

**JANUARY 7**

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 7, 1990 - 4:00 - 6:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meetings December 10 and 11, 1989
2. Review of Legislative Rules:
  - a. State Fire Commission - Electrician Licensing Legislative Rules, Series II
  - b. Dept. of Energy - Rules & Regulations governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia
  - c. Division of Workers Compensation - Enforcement of Reporting and Payment Requirements
  - d. Tax Dept. - Consumers Sales and Service Tax and Use Tax
3. Other Business:

Sunday, January 7, 1990

4:00-6:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Jackson, Chairman (absent)  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Warner

Murphy, Acting Chairman  
Buchanan  
Burk  
Faircloth  
Roop  
Starcher

The meeting was called to order by Mr. Murphy, Co-Chairman.

The minutes of the December 10 and 11, 1989 meetings were approved.

Ms. Starcher moved that the rule proposed by the Tax Department - Consumers Sales and Service Tax and Use Tax be postponed until a later meeting. After discussion, Ms. Starcher asked unanimous consent to withdraw her motion. There being no objection, the motion was withdrawn.

Debra Graham, Committee Counsel, explained proposed modifications to the rule proposed by the State Fire Commission - Electrician Licensing Legislative Rules. Walter Smittle, State Fire Commissioner, and Clark Vandervort, West Virginia Electrician's Association, answered questions from the Committee.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed the rule proposed by the Department of Energy - Rules and Regulations governing the submission and the approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia. He stated that the Department had agreed to minor technical modifications.

Ms. Starcher moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Workers Compensation - Enforcement of Reporting and Payment Requirements. He stated that the Division had agreed to technical modifications. John Kozak, Counsel for the Division of Workers Compensation, answered questions from the Committee.

Mr. Manchin moved that the proposed rule lie over until the Committee's meeting on January 10, 1990. The motion was adopted.

Mr. Murphy stated that four rules proposed by the Department of Health would be added to the agenda for the Committee's meeting on January 8, 1990 and Ms. Graham distributed copies of the abstracts for two of the proposed rules which had not been previously mailed. Mr. Murphy also told members of the Committee that the time for the Committee's meeting on Wednesday, January 10, 1990, would be moved from 9:00 a.m. to 8:30 a.m.

Mr. Murphy told members of the Committee that five issues remain regarding the rule proposed by the Tax Department - Consumers Sales and Service Tax and Use Tax and that those issues - farmers, funeral homes, educational summer camps, membership dues and movie theatres - are before the Committee. Richard Boyle of the Tax Department answered questions from the Committee regarding the impact of the proposed rule on farmers. Mark Harman, representing the WV Farm Bureau, addressed the Committee and answered questions. The Committee took no action on this issue.

Mr. Boyle and Tom Battle, representing various country club owners, and Dale Steager, of the Tax Department, addressed the issue of membership dues and answered questions. Mr. Steager distributed a modification to the definition of bona fide dues which is under consideration by the Tax Department. The Committee took no action on this issue.

Roger Price, representing the West Virginia Funeral Directors Association, and Mark Morton of the Tax Department addressed the issue of funeral homes and answered questions from the Committee.

Mr. Warner moved to amend the rule so that funeral directors would be treated on an equal basis for tax purposes with other professionals.

Mr. Chafin moved that Mr. Warner's motion be tabled. The motion was adopted. Mr. Warner and Mr. Buchanan asked to be recorded as voting No.

Michael Caryl, representing Timber Line Camps, and Dale Steager addressed the issue of educational summer camps and answered questions from the Committee. Mr. Caryl distributed copies of a proposed modification to Section 2.28 of the proposed rule which defines "educational summer camp".

Mr. Chafin moved that the proposed rule be amended to reflect the modification proposed by Mr. Caryl. The motion was adopted.

Mr. Manchin distributed copies of a proposed modification to Section 2.16 of the proposed rule which defines "communication" to

include motion picture theatres. Mr. Steager stated that the Department had agreed to the proposed modification.

