

STATE OF WEST VIRGINIA

**Update of the
PRELIMINARY PERFORMANCE REVIEW OF THE
DIVISION OF ENVIRONMENTAL PROTECTION**

Office of Water Resources

**Effectiveness of Permit Decisions
Limited by the Lack of Data on
Existing Water Quality**

**OWR has a Backlog and Delay
in Processing Industrial Permit
Applications**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

November 2000

PE-00-29-187

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November 2000

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Antonio E. Jones, Ph.D.
Director

November 12, 2000

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
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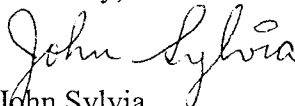
Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting an Update of the Preliminary Performance Review of the *Division of Environmental Protection - Office of Water Resources*, which will be presented to the Joint Committee on Government Operations on Sunday, November 12, 2000. The issues covered herein are "*Effectiveness of Permit Decisions Limited by the Lack of Data on Existing Water Quality*"; and, "*OWR has a Backlog and Delay in Processing Industrial Permit Applications.*"

We conducted an exit conference with the *Office of Water Resources* on October 30, 2000. We received the agency response on November 6, 2000.

Let me know if you have any questions.

Sincerely,


John Sylvia
Director

JS/wsc

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Executive Summary

The Office of Water Resources (OWR) within the Division of Environmental Protection was created to protect, preserve and enhance water quality and public health while maximizing social and economic development. The OWR is charged with administering and enforcing the following Acts:

- *Water Pollution Control Act (WV Code §22-11)*, which controls the issuance of NPDES permits;
- *Groundwater Protection Act (WV Code §22-12)*, which controls the issuance of groundwater quality certifications;
- *Natural Streams Preservation Act (WV Code §22-13)*, which controls permits to discharge into controlled streams; and,
- *Dam Control Act (WV Code §22-14)* which issues permits to construct, modify, or operate dams.

The scope of the original audit and of this update is limited only to the issuance of NPDES permits.

In October 1995, the Performance Evaluation and Research Division issued a preliminary performance review on OWR with eight recommendations. After two previous updates, three recommendations remain to be evaluated for compliance.

The update process utilizes the following definitions to evaluate the level of compliance with recommendations:

Levels of Compliance
<u>In Compliance</u> - The Entity has corrected the problems identified in the final draft of the audit report.
<u>Partial Compliance</u> - The Entity has partially corrected the problems identified in the final draft of the audit report.
<u>Planned Compliance</u> - The Entity has not corrected the problem but has provided sufficient documentary evidence to find that the agency will do so in the future.
<u>In Dispute</u> - The Entity does not agree with either the problem identified or the proposed solution.
<u>Non-Compliance</u> - The Entity has not corrected the problem identified in the final draft of the audit report.

This review of the remaining three recommendations indicates that the OWR is **In Compliance** with one recommendation, and is in **Partial Compliance** with two recommendations.

Issue Area 1: Effectiveness of Permit Decisions Limited by the Lack of Data on Existing Water Quality.

Recommendation 1:

OWR should examine the data collected by its various sections and develop a plan to create a management information system that facilitates an assessment of ambient water quality in all permit decisions. In order to maximize scarce resources, the strategy might begin with those streams and watersheds most frequently impacted by permit decisions.

Level of Compliance: In Compliance

In June 1999, the OWR contracted with Earthsoft Inc. to provide OWR with five licenses of Environmental Information System (EQuIS) software. DEP also contracted with Earthsoft to perform a needs assessment for each office and develop a plan to install and implement EQuIS.

In September 1999, OWR contracted West Virginia University Research Corp. to improve the Watershed Characterization and Modeling System (WCMS). The improvements will give permit writers the ability to perform waste load allocations and flow estimations, and will add links to external databases, add additional queries, and will provide study area tools for analysis specific to program needs.

On June 29, 2000, the DEP contracted with Earthsoft to provide the DEP with a comprehensive enterprise sampling information system. This database will store all pertinent information relating to environmental samples. This will allow offices to share data and will streamline the permit and decision process. Furthermore, this system will be integrated with DEP's permit tracking system.

Issue Area 2: OWR has a Backlog and Delay in Processing Industrial Permit Applications.

Recommendation 4:

The Office of Water Resources should take steps to fill vacant positions in the Industrial branch of the Permit Section.

