

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY 20-24-5-C

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 6C (formally 6A)

TITLE OF RULE BEING PROPOSED: General Groundwater Protection Rules for

Fertilizer and Manure

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.



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OFFICE OF WEST VIRGINIA
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TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE

SERIES 6C
GENERAL GROUNDWATER PROTECTION RULES FOR FERTILIZER AND MANURES

§61-6C-1. General.

1.1. Scope - The rules establish practices to prevent or minimize the entry of nutrients from fertilizers and manures into groundwater while maintaining and improving the soil and plant resources of this state.

1.2. Authority - Code of West Virginia 20-5M-5-c.

1.3. Filing Date -

1.4. Effective Date -

1.5. This is a new legislative rule.

§61-6C-2. Incorporation by Reference.

2.1. The following documents are adopted in their entirety:

2.1.a. Generic State Management Plan for Pesticides and Fertilizers in Groundwater, (November 1,1992) WV61CSR 22 et seq.

2.1.b. Water Well Design Standards WV 64 CSR 46 et seq. (effective 6-8-84).

2.1.c. Soil Conservation Service Field Office Technical Guide as supplemented by the West Virginia Soil Conservation Committee (access number PB85-2444661AS) (current version at effective date of this rule).

2.1.d. Best Management Practices for Fertilizers and Manures WV 61 CSR 22B et seq. (December 6,1992).

§61-6C-3. Definitions.

3.1. "Animal unit" means a unit of measurement calculated by adding the following numbers: the number of slaughter and feeder

cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

3.2. "Best Management Practices" means activities, procedures and practices to prevent or remedy the introduction of fertilizer or manure residues into groundwater to the extent technically feasible and economically practical. Best Management Practices are designed to maintain the health and long-term productivity of the soil, water and related plant and animal resources and to minimize the threat of soil, waste and nutrient contamination to the waters of the state.

3.3. "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

3.4. "Department" means the West Virginia Department of Agriculture.

3.5. "Feedlot" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: 1.) animals (other than aquatic animals) have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and 2.) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered, for the purposes of these rules, to be a single feedlot if they adjoin each other or if they use a common area or system for the disposal of wastes.

3.6. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum, and other products exempted by regulation of the commissioner.

3.7. "Manure" means any substance composed of excreta of animals, other than man, and may include bedding or other materials normally associated with the substance as well as water associated with or added to the substance.

3.8. "Non-point source" means a diffuse source of substances that have the potential to impair the beneficial uses of groundwater resulting from activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

3.9. "Point source" means a source of substances that have

the potential to impair the beneficial uses of groundwater resulting from an activity over a small area and generally is limited to mixing, loading and storage sites or feedlots. A source is not considered a point source until a discharge of substances occurs.

§61-6C-4. Program and Policy Statements.

4.1. The commissioner shall encourage the education of all users of fertilizers and manures so that they have the knowledge and technical means to respond independently and voluntarily in addressing environmental concerns. The commissioner will encourage the development of training and educational programs for persons who make recommendations for the application rates for fertilizers and manures and for those persons who apply fertilizers and manures.

4.2. The commissioner shall support the development of financial incentives for the implementation of best management practices and will instruct potential users of these incentives of the availability of the programs.

4.3. The commissioner may develop mandatory best management practices by rule, in accordance with the provisions of Chapter 29A, Article 1 of this code, for the application and use of fertilizers or manures when valid groundwater data indicates that chemicals from fertilizers or manures are contaminating the groundwater and when scientific knowledge develops to indicate that the mandatory best management practices will be effective in the protection of groundwater.

4.4. The commissioner shall take action to promulgate rules to make some or all of the voluntary best management practices mandatory in a portion or all of the state when the monitoring program indicates that the chemical concentrations of residues from fertilizers or manures in groundwater are increasing or other valid data shows that contamination exceeding the water quality standards have occurred. A change in technology or methodology that lowers the detection limits and thus changes the amount of pollutant detected shall not be interpreted as showing an increase in chemical concentration of a particular residue. The commissioner shall utilize data averaged from at least four samples over a one year period to determine if the water quality standards have been exceeded or there is a trend of increasing concentrations of the chemical residue from fertilizers or manures.

4.5. The commissioner shall review the voluntary and mandatory programs every 5 years to determine the effectiveness of the programs and will effect change in the programs if the voluntary and/or mandatory programs are not effective or if the current best available technology needs to be incorporated into

these programs.

§61-6C-5. Powers and duties of commissioner.

5.1. The commissioner:

5.1.a. may enter and inspect, during reasonable hours, any location where fertilizers or manures are manufactured, distributed, transported, stored or used, and where records relating to the storage, manufacture, distribution, shipment, labeling or use of fertilizers or manures are kept;

5.1.b. may coordinate the sampling and inspection program with all other groundwater regulatory agencies within the framework of the Department of Environmental Protection, Division of Natural Resources state groundwater management strategy and their rules relating to monitoring and analysis of groundwater;

5.1.c. shall utilize the Department of Environmental Protection, Division of Natural Resources data management system for data on groundwater;

5.1.d. shall conduct a study to determine the cause of contamination, assess remediation options for the situation, and notify the groundwater user(s) or owner(s), if known to the commissioner, when contamination is predicted or is known to be occurring due to the residues of fertilizers or manures;