Mr. Manchin moved that the proposed rule be modified in accordance with the proposed modification which he distributed to the Committee. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-7-90

TIME: 4:00 - 6:00 pm

NAME

Present      Absent      Yeas      Nays

Chambers, Robert "Chuck", Speaker

Murphy, Patrick H, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Roop, Jack

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
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RE:

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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: SUN. JAN. 7, 1990

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly.</u>			
JOHN KOZAK	CHAS.	WORKER'S COMP. FUND	
TONY GRBAE	CHAS	W.Va. DOE	
Mike Caryl	Martinsburg	Timber Ridge Camps	Yes - sales tax regn
Tom Battle	Char.	Club Group	Yes - sales tax regns
R. CLARKE VAN KATWANT	CHARLESTON	W.Va. Electrician's Ass'n	
Richard Boyle	Charleston	Tax Dept	As needed
John Montgomery	Charleston	Tax Dept	As needed
James Gaji	White Sulphur Springs	State Fire Comm'n	as needed
Roger K. Price	Charleston	W.Va. Funeral Directors Ass'n	As Needed
Thomas Mookman	Charleston	IBEW 466 char. w.v.	
Les PERRY	St. Albans	IBEW 466	
James Southern	Morgantown	MPA	if necessary
Derek Lynn	Huntington	Greater Huntington Theatre	No
John MAIAS	Charleston	MPA	if necessary
Dale W. Steger	Charleston	W.V. Dept. Tax & Rev.	if necessary

1441U

Mr. Chairman, I move to amend proposed Emergency Consumers Sales and Service Tax and Use Tax Regulation § 110-15-2.16 to read as follows:

2.16 "Communication" means all telephone, radio, light, light wave, radio-telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television, and cable television and motion picture theaters. (The underlined language is new.)



2.28 "Educational summer camp" means a program and facility providing courses of instruction in activities such as art, music, computers, foreign languages, forestry, religious study, science, etc., such courses of instruction occupying a substantial amount of time during which participants are in attendance at the camp.

2.28.1 For purposes of this regulation, the term "educational" means: dedicated to providing instruction or learning for the intellectual, physical ~~or~~ and moral development and betterment of the recipient thereof, and the improvement of his knowledge, skill and character. For purposes of these regulations, those courses of study traditionally provided through formal schooling may be presumed to be educational.

2.28.2 Training ~~or instruction~~ in athletics, sports training, or physical conditioning ~~or any portion of a school curriculum classified as "physical education"~~ shall not be considered "educational" for purposes of these regulations unless:

2.28.2.1 ~~such training and instruction are incidental to the overall camp program, and~~

~~2.28.2.2~~ the primary scope or purpose of the summer camp is not training ~~or instruction~~ in athletics, sports training, or physical conditioning, ~~or any portion of a school curriculum classified as "physical education."~~

2.28.3 Specifically excluded from the definition of educational summer camps are those programs and facilities primarily related to paramilitary training, nudist camping or those related to animal training.

2.28.4 For purposes of this regulation, the term "summer" means that portion of the year during which West Virginia elementary and secondary public schools have summer recess. This period shall begin with the earliest cessation of the regular school year occurring for any such West Virginia public school among all such schools in all counties of the State of West Virginia, and shall end with the latest beginning of the next regular school year occurring for any such West Virginia public school among all such schools in all counties of the State of West Virginia.

52.5 The sales and service tax applies to the receipts from the sale of admissions, by tickets or fixed-fee donations whether by a season subscription or by single ticket purchases, to places at which amusements, entertainment, sports events, seasonal and exhibition games or recreation are provided. The term "admissions" does not include bona fide dues paid solely for the privilege of maintaining membership in a club or other organization. "Bona fide dues," as defined in Section 2 of these regulations, mean only those amounts periodically paid by members which entitle such persons to continued membership in a club, other organization or association, and "Bona fide dues" may include: the right to gather, meet and socialize to the exclusion of non-members; communications about membership activities; representation about membership concerns before governmental bodies; indicia of membership; isolated, free event to enhance membership collegiality; and incidental benefits as opposed to regular systematic services. "Bona fide dues" shall not include any amounts paid for goods or specific services rendered to members by the club or other organization. As a result, "bona fide dues" do not entail regular, systematic access to recreational or amusement facilities. For example, if one benefit attained by a membership fee includes admission to a pool, tennis court or golf course, the member is purchasing more than a "membership." In order to be exempt, bona fide dues must be separately identified and may not include any charge for services, tangible personal property or for any benefits provided to the members other than membership. The inclusion of such charges in membership dues may render the entire amount of such charge subject to tax.

