Director's approval of necessary minimum disposal areas in areas where seasonal flooding occurs. New Section 8.9.f provides that for lots over two acres, that a minimum disposal area of 10,000 feet must be available. No structures can be built on the disposal area, and no divided disposal area can be less than 3,000 feet. New Section 8.9.g provides that alternative systems may be considered on two acre plus lots, based on specific situations.

Portions of Section 10.7 are deleted relating to design standards for sewage treatment facilities. In this section and other sections in the rule, specific design requirements are deleted and replaced by references to 64CSR47, which establishes sewage treatment and collection system design standards.

Section 10.9 is rewritten. Waste tank cleaners have previously been required to keep written records of all jobs. The amended rule requires that cleaners submit quarterly reports to the Director on forms provided by the Director.

Section 11.1 is amended to require that persons must be at least eighteen years old to be eligible to be certified as a sewer system installer. The exemption from certification requirements for persons installing or modifying his or her own sewage system is also removed.

Section 11.9 is amended to provide that if a person's certification has expired for longer than six months, then he or she must reapply for a new certification.

Section 11.10 is amended to extend the certification suspension period for violations of this rule from ten days to thirty days.

A new Section 12 is created which establishes a Sewage Advisory Board, with duties of the Board to be assigned by the Director. Members of the Board are to include: two representatives from the sewage industry, two representatives from the Department of Health, one representative from the Department of Environmental Protection, and four representatives from local health departments.

Section 13 is amended by deleting the penalties in the rule and adopting the reference to WVC §16-1-18.

AUTHORITY

Statutory authority: W.Va. Code, §16-1-7, which provides:

"The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof: Provided, That no rules or regulations shall be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of said tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single family dwelling units. The provisions next above notwithstanding, nothing in this section shall be construed to abate the authority of the department of health and human resources to: (1) Restrict the subdivision or development of such tract for any more intense or higher density occupancy than such single family dwelling unit; (2) promulgate and enforce rules and regulations applicable to single family dwelling units for single family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply. The secretary shall have the power to appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and such other areas as it deems necessary to advise the secretary on rules and regulations. Such rules and regulations shall include, but not be limited to, the regulation of:

(1) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(2) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems, and the qualifications of personnel connected with any of such facilities, without regard to whether such supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, swimming pools in this state, whether publicly or privately owned....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has modifications to suggest.