

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 6, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305
304-558-2227

LEGISLATIVE RULE TITLE: General Groundwater Protection Rules For Fertilizers and Manures

1. Authorizing statute(s) citation 22-12-5C

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 1, 2010 Public Comment Period

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 1, 2010 Public Comment Period Ended

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received XX

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 12, 2010

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Herma Johnson, Director

West Virginia Department of Agriculture

1900 Kanawha Blvd., East

Charleston, WV 25305

Office: 304-558-2227

E-Mail: HJohnson@wvda.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

SUMMARY OF RULE

**General Groundwater Protection Rules for Fertilizer and Manures
Title 61-6C**

The West Virginia Department of Agriculture is proposing to repeal this rule. The authority for this rule is found in Chapter 22 – Environmental Resources, Article 12 – Groundwater Protection Act. This rule became effective July 1, 1993, prior to the Department of Environmental Protection's (DEP) Concentrated Animal Feeding Operations Rules (CAFO). After consulting with Mr. Jay Lazell, Legislative Counsel for DEP both agencies agree this rule is no longer needed as it is in direct conflict with the CAFO Rule.



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Facts and Circumstances
General Groundwater Protection Rules for Fertilizer and Manures
Title 61 – 6C

As a result, of the passage of The Department of Environmental Protection's (DEP) Concentrated Animal Feeding Operations Rule (CAFO), the General Groundwater Protection Rules for Fertilizer and Manures rule that became effective in 1993, is in direct conflict with the CAFO rule.

After consulting with Mr. Jay Lazell, Legislative Counsel for DEP, and the West Virginia Department of Agriculture agree this rule is no longer needed.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Groundwater Protection Rules For Fertilizer and Manures

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East
Charleston, WV 25305

Phone Number: 304-558-2227 Email: hjohnson@ag.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

As this rule is being repealed, there is no fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| FISCAL YEAR | | | |
|-----------------------------|--|-------------------------------------|---|
| Effect of Proposal | Current Increase/Decrease (use "-") | Next Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | <i>N/A</i> | <i>N/A</i> | <i>N/A</i> |
| Personal Services | | | |
| Current Expenses | | | |
| Repairs & Alterations | | | |
| Assets | | | |
| Other | | | |
| 2. Estimated Total Revenues | | | |

Rule Title: General Groundwater Protection Rules For Fertilizer and Manures

Rule Title:

General Groundwater Protection Rules For Fertilizer and Manures

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

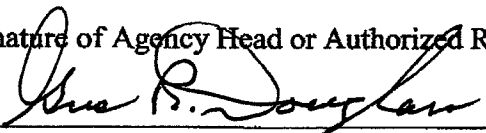
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule is being repealed; therefore, no fiscal impact.

Date:

6/1/10

Signature of Agency Head or Authorized Representative



FILED

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

2010 JUL 12 PM 3:32

SERIES 6C

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~REPEAL GENERAL GROUNDWATER PROTECTION RULES FOR FERTILIZER AND MANURES~~

~~1-61-6C-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. — W. Va Code 122-12-5e.~~

~~1.3. Filing Date. — June 24, 1993.~~

~~1.4. Effective Date. — July 1, 1993.~~

~~1.5. This is a new legislative rule.~~

~~1-61-6C-2. Incorporation by Reference.~~

~~2.1. The following documents are adopted in their entirety:~~

~~2.1.1. Generic State Management Plan for Pesticides and Fertilizers in Groundwater, (November 1, 1992) WV 61 CSR 22 et seq.~~

~~2.1.2. Water Well Design Standards WV 64 CSR 46 et seq. (effective June 8, 1984).~~

~~2.1.3. 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).~~

~~2.1.4. Best Management Practices for Fertilizers and Manures WV 61 CSR 22B et seq. (December 6, 1992).~~

~~1-61-6C-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 forty five (45) days or more in any twelve (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 (2) 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 the W. Va. Code §29A-1 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 (4) 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 five (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:~~

~~5.1.1. 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;~~

~~5.1.2. 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;~~

~~5.1.3. shall utilize the Department of Environmental Protection, Division of Natural Resources data management system for data on groundwater;~~

~~5.1.4. 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;~~

~~5.1.5. shall share data with other federal and state agencies for their evaluation and further investigation;~~

~~5.1.6. shall promote the protection of groundwater from fertilizers or manures through public education programs;~~

~~5.1.7. 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;~~

~~5.1.8. shall collect and expend moneys under the terms of this rule as provided by W. Va. Code 22-12-1 et seq.;~~

~~5.1.9. 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;~~

~~5.1.10. 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;~~

~~5.1.11. shall maintain a testing laboratory or contract with other laboratories for testing;~~

~~5.1.12. may conduct hearings, assess civil administrative penalties, seek injunctive relief and issue orders in accordance with W. Va. Code '22-12-10.~~

~~5.1.13. 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 twenty five (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 two (2) years of the effective date of these rules and shall implement the plan within three (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.~~

~~6.2.1. Number of animals maintained: 1,000 slaughter or feeder cattle; seven hundred (700) mature dairy cattle (whether milked or dry cows); two thousand five hundred (2,500) swine each weighing over twenty five (25) kilograms (approximately fifty five (55) pounds); five hundred (500) horses; ten thousand (10,000) sheep or lambs; fifty five thousand (55,000) turkeys; one hundred (100,000) laying hens or broilers (if the facility has continuous overflow watering); thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure handling system); five thousand (5,000) ducks; or one thousand (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 one hundred (100) ft of an open portal of a sinkhole or within one hundred (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 five (5) years of the effective date of these rules and shall implement the plan within five (5) years of the development of the Nutrient Management Plan.~~

~~6.3.1. Number of animals maintained: three hundred (300) slaughter or feeder cattle; two hundred (200) mature dairy cattle (whether milked or dry cows); seven hundred fifty (750) swine each weighing over twenty five (25) kilograms (approximately fifty five (55) pounds); one hundred fifty (150) horses; three thousand (3,000) sheep or lambs; sixteen thousand five hundred (16,500) turkeys; thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering); nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system); one thousand five hundred (1,500) ducks; or three hundred (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 6.2.1. or 6.3.1. for a period of forty five (45) days or more in a twelve (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 W. Va Code 122-12 et seq. to order persons to conduct remedial actions when issuing an order. When issuing an order pursuant to W. Va Code 122-12-10, the commissioner may:~~

~~7.1.1. encourage agreements for investigation and cleanups in appropriate cases;~~

~~7.1.2. use permanent solutions to the maximum extent practical to correct groundwater contamination where possible;~~

~~7.1.3. not allow for dilution and dispersion of the contaminant if active remedial measures are technically and economically feasible; and~~

~~7.1.4. 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 W. Va Code 122-12-10 and 22-12-11.~~

~~8.2. When determining the assessment of penalties pursuant to W. Va Code 122-12 et seq., the commissioner may consider the following factors:~~

~~8.2.1. the extent of harm to the public health, the environment, or the beneficial use of the groundwater;~~

~~8.2.2. the burden and fairness of requiring a person to bear the loss;~~

~~8.2.3. the person's history of compliance that may indicate continued noncompliance or disregard for compliance;~~

~~8.2.4. the person's knowledge of the rules and regulations that were violated; and~~

~~8.2.5. activities that were conducted in a negligent, reckless or intentional manner, where negligence means a failure to exercise reasonable care.~~