

\$4.60

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RULE PROMULGATION HISTORY ABSTRACT**

Rule Title: Sewage Systems, Sewage Treatment Systems and Sewage Tank Cleaners

Series Number: 9

Amendment of Existing Rule: X **New Rule:**

Responsible Agency: Division of Health

Date Filed for Public Hearing or Comment Period: April 7, 1997, April 18, 1997
(extension)

Date of Public Hearing (if any):

Date Public Comment Period Ended: May 14, 1997 (extension)

**Date Agency-Approved Rule Filed with the
Legislative Rule-Making Review Committee:** June 4, 1997

**Date of Filing of Modified Rule as Approved by
the Legislative Rule-Making Review Committee:** December 16, 1997

Date of Final Filing: March 30, 1998

Effective Date: May 1, 1998

Authorized by: Com. Sub. for SB 305 (With amendments? Yes X No),
Passed: March 12, 1998

Dates Emergency Rule in Effect (if any): March 14, 1997

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES

TITLE 64, SERIES 9

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

1998

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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FILED

TITLE 64

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULE

SERIES 9

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SEWER SYSTEMS, SEWAGE TREATMENT SYSTEMS,
AND SEWAGE TANK CLEANERS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-9-1. General.

1.1. Scope. -- This legislative rule establishes minimum requirements for sewer systems, 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. -- March 30, 1998.

1.4. Effective Date. -- May 1, 1998.

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

1.6. Application. -- 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. -- This rule is enforced by the director of the West Virginia division of health.¹

§64-9-2. Definitions.

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

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.

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

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.

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

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

2.6. Director. -- Director of the 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" 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 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.

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.

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 method described in 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 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 matter in suspension or solution including, but not limited to, waste from 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. This definition 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 include, but are not limited to, septic tanks, aeration type sewage treatment systems, privy 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.

2.24. Subdivision. -- A tract of land which has been divided into two (2) or more lots, tracts, parcels, plats, sites, areas, units, interests or other division 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. -- Water containing human, animal, or domestic waste.

2.26. 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 approved by the director.

3.3. It is the duty of the owner of the dwelling or establishment to provide toilet facilities and a sewer system 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 this rule, the 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

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 the system in the following manner:

3.6.a. The contents of the sewage tank shall be removed by a certified septic tank cleaner. The tank or excavation shall be filled to eliminate any physical hazard. If the tank is 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. 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. Any water service to the system shall be disconnected; and

3.6.d. 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 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. This recorded document shall be binding to the heirs and assigns of the properties involved.

§64-9-4. Permits.

4.1. In accordance with W. Va. Code §16-1-9, no sewer system 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 Sewage Treatment and Collection System Design Standards, 64 CSR 47, have been reviewed and approved by the director. Where applicable, a discharge permit shall be obtained from the chief of the office of water resources in conformance with 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 the construction or installation.

4.4. The director shall approve or deny any application for a permit to construct a public sewer system within a period of forty-five (45) working days from the date an application is received. The director shall approve or deny an application for an individual sewer system within a period of twenty-one (21) working days from the date an application is received.

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 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 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. The hearing shall be held by the director within a period of forty-five (45) days after receipt of the written request for 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 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. The hearing shall be held within a period of forty-five (45) days by the director after receipt of the

written request for the hearing.

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

4.10. Permits are not transferable or assignable and automatically become invalid upon a change in ownership, except when application for transfer or assignment is made to, and 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, all sewage tank cleaning equipment, containers, or other devices used in the collection, removal, transportation or disposal of sewage tank contents to ascertain that the items are used, maintained and operated in compliance with all applicable provisions of 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 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 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 division of health, its district offices or local health department offices: Provided, that the director shall issue a permit for the installation of a National Sanitation Foundation Class I home aeration unit to be installed on a single family dwelling unit when no other approved system can be installed.

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 sewer system.

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

§64-9-6. Inspections.

6.1. The director may make, as many inspections as are necessary during the construction, installation, modification, or operation of sewer systems to determine compliance with the applicable provisions of 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 the inspection.

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

6.4. No part of any sewer system utilizing soil absorption disposal of effluent shall be covered until the system installation has been approved in writing by the director. Any part of the system that is covered prior to 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 are necessary and proper to insure that the system is in compliance with all applicable provisions of this rule.

6.6. If the director finds that the construction, installation, extension, alteration, or operation of a sewer system is not in compliance with the applicable requirements of this rule, the director may issue an order for the corrections to be made. The order shall be issued in writing to the owner of the sewer system and the order shall be effective immediately.

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

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 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.

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 division of health for the safe, proper, and efficient operation of the plant. The state 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 any physical, chemical, and bacteriological control tests which are considered necessary by the state division of health for the proper and safe operation of the plant. The frequency of making these physical, chemical, and bacteriological control tests shall be determined by the state division of health. 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 division of health, the operator of the sewage treatment or disposal plant shall furnish a summary of operation and control data to the state division of health. The data shall be submitted on a standard form or another form acceptable to the state division of health.

7.6. The 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.

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 from the director in compliance with the provisions of this rule; W. Va. Code §16-1-7 and the procedures set forth in 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 4 of this rule.