Level of Compliance: **Partial Compliance**

As reported in the last update, in November 1998, the last of the vacancies identified in the 1995 audit were filled. However, the purpose of this recommendation was to decrease the backlog in issuing permits. This is why the OWR remained in Non-Compliance in the last update. Since the last update, the OWR has made progress in the permitting department. Perhaps the most significant accomplishment is in the area of management information. In late 1999, the OWR implemented the ERIS computer system which gives OWR management much more information regarding individual permits than what was previously available. Prior to the installation of the ERIS system, the OWR had no electronic way to determine the number of pending permits that were older than 180 days. By law, the OWR must issue permits in 180 days. Therefore, all pending permit applications were considered as a backlog. Table 1 shows the number of pending permits by year, and the accurate number of “backlog” applications (permits pending for more than 180 days).

**Table 1
Pending Permits by Fiscal Year**

Fiscal Year	Pending Permits	Backlog †
FY96	281	Not Available
FY97	317	Not Available
FY98	440	Not Available
FY99	495	Not Available
FY00	304	189‡
FY01*	312	95

* Current as of October 28, 2000
† Backlog is defined as those applications which have been pending for more than 180 days.
‡ Includes 77 applications that were purposely postponed. Thirteen to synchronize the renewal of these applications and sixty-four to cover under a new general permit..

Since the installation of ERIS, the OWR now knows for any day which applications are older than 180 days. Since it is reasonable to assume that the OWR will always have a certain number of applications representing work in progress, only applications which are older than 180 days can truly

be described as a backlog. Currently, of the 312 pending permit applications, 95 (30%) are older than 180 days.

Of the 95 backlogged applications, 40 (42%) are for permit renewals. By law, the OWR has the ability to automatically extend the life of a permit by one year. The companies that have applications for permit renewals that are older than 180 days are all operating on permit extensions. Therefore, the business of the company is not being impeded by not having the permit renewed in a timely manner. However, there is a potential danger to the environment in not issuing permit renewals in a timely manner. Every three years water quality standards are reviewed and could be revised. These revisions could make the standards more stringent. Given that a permit is usually issued for a five year term, if a permit holder is then granted an extension, water quality standards could change twice before a permit is re-issued or modified to comply with current water quality standards.

Of the remaining 55 backlogged applications, only one is an application for a new facility. The remaining 54 applications are applications for a new permit to cover an existing facility. By law, such facilities are not allowed to operate until they receive a new permit. However, according to the OWR some of these facilities are already operating without a valid permit. Facilities operating without a valid permit may be releasing excessive pollutants into the environment since the OWR is not obtaining monitoring reports on these facilities.

The OWR does not anticipate receiving as many applications this year as they did last year. Therefore, the OWR anticipates reducing or eliminating the current backlog applications. However, until all backlog permits are issued and the OWR can issue all permits in 180 days, the OWR remains in **Partial Compliance** with the recommendation.

Recommendation 5:

The Office of Water Resources should review the permit drafting process and increase computer automation that will reduce or eliminate any unnecessary burdens created by the permit drafting, review and approval process. The strategy might be developed in conjunction with a plan to address the lack of ambient water quality data discussed in Issue Area 1¹.

Level of Compliance: **Partial Compliance**

According to the OWR, the electronic permitting project is 90% complete, and they expect completion of the project sometime this fiscal year. According to the OWR, the electronic permit system provides the OWR with the following:

- provides the ability to input additional data into a much better system;

¹*Ambient Water Quality is defined as an assessment of overall quality of a stream or watershed including stream properties such as pH, hardness, turbidity, etc. and types and quantity of pollution contained in a stream or watershed.*

- provides greater accessibility of quality data not before available without time consuming research;
- reduces clerical time involved in permit issuance;
- provides the ability to track permit activities;
- provides tools for management to monitor work in progress; and,
- will provide public access to permit tracking information.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
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Charleston, West Virginia 25305-0610
(304) 347-4890
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Antonio E. Jones, Ph.D.
Director

October 25, 2000

Ms. Allyn G. Turner, Chief
Office of Water Resources
Division of Environmental Protection
1201 Greenbrier Street
Charleston, WV 25311

Dear Ms. Turner:

Pursuant to the West Virginia Sunset Law, we are transmitting a draft of the Update to the Preliminary Performance Review of the Office of Water Resources, which is scheduled to be presented to the Joint Committee on Government Operations on Sunday, November 12, 2000.