52.5.1 For example, if persons paying a membership fee to a country club must also pay fees to use the facilities, such as golf courses, tennis

courts and swimming pool, then the fee for membership would be bona fide dues and exempt from sales tax. If payment of the membership fee entitles the member to utilize such facilities of the club, then the entire fee, is may be subject to sales tax.

52.5.2 Fees paid on an annual basis entitling members of an organization, association or club to services such as the use of swimming pools, tennis courts and other services or facilities, are specifically excluded from the definition of "bona fide dues."

52.5.3 Initiation fees and stock purchased from an organization, association or club as a prerequisite for membership, are not subject to tax so long as they do not entitle members to use such services and facilities without charge.

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 8, 1990 - 4:00 - 6:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting January 7, 1990
2. Review of Legislative Rules:
  - a. Air Pollution Control Commission - Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter
  - b. Air Pollution Control Commission - Prevention of Air Pollution Emergency Episodes
  - c. Air Pollution Control Commission - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration
  - d. Air Pollution Control Commission - Standards of Performance for New Stationary Sources
  - e. Air Pollution Control Commission - Emission Standards for Hazardous Air Pollutants
  - f. Dept. of Health & Human Resources, Division of Health - Licensure of Behavioral Health Centers
  - g. Board of Health - Methods and Standards for Chemical Test for Intoxication
  - h. Dept of Health & Human Resources, Division of Health - Nursing Home Licensure
  - i. Air Pollution Control Commission - "To Prevent and Control the Emissions of Toxic Air Pollutants"
  - j. Dept. of Health - Asbestos Abatement Licensing Rule
  - k. Real Estate Commission - Renewal of License - Continuing Education

1. Division of Natural Resources - Water  
Pollution Control Permit Fee Schedules

2. Other Business:

Monday, January 8, 1990

4:00-6:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Jackson, Chairman  
Chafin (absent)  
Manchin, J. (absent)  
Tomblin (absent)  
Wiedebusch (absent)  
Warner

Murphy, Acting Chairman  
Buchanan (absent)  
Burk  
Faircloth  
Roop (absent)  
Starcher

The meeting was called to order by Mr. Jackson, Co-Chairman.

Debra Graham, Committee Counsel reviewed her abstract on the rule proposed by the Air Pollution Control Commission - Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter and stated that the Commission had agreed to several minor technical modifications. Dale Farley, Director, Air Pollution Control Commission, addressed the proposed rule.

Mr. Murphy moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Air Pollution Control Commission - Prevention of Air Pollution Emergency Episodes and told the Committee that the Commission had agreed to several minor technical modifications. Mr. Farley and John Benedict, of the Air Pollution Control Commission, answered questions from the Committee.

Mr. Warner moved that the proposed rule be modified to discourage rather than prohibit the use of coal and woodburning stoves during periods of emergency. The motion was adopted.

Ms. Starcher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Air Pollution Control Commission - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration and stated that the Commission had agreed to several minor technical modifications. Mr. Farley answered questions from the Committee.

Mr. Murphy moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Air Pollution Control Commission - Standards of Performance for New Stationary Sources. Mr. Farley answered questions from the Committee.

Mr. Murphy moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Air Pollution Control Commission - Emission Standards for Hazardous Air Pollutants. Mr. Farley answered questions from the Committee.

Mr. Murphy moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Department of Health and Human Resources, Division of Health - Licensure of Behavioral Health Centers. Kay Howard, of the Regulatory Development Division, answered questions from the Committee.

Ms. Starcher moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Health - Methods and Standards for Chemical Tests for Intoxication.

Mr. Murphy moved that the proposed rule be approved. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Health and Human Resources, Division of Health - Nursing Home Licensure and stated that the Division had agreed to several minor technical modifications. Ms. Howard and Larry Arnold, of the Division of Health, answered questions from the Committee.

Mr. Murphy moved that the proposed rule lie over until the Committee's meeting on January 10, 1990. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Air Pollution Control Commission - "To Prevent and Control the Emissions of Toxic Air Pollutants" and told the Committee that the Commission had agreed to several minor technical modifications. Mr. Farley addressed the Committee regarding the proposed rule.