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

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

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 if he or she has been petitioned and has ascertained through a hearing, an on-site inspection, percolation tests and other requirements of 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. All lots originating prior to May 12, 1983, where individual sewer systems are proposed, shall comply with Subsection 3.1 of this rule.

8.9. 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 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 standard 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 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 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 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 Sewage Treatment and Collection System Design Standards, 64 CSR 47, 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 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 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 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 the activity from the director, in accordance with Section 6 of 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 Sewage Treatment and Collection System Design Standards, 64 CSR 47.

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 in accordance with Sewage Treatment and Collection System Design Standards, 64 CSR 47.

10.8. Special written permission from the director shall be obtained for any method of cleaning or disposal not specifically mentioned in 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.

§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 by the director. An individual shall be a minimum of eighteen (18) years old to qualify for certification.

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 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 applies to the installation of standard soil absorption systems, soil absorption beds, holding tanks, effluent lift stations and grey water soil absorption systems.

11.4.b. A class II certificate applies to those systems covered by the class I certificate

plus all alternative and other individual or on-site sewer systems as set forth in Sewage Treatment and Collection System Design Standards, 64 CSR 47.

11.5. An application for certification as an individual sewer system installer, or renewal of certification 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 as an individual sewer system installer, the applicant shall pass a written examination for each classification and shall be required to demonstrate that he or she possesses adequate knowledge and skill in making installations in accordance with 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. An applicant shall attain a passing grade of seventy percent (70%) to qualify for certification. Any applicant who has failed an examination shall wait thirty (30) days before re-examination.

11.9. Certification is not transferable or assignable and becomes invalid upon suspension or revocation.

11.10. Certification 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 shall be based upon recommendation of the local health department in those counties knowledgeable of the individual's work.

11.11. In the event any person certified is found to be violating any of the applicable requirements of this rule, his or her certification may be immediately suspended for a period of thirty (30) days by the director. Two 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.

13.1. Any person who violates any provision of this rule 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 this rule constitutes a separate offense.

§64-9-14. Administrative Due Process.

Those persons adversely affected by the enforcement of 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.

0217
64-9

H. B. 4170

1 Bill-He

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(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

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[Introduced January 30, 1998; referred to the
Committee on the Judiciary.]

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10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to sewage systems.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
21 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-5-1. State board of health; division of health.

23 (a) The legislative rule filed in the state register

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1 on the eighth day of November, one thousand nine hundred
2 ninety-six, authorized under the authority of section five,
3 article five-c, chapter sixteen of this code, modified by
4 the division of health to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-seventh day of February, one
7 thousand nine hundred ninety-seven, relating to the
8 division of health (nursing home licensure, 64 CSR 13), is
9 authorized.

10 (b) The legislative rule filed in the state register
11 on the thirtieth day of August, one thousand nine hundred
12 ninety-six, authorized under the authority of section
13 seven, article one, chapter sixteen of this code, modified
14 by the division of health to meet the objections of the
15 legislative rule-making review committee and refiled in the
16 state register on the twenty-sixth day of February, one
17 thousand nine hundred ninety-seven, relating to the
18 division of health (child care centers, 64 CSR 21), is
19 authorized.

20 (c) The legislative rule filed in the state register
21 on the thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section
23 twenty-three, article four-c, chapter sixteen of this code,

1 modified by the division of health to meet the objections
2 of the legislative rule-making review committee and refiled
3 in the state register on the twenty-eighth day of February,
4 one thousand nine hundred ninety-seven, relating to the
5 division of health (emergency medical services, 64 CSR 48),
6 is authorized.

7 (d) The legislative rule filed in the state register
8 on the twenty-seventh day of November, one thousand nine
9 hundred ninety-five, authorized under the authority of
10 section five, article five-c, chapter sixteen of this code,
11 modified by the division of health to meet the objections
12 of the legislative rule-making review committee and refiled
13 in the state register on the twenty-sixth day of February,
14 one thousand nine hundred ninety-seven, relating to the
15 division of health (residential board and care homes, 64
16 CSR 65), is authorized.

17 (e) The legislative rule filed in the state register
18 on the fifth day of October, one thousand nine hundred
19 ninety-five, under the authority of section ten, article
20 five-j, chapter sixteen of this code, modified by the
21 director of the department of health to meet the objections
22 of the legislative rule-making review committee and refiled
23 in the state register on the thirty-first day of October,

1 one thousand nine hundred ninety-six, relating to the
2 department of health (clinical laboratory technician and
3 technologist licensure and certification, 64 CSR 57), is
4 authorized until July 1, 1998: *Provided*, That the director
5 of the department of health review, revise and propose,
6 within the statutory deadline and in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code, a rule for legislative consideration during the
9 legislative session of one thousand nine hundred ninety-
10 eight with the following amendments:

11 "On page one, subsection 2.2.2, following the semi-
12 colon, by striking the word 'or';

13 On page one, by inserting a new 2.2.3, to read as
14 follows: '2.2.3. Any respiratory care provider licensed
15 within the state providing diagnostic testing within the
16 scope of his or her professional license who performs
17 moderate complexity testing as defined by CLIA, pursuant to
18 42 CFR 493.17; or';

19 'On pages one and two, by renumbering the subsequent
20 subdivision,.'