5.1.e. shall share data with other federal and state agencies for their evaluation and further investigation;

5.1.f. shall promote the protection of groundwater from fertilizers or manures through public education programs;

5.1.g. shall encourage, participate in, conduct or cause to be conducted studies on the environmental impact of the use of fertilizers and manures on the groundwater of this state, as well as ecologically and economically sound fertilizer and manure use and application practices;

5.1.h. shall collect and expend moneys under the terms of this rule as provided by WV Code §20-5M-1 et seq.;

5.1.i. may cooperate and enter into agreements with governmental agencies of this state or other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this rule;

5.1.j. shall make reports and recommendations to the Groundwater Coordinating Committee or to the legislature as needed

to further the protection of groundwater in this state;

5.1.k. shall maintain a testing laboratory or contract with other laboratories for testing;

5.1.l. may conduct hearings, assess civil administrative penalties, seek injunctive relief and issue orders in accordance with §20-5M-10.

5.1.m. shall promulgate additional rules as necessary to protect groundwater within statutory mandates that may include, but is not limited to, permitting, licensing and certification, facility design, operational management, closure, remediation and monitoring of water quality.

§61-6C-6. Protection of groundwater from point sources.

6.1. Any person storing fluid bulk fertilizers in undivided quantities in excess of five thousand (5,000) U.S. gallons or dry bulk fertilizers in undivided quantities exceeding 25 tons shall comply with the rules for Primary and Secondary Containment of Fertilizers (WV 61 CSR 6B) in addition to these rules. For purposes of this rule, the term "undivided" indicates the total amount of product stored at the facility which may be divided into several storage containers.

6.2. Any person maintaining more than the number of animals in a feedlot as listed in this subsection shall submit a Nutrient Management Plan to the commissioner within 2 years of the effective date of these rules and shall implement the plan within 3 years of the development of the Nutrient Management Plan. The Nutrient Management Plan is specified in the Nutrient Management Standard Practice #590 of the Soil Conservation Service Field Office Technical Guide.

6.2.a. Number of animals maintained: 1,000 slaughter or feeder cattle; 700 mature dairy cattle (whether milked or dry cows); 2,500 swine each weighing over 25 kilograms (approximately 55 pounds); 500 horses; 10,000 sheep or lambs; 55,000 turkeys; 100,000 laying hens or broilers (if the facility has continuous overflow watering); 30,000 laying hens or broilers (if the facility has a liquid manure handling system); 5,000 ducks; or 1,000 animal units.

6.3. Any person maintaining more than the number of animals in a feedlot as listed in this subsection in an area where the potential for impairment of existing groundwater quality is high from the storage of manure; such as in a karst limestone area, in an area with sandy soils, in a location within 100 ft of an open portal of a sinkhole or within 100 ft of wells that do not meet the Water Well Design Standards set by WV 64 CSR 46 et seq.; shall

submit to the commissioner a Nutrient Management Plan within 5 years of the effective date of these rules and shall implement the plan within 5 years of the development of the Nutrient Management Plan.

6.3.a. Number of animals maintained: 300 slaughter or feeder cattle; 200 mature dairy cattle (whether milked or dry cows); 750 swine each weighing over 25 kilograms (approximately 55 pounds); 150 horses; 3,000 sheep or lambs; 16,500 turkeys; 30,000 laying hens or broilers (if the facility has continuous overflow watering); 9,000 laying hens or broilers (if the facility has a liquid manure handling system); 1,500 ducks; or 300 animal units.

6.4. Any person storing an amount of manure in a defined area generated by the number of animals specified in Sections 6.2.a. or 6.3.a. for a period of 45 days or more in a 12 month period even if the person does not meet the other criteria of a feedlot shall comply with the applicable provisions of sections 6.2. and 6.3, except that this Section will not be construed to apply to the normal practice of pasturing animals.

§61-6C-7. Remediation.

7.1. The commissioner has the authority pursuant to §20-5M et seq. to order persons to conduct remedial actions when issuing an order. When issuing an order pursuant to §20-5M-10, the commissioner may:

7.1.a. encourage agreements for investigation and cleanups in appropriate cases;

7.1.b. use permanent solutions to the maximum extent practical to correct groundwater contamination where possible;

7.1.c. not allow for dilution and dispersion of the contaminant if active remedial measures are technically and economically feasible; and

7.1.d. specify which parameters will be tested in a monitoring program in order to demonstrate control and containment.

§61-6C-8. Hearings, penalties, orders, and injunctive relief.

8.1. The commissioner may conduct hearings, assess civil administrative penalties, seek injunctive relief and issue orders in accordance with §20-5M-10 and §20-5M-11.

8.2. When determining the assessment of penalties pursuant to §20-5M et seq., the commissioner may consider the following factors:

8.2.a. the extent of harm to the public health, the environment, or the beneficial use of the groundwater;

8.2.b. the burden and fairness of requiring a person to bear the loss;

8.2.c. the person's history of compliance that may indicate continued noncompliance or disregard for compliance;

8.2.d. the person's knowledge of the rules and regulations that were violated; and

8.2.e. activities that were conducted in a negligent, reckless or intentional manner, where negligence means a failure to exercise reasonable care.



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
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OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair
 Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

February 8, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. John Liggett
 Department of Agriculture
 State Capitol
 Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: General Groundwater Protection Rules for Fertilizers
 and Manures, Series 6A

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.