Mr. Warner moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Health - Asbestos Abatement Licensing Rule and informed the Committee that

the Department had agreed to several minor technical modifications. Joe Schock and Paul Gallagher of the Department of Health and John Hart, Advisory Board to Department of Health, spoke on the proposed rule and answered questions from the Committee.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Real Estate Commission - Renewal of License - Continuing Education and explained that the Commission had agreed to several minor technical modifications. Donald Portas, Executive Secretary of the West Virginia Real Estate Commission, answered questions from the Committee.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Division of Natural Resources - Water Pollution Control Permit Fee Schedules and stated that the Division had agreed to some technical modifications. Larry George, of the Department of Natural Resources, Chet Fleming, WV Rural Water Association, Robert McCarty, President, WV Rural Water Association, Robert Edwards, Evans PSD, and William Packard, Lubeck PSD, addressed the Committee and answered questions from the members.

Mr. Murphy moved that the Division be requested to withdraw the proposed rule because the fees set forth in the proposed rule are inequitable. The motion was adopted.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-8-90

TIME: 4:00-6:00pm.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			

Chambers, Robert "Chuck", Speaker

Murphy, Patrick H, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Roop, Jack

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: JAN. 8, 1980 4:00-6:00pm.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly</u>			
Joseph P Schrock		Dept Health	As needed
PAUL D. GALLAGHER		" "	" "
CHET FLEMING		WV RURAL WATER ASSO.	
J. ROBERT McCARTY		WV RURAL WATER ASSOC	X-YES
DALE FARLEY		APCC	If request needed
JOHN BENEDICT		APCC	If request needed
R. Scott Long		RFCI	
WAYNE MORGANROTH		DEPT. OF HEALTH, OLS	
Kay Howard	Charleston	Health + Human Resources	If needed
Nora Antlake		" " "	" "
JEFFREY E. HERROLD		DIVISION OF NATURAL RESOURCES	
JERRY L. RAY	Clun.	DNR - DIV. OF WATER RESOURCES	
BILL FACKARD	LOBECK WV	LUBECK PSD	X
Hank Karawa	Char.	Cabot & G	
G. Delaura		Hospital Association	
Edwin J. Jones	#8 CAPITOL ST. - SUITE 700 CHARLESTON - 25301	WVHCA	NO
J. J. H.	S. CHARLESTON	ASBESTOS ADVISORY BOARD	YES
L. ARNOLD		DIV. OF HEALTH	NO



Hand Out 1-9-90  
Meeting

# WEST VIRGINIA RURAL WATER ASSOCIATION

## COMMENTS OF

J. ROBERT McCARTY, President  
West Virginia Rural Water Association

## PRESENTED TO

WV Legislative Rule Making and Review Committee  
January 8, 1990

## SUBJECT

"Water Pollution Control Permit Fee Schedule"  
A Rule submitted by DNR



My name is J. Robert McCarty, I reside in Harrison County, West Virginia where I have participated in the management of Sun Valley Public Service District for more than a decade. I appear before you today on behalf of the 117 members of the West Virginia Rural Water Association (WVRWA). As their president I feel compelled to inform you of the negative economic effect the emergency rule is having and that the permanent rule will continue to have on the very small utilities of West Virginia. For your information I have given each of you a list of our current membership and would like to give you a very brief description of WVRWA and our activities.

WVRWA is non-profit organization of rural and small municipal, publicly owned and operated water systems. Our goal is to help provide safe drinking water to all West Virginians and thereby enhance the quality of life in small cities, towns, and the rural areas throughout our state. WVRWA is one of 38 members of the National Rural Water Association. We have three fulltime staff members that provide technical assistance and training to the managers and operators of all publicly-owned water systems across West Virginia. Each year our staff makes over 700 onsite visits to these systems and offers over 100 hours of training at locations across the state. Fifteen other state rural water associations provide similar services to small sewer systems in their states. WVRWA expects to begin assistance to West Virginia's small sewer systems later this year.

Our members pay 10 cents per customer per year as dues. These monies make up about 15% of our operating budget. The balance of our funds is provided by contracts with NRWA that has contracts with both EPA and FmHA. It will require about \$10,000 of WVRWA membership funding to start the sewer program. Why would the operators of water systems agree to have their monies spent to serve sewer systems? There are two primary reasons; 1. Many of our members are now operating sewer systems. 2. They recognize the need for and the value of the service we provide.