21 And,

22 "On page 6, subsection 7.2, after the word
23 'Personnel', by striking the period and inserting in lieu

1 thereof the following: 'or by the International Society
2 for Clinical Laboratory Technology.'"

3 (f) The legislative rule filed in the state register
4 on the fourth day of June, one thousand nine hundred
5 ninety-seven, authorized under the authority of section
6 seven, article one, chapter sixteen, of this code, modified
7 by the division of health to meet the objections of the
8 legislative rule-making review committee and refiled in the
9 state register on the sixteenth day of December, one
10 thousand nine hundred ninety-seven, relating to the
11 division of health (sewage systems, 64 CSR 9), is
12 authorized.

13

14 NOTE: The purpose of this bill is to authorize the
15 Division of Health to promulgate a legislative rule
16 relating to Sewage Systems.

17

18 Strike-throughs indicate language that would be
19 stricken from the present law, and underscoring indicates
20 new language that would be added.

Senate Bill No. 305

64-9

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the
Committee on Health and Human Resources; and
then to the Committee on the Judiciary.]

9

10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to sewage systems.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
21 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-5-1. State board of health; division of health.

23 (a) The legislative rule filed in the state register

1 on the eighth day of November, one thousand nine hundred
2 ninety-six, authorized under the authority of section five,
3 article five-c, chapter sixteen of this code, modified by
4 the division of health to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-seventh day of February, one
7 thousand nine hundred ninety-seven, relating to the
8 division of health (nursing home licensure, 64 CSR 13), is
9 authorized.

10 (b) The legislative rule filed in the state register
11 on the thirtieth day of August, one thousand nine hundred
12 ninety-six, authorized under the authority of section
13 seven, article one, chapter sixteen of this code, modified
14 by the division of health to meet the objections of the
15 legislative rule-making review committee and refiled in the
16 state register on the twenty-sixth day of February, one
17 thousand nine hundred ninety-seven, relating to the
18 division of health (child care centers, 64 CSR 21), is
19 authorized.

20 (c) The legislative rule filed in the state register
21 on the thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section
23 twenty-three, article four-c, chapter sixteen of this code,

1 modified by the division of health to meet the objections
2 of the legislative rule-making review committee and refiled
3 in the state register on the twenty-eighth day of February,
4 one thousand nine hundred ninety-seven, relating to the
5 division of health (emergency medical services, 64 CSR 48),
6 is authorized.

7 (d) The legislative rule filed in the state register
8 on the twenty-seventh day of November, one thousand nine
9 hundred ninety-five, authorized under the authority of
10 section five, article five-c, chapter sixteen of this code,
11 modified by the division of health to meet the objections
12 of the legislative rule-making review committee and refiled
13 in the state register on the twenty-sixth day of February,
14 one thousand nine hundred ninety-seven, relating to the
15 division of health (residential board and care homes, 64
16 CSR 65), is authorized.

17 (e) The legislative rule filed in the state register
18 on the fifth day of October, one thousand nine hundred
19 ninety-five, under the authority of section ten, article
20 five-j, chapter sixteen of this code, modified by the
21 director of the department of health to meet the objections
22 of the legislative rule-making review committee and refiled
23 in the state register on the thirty-first day of October,

1 one thousand nine hundred ninety-six, relating to the
2 department of health (clinical laboratory technician and
3 technologist licensure and certification, 64 CSR 57), is
4 authorized until July 1, 1998: *Provided*, That the director
5 of the department of health review, revise and propose,
6 within the statutory deadline and in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code, a rule for legislative consideration during the
9 legislative session of one thousand nine hundred ninety-
10 eight with the following amendments:

11 "On page one, subsection 2.2.2, following the semi-
12 colon, by striking the word 'or';

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14 follows: '2.2.3. Any respiratory care provider licensed
15 within the state providing diagnostic testing within the
16 scope of his or her professional license who performs
17 moderate complexity testing as defined by CLIA, pursuant to
18 42 CFR 493.17; or';

19 'On pages one and two, by renumbering the subsequent
20 subdivision, .'"

21 And,

22 "On page 6, subsection 7.2, after the word
23 'Personnel', by striking the period and inserting in lieu

1 thereof the following: 'or by the International Society
2 for Clinical Laboratory Technology.'"

3 (f) The legislative rule filed in the state register
4 on the fourth day of June, one thousand nine hundred
5 ninety-seven, authorized under the authority of section
6 seven, article one, chapter sixteen, of this code, modified
7 by the division of health to meet the objections of the
8 legislative rule-making review committee and refiled in the
9 state register on the sixteenth day of December, one
10 thousand nine hundred ninety-seven, relating to the
11 division of health (sewage systems, 64 CSR 9), is
12 authorized.

13

14 NOTE: The purpose of this bill is to authorize the
15 Division of Health to promulgate a legislative rule
16 relating to Sewage Systems.

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18 Strike-throughs indicate language that would be
19 stricken from the present law, and underscoring indicates
20 new language that would be added.