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JAN 13 2 20 PM '00

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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December 10, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart
Health & Human Resources
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Public Water Systems Design Standards, 64CSR77**

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
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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health, Department of Health and Human Resources

Subject: Public Water Systems Design Standards, 64CSR77

PERTINENT DATES

Filed for public comment: June 30, 1999
Public comment period ended: July 30, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE SECRETARY OF HEALTH
SERVICES
DIVISION OF HEALTH
REGISTRATION
FEB 2 2 54 PM '99

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule. It also identifies the various acronyms used throughout the proposed rule.

Section 2 relates to submission of plans. It provides that all reports, final plans and specifications for a public water system should be submitted at least 45 days prior to the date when their approval is desired. It sets forth the required elements of the engineer's report and plans for public water improvements. It requires that complete detailed technical specifications be supplied for the proposed project as well as a summary of the complete design criteria. It requires the applicant to obtain approval from the Environmental Engineering Division before deviating from approved plans or specifications.

Section 3 relates to general design considerations. It contains requirements in the following areas: design basis; plant layout; building layout; location of structures; electrical controls; standby power; shop space and storage; laboratory

facilities; testing equipment; monitoring equipment; sample taps; facility water supply; wall castings; meters; piping color codes; disinfection; manuals and parts lists; operator instruction; paints, coatings, sealers and liners; and other considerations.

Section 4 relates to source development. It requires the designing engineer to prove to the satisfaction of the Environmental Engineering Division that an adequate quantity of water will be available and that the water that is to be delivered to consumers will meet the requirements of the Division of Health rule, Public Water Systems. It sets forth standards regarding the quantity, quality and minimum treatment of surface waters; structures; the quantity, quality, location, and testing of groundwater systems; and well construction.

Section 5 relates to treatment. It provides that the design of treatment processes and devices depend on an evaluation of the nature and quality of the particular water to be treated, the desired quality of the finished water and the mode of operation planned. It sets forth clarification, filtration, disinfection, softening, aeration, iron and manganese control, fluoridation, stabilization, taste and odor control, microscreening, and waste handling and disposal requirements for plants designed for processing surface and ground water.

Section 6 relates to chemical application. It prohibits the application of chemicals to treat drinking waters unless specifically approved by the Environmental Engineering Division. It contains requirements for facility design, the chemicals and operator safety.

Section 7 relates to pumping facilities. It requires pumping facilities to be designed to maintain the sanitary quality of pumped water. It sets forth standards for pumping stations, ground water pump stations, pumps, booster pumps, and appurtenances.

Section 8 relates to finished water storage. It requires that materials and designs used for finished water storage structures provide stability and durability as well as protect the quality of the water. It sets forth specific standards for plant storage, hydropneumatic tanks and distribution storage.

Section 9 relates to distribution systems. It sets forth requirements for materials; water main design; valves; hydrants; air relief valves and valve, meter and blow-off chambers; installation of mains; separation of water mains, sanitary sewers and storm sewers; surface water crossings; cross connections and interconnections; water services and plumbing; and service meters.

AUTHORITY

Statutory authority: W.Va. Code, §16-1-9a, 16-1-7, which provide, in part, as follows:

§16-1-9a.

... (b) (1) The division of health shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. Such rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer.

(2) It shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations...

§16-1-7.

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...

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 technical modifications to suggest.