Thank you for indulging me and now let me address the rule before you today. H.B. 2677 that passed in the last legislative session authorized the Department of Natural Resources to establish a discharge permit fee schedule. These fees were to be paid by the applicants for and the holders of "National Pollutant Discharge Elimination System Permits" and "State Pollution Control Permits". H.B. 2677 placed certain specific limitations on the amount that could be charged for these fees. Other language provided guidelines to be followed in establishing the fees. We are concerned that HB 2677 permits DNR to determine how much money they want and then collect it from us. Should government work in this manner?

On August 16, 1989 representatives of WVRWA appeared at a public hearing held to accept public comments on the proposed permanent rule. During the required recorded procedure DNR refused to respond to presented comments. After the hearing was officially closed DNR representatives engaged in a "discussion" with those present. When asked how a schedule so blatantly unfair to small systems had been proposed, they responded, that it was necessary to charge the small systems so much because the cap was so low. When questioned why the maximum was so low, their response was that others had set it at those levels. One of our representatives suggested that if they had consulted those affected by the legislation we could have provided guidelines we could have endorsed. A DNR spokesman said it would not be appropriate for them to discuss proposed legislation.

The fee schedule now in place results in the following discrepancies. Evans PSD with 262 sewage customers will be required to pay an annual fee of \$1500.00 or \$5.72 per customer. On the other hand, the City of Charleston with 23,000 customers will be required to pay the maximum annual fee of \$2,500.00 or less than 11 cents per year per customer. The Evans per-customer fee will be 52 times that for Charleston. We challenge that such a schedule fails to meet the language of H.B. 2677 requiring that the annual fees be; "based upon the relative potential .... to degrade the waters of the state.". And that the schedule of fees are certainly not "reasonable".

Another concern we have is that more than one of our members have stated they submitted applications for permit renewal prior to the effective date of the emergency rule that have apparently been lost by DNR. The previous fee for this renewal was \$50.00. Red Jacket PSD, a financially troubled system, recently reported receiving a letter from DNR stating that if they could not prove they had submitted their renewal application in March as claimed, they would now have to pay \$1,000 under the emergency rule. Several of our members have also complained that applications have been returned as incomplete. When information was sought on how to correct the application, they often receive conflicting information when dealing with the DNR staff.

Water systems that remove water from streams and then discharge their filter backwash water will have that discharge classified as process water, placing it in the same category as a chemical plant's discharge and higher than that of a sewage plant. Is this another case of violating the language "potential to degrade the waters of the state"?

We object to the fact that the legislation was passed and the emergency rule instituted without prior notification. The actions of DNR have created the appearance that they are insensitive to financial problems faced by most small utilities in West Virginia. This legislation and rule appear to require that the victim pay for the bullet for their own execution. Are the monies paid to DNR to be used to hire more people to think of new ways to make our difficult job even more difficult. We ask that you prevent this from happening.

# WVRWA MEMBERSHIP LIST 1989 - 1990

## VOTING MEMBERS

ALBRIGHT WATER WORKS  
 ALDERSON, TOWN OF  
 ARBUCKLE PSD  
 BELMONT, CITY OF\*  
 BERKELEY COUNTY PSD  
 BERKELEY SPRINGS WATER WORKS  
 BIG BEND PSD  
 BOLAIR PSD  
 BRADLEY PSD  
 BURNSIDE PUBLIC UTILITIES\*  
 CAIRO WATER WORKS\*  
 CAMPSITE PROP. OWNERS ASSOC.  
 CAPON BRIDGE, TOWN OF  
 CENTURY - VOLGA PSD  
 CHATTAROY PSD  
 CHEAT NECK PSD  
 CLAY BATTELLE PSD  
 CLINTON WATER ASSOC.  
 CLOVER PSD\*  
 COAL RIVER PSD  
 COONS RUN PSD  
 COTTAGEVILLE PSD\*  
 COWEN PSD  
 CRUM PSD  
 CULLODEN PSD  
 DENVER WATER ASSOC.  
 ELIZABETH, TOWN OF  
 ELLENBORO-LAMBERTON PSD  
 EVANS PSD  
 FOLLANSBEE, CITY OF  
 FORT ASHBY PSD  
 FOUNTAINHEAD HOME OWNERS  
 FRANKFORT PSD  
 GAP MILLS PSD  
 GILBERT WATER WORKS  
 GLEN DALE HEIGHTS  
 GLEN DALE MUNICIPAL WATER  
 GRAFTON, CITY OF  
 GRANDVIEW-DOOLIN PSD  
 GRANT COUNTY PSD  
 GREENBRIER COUNTY PSD #2\*  
 GREENVILLE WATER COMPANY\*  
 HAMMOND PSD  
 HAMRICK PSD  
 HARPERS FERRY, TOWN OF  
 HARRISVILLE, TOWN OF  
 HARTFORD, TOWN OF  
 HEPZIBAH PSD  
 HILLSBORO WATER\*  
 HOOVERSON HEIGHTS PSD