If you would like to meet to discuss the content of the report, we would be available Monday, October 30, 2000. If you do not need to meet with us, we would appreciate a written response by 12:00 noon on Wednesday, November 1, 2000 so that it can be printed with the report. If you have any questions please contact either myself, or Paul Barnette.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia
Research Manager

plb/JS

Joint Committee on Government and Finance

APPENDIX B
Agency Response



Office of Water Resources
1201 Greenbrier Street
Charleston, WV 25311-1088
Telephone: (304) 558-8855 or 558-4086



West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael C. Castle
Director

November 6, 2000

Mr. John Sylvia, Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305

Re: Draft Report
Office of Water Resources
Performance Review

Dear Mr. Sylvia:

The Office of Water Resources (OWR), has reviewed the above referenced draft report, which is scheduled to be presented to the Joint Committee on Government Operations. The OWR is generally in agreement with your findings, however, offers the following comments and added clarifications.

Issue Area 2: Recommendation 4

1. The OWR has increased processing efficiencies resulting in an increase in the number of permits processed by 374 percent in fiscal year 2000 over fiscal year 1998 and resulting in a decrease in the percentage and total number of permit applications considered "backlogged". This fact is documented in OWR'S Monthly Permit Action Report for June, 2000, a copy of which was recently submitted to you. It is estimated that approximately 80 percent of pending applications in FY 1996 to FY 1998 were older than 180 days. Currently only 30 percent of the pending applications are older than 180 days. Furthermore, 15 of the "backlogged" applications are fully processed and currently available for public comment, and 40 more of the "backlogged" applications are for car wash facilities that will be processed immediately after the new car wash general permit is issued within 60 - 90 days. At that time, the permit application "backlog" will equal only 13% of pending applications.

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia
Division of
Environmental Protection

Mr. John Sylvia, Research Manager

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November 6, 2000

2. As you indicated in this report, 40 of the 95 backlogged applications are for permit renewals, and the remaining 55 applications are for a new permit. Of these 55 applications, 50 are for facilities that OWR does not consider to be significant pollution sources. Specifically, 40 are for car washing establishments and 10 are for industrial landfills that have closed, are completely covered, and need to continue monitoring. In addition, the OWR has developed a schedule to process all of these backlogged applications during the current fiscal year.

3. You should also consider that even in the normal five-year term of a permit as provided by the statute, that the water quality standards could change twice.

For your information and convenience, I am attaching a copy of OWR'S Monthly Permit Action Report for June 2000, as well as a table reflecting the status of currently "backlogged" permit applications. If you have any questions, please do not hesitate to contact either me or Jerry Ray.

Sincerely,



Allyn G. Turner
Chief
Office of Water Resources

PGS:jl
Attach.

Cc: Michael C. Castle, Director, DEP
Jerry L. Ray, Asst. Chief, OWR Permits

West Virginia Division of Environmental Protection
Office of Water Resources

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION OFFICE OF WATER RESOURCES		WV/NPDES PERMITS ISSUED				APPLICATIONS			
		2000	1999	1998	1997	2000	1999	1998	1997
INDIVIDUAL PERMITS	Surface Water	49	118	169	42	77	107	16	0
	Groundwater	0	0	0	0	0	0	0	0
PERMIT MODIFICATIONS	Surface Water	100	150	101	8	0	29	12	0
	Groundwater	0	0	0	0	0	0	0	0
TOTAL		149	268	270	50	77	107	28	0

* 13 Deferred due to watershed permitting (scheduled to be processed in FY - 2001 - 2002)
64 Deferred awaiting general permit coverage (scheduled to be processed in FY - 2000)

Notes: 1.) This report is in addition to that required on a quarterly basis by HB 2684

2.) NPDES actions in this report reflect non-coal NPDES permits; The Office of Mining and Reclamation, through an agreement with OWR, reviews NPDES coal permit applications, conducts all public participation, and prepares draft and final permits. Although the OWR Chief issues the final permits, OWR Permits Section is not responsible for reviewing, processing, or developing coal NPDES permits.

Office of Water Resources
Permits Section

Status of Pending Application Greater than 180 days old

Total Applications

96

40 Carwash GP Registrations (40)

55

Status

	Pending or Admin. Complete	Technical Corrections Requested	Draft	To Public Notice	Administratively Incomplete	Total
Individual - Sewage	7 (1)	4		4 (1)		15 (2)
Individual - Landfill	20 (9)	1		5 (1)		26 (10)
Individual - Industrial	4	1	1	6		11
GP Registrations - Sewage	0			1 (1)		1 (1)
GP Registrations - Industrial	0	1 (1)			1 (1)	2 (2)
Modifications - Sewage	0		0			0
Modifications - Industrial	0		0			0
Total	31 (10)	7 (1)	1	15 (3)	1 (1)	55 (15)

*Stormwater

Note: Numbers in parenthesis indicate new permit applications