JANE LEW WATER COMMISSION  
 JUMPING BRANCH-NIMITZ PSD  
 KERMIT, TOWN OF  
 KINGWOOD WATER WORKS\*  
 LASHMEET PSD  
 LAVALETTE PSD  
 LEON WATER SYSTEM  
 LESTER, TOWN OF\*  
 LINCOLN PSD  
 LOGAN COUNTY PSD  
 LOST CREEK - MT CLARE PSD  
 LUBECK PSD  
 LUMBERPORT PSD  
 MANNINGTON, CITY OF  
 MANNINGTON PSD  
 MASON COUNTY PSD  
 MASONTOWN WATER WORKS  
 MATEWAN WATER WORKS  
 MINERAL WELLS PSD  
 MOSSEY PSD  
 MOUNT HOPE, CITY OF\*  
 MOUNTAIN TOP PSD  
 MOUNTAIN VIEW WATER ASSOC.  
 NEW CREEK WATER ASSOC.  
 NEW HAVEN MUNICIPAL WATER  
 NORTON-HARDING JIMTOWN PSD  
 OAKLAND PSD  
 OPEQUON PSD  
 PAGE-KINCAID PSD  
 PARSONS, CITY OF  
 PENDLETON COUNTY PSD  
 PENNSBORO, CITY OF  
 POINT PLEASANT, CITY OF\*  
 POUNDS HOLLOW WATER ASSOC.  
 PRATT WATER WORKS  
 PRESTON COUNTY PSD #1  
 PRESTON COUNTY PSD #2  
 PUTNAM UNION PSD  
 QUIET DELL PSD\*  
 RALEIGH COUNTY PSD  
 RAVENSWOOD MUNICIPAL WATER  
 RED SULPHUR PSD\*  
 RED JACKET PSD  
 RIDGELY MUNICIPAL WATER  
 RIPLEY, CITY OF  
 RONCEVERTE, CITY OF  
 SHINNSTON, CITY OF  
 SHORT LINE PSD  
 SILVERTON PSD\*  
 SISSONVILLE PSD  
 SISTERSVILLE, CITY OF\*  
 SOUTH PUTNAM PSD

SOUTHERN JACKSON PSD  
 SPENCER, CITY OF  
 SPRINGFIELD WATER ASSOC.  
 STONEWOOD, CITY OF  
 SUMMERSVILLE WATER WORKS  
 SUN VALLEY PSD  
 TAYLOR COUNTY PSD\*  
 UNION, TOWN OF  
 VALLEY FALLS PSD  
 VALLEY OF GOOD HOPE  
 WASHINGTON PIKE PSD  
 WASHINGTON PSD  
 WEST FORK RIVER PSD  
 WILDERNESS PSD  
 WILLIAMSTOWN, CITY OF  
 WINFIELD, TOWN OF

## INDIVIDUAL MEMBERS

Holly E. Alkire  
 Michael I. Barkley  
 Donald Basham  
 Harvey Chapman  
 David Cole  
 Scott Compton  
 John A. Dienst  
 Steve Fenell  
 Chet Fleming  
 Loren J. Fox\*  
 Robert L. Frost\*  
 C. Michael Harrington  
 C. David Holt\*  
 Paul A. Hornor, Jr.  
 Donald Jarvis  
 Cline E. Larck  
 Terry Largent  
 Charles A. Lefon  
 Raymond Logan  
 G. Lee Massey  
 Douglas L. Miles  
 Herbert S. Montgomery  
 Sonny Moore  
 Jearl Ramsey  
 Richard W. Richardson  
 W. Allan Schomaker  
 Gary Shaffer  
 Fred Stottlemeyer  
 Dave Treharne  
 James O. Turner  
 Konrad Walther\*  
 Frank Welch  
 \*indicates new members

# CONFIDENTIAL / FOR MAYORS, COUNCILMEN, AND PSD COMMISSIONERS ONLY

by Fred Stottlemeyer

In our travels across West Virginia, we continue to find one very common problem in nearly two out of every three small water systems — *WATER SYSTEM STARVATION*. Such starvation is evident in lack of maintenance, poverty level wages and often in poor water quality.

Indeed, we have been going through a difficult time economically in West Virginia and public boards have been reluctant to burden their customers with higher rates. However, it is time that all board members, city councilmen and mayors take a few minutes and reflect on what a great burden they will be placing on their customers if their water system is starved to the point that it breaks down and the residents have to haul water or drill wells.

Sure 6 to 10 dollar water bills are nice to take credit for, but are you also willing to take the credit for the hundreds of thousands of dollars that will be required to replace deteriorated water plants, and water tanks? Are you willing to take the credit for illnesses that may result from poor water quality? Are you willing to take the credit for making your water system employees suffer from lack of medical insurance, a poverty level life style and no retirement benefits?

Water Systems are mechanical systems that deteriorate quickly when neglected. Many of our small systems were constructed in the 1960's and have reached an age where they demand special care and attention. These facilities have been placed in your trust and you should be just as concerned about protecting this community investment as you would be about looking after a trust established for a small child.

Your water system employees are not only the day by day protectors of the system, but they are

also responsible for making certain that when you or your loved ones take a drink of water it will be safe. These individuals deserve your attention to make sure they are recognized for what they do, to make sure they are adequately trained and to make sure they are properly paid so that they have pride in their jobs and the quality of water they produce.

Yes, you can ignore this trust and can go around your community bragging about how you have kept water rates down. Yes, you can be responsible for *starving* your water system.

Would you not rather be known in your community as a good trustee who came forward and leveled with your fellow citizens about what was needed to assure them of a safe reliable water supply. You may not be popular with everyone, but in most cases the majority will accept your decision if you are straight forward and explain in understandable terms the need for more money to properly maintain the system. All of us paint our houses and replace our automobiles every so many years and water systems require the same type expenditures.

Would you rather be known as the water commissioner who saw to it that the water plant operators were properly trained and properly paid, rather than the commissioner who allowed the good qualified operator to slip away due to poor pay and benefits.

You and your fellow board members are responsible for setting the policies by which you will carry out the trust the community has placed with you. The policies you set now are the policies that will determine the condition of your water system and the quality of life in your community as we move toward the year 2000.



**JANUARY 10**

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 10, 1990 - 9:00 - 11:00 a.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meetings January 7 and 8, 1990
2. Review of Legislative Rules:
  - a. Dept. of Natural Resources - Solid Waste Management Regulations
3. Other Business:

Wednesday, January 10, 1990

2:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Jackson, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin  
Wiedebusch  
Warner

Murphy, Acting Chairman  
Buchanan  
Burk  
Faircloth  
Roop  
Starcher

The meeting was called to order by Mr. Murphy, Co-Chairman.

Mr. Warner moved to modify the rule proposed by the Department of Natural Resources - Solid Waste Management Regulations - on pages 104 and 105, Section 4.5.4, relating to liners by changing several deadlines in accordance with a proposed modification which he distributed. The motion was adopted.

Mr. Buchanan moved to modify the proposed rule on page three, Section 2.15 relating to the definition of coal combustion by-products.

Frank Pelurie, Director, Environmental and Regulatory Affairs, Kim Poland, representing W.Va. Manufacturers Association, Scott Icard, representing Appalachian Power Company, addressed the Committee and answered questions.

Mr. Buchanan asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Murphy moved to modify the proposed rule on page thirteen, Section 3.26, by inserting the word "known" before the word "faults" and by striking everything after the word "faults" and inserting a period. The motion was adopted.

Mr. Murphy moved to modify the proposed rule on page twenty-one, Section 3.7.11, and on page sixty-four, Section 3.14.25, by striking the word "twenty" and inserting in lieu thereof, the word "five". After discussion, Mr. Murphy asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Murphy moved to modify the proposed rule on page seventy, Section 3.16.3.e, by striking the words "If required by the chief". The motion was rejected.

Mr. Murphy moved to modify the proposed rule on page seventy-seven, Section 3.18.2.b, to require that a public hearing on major modifications be held in the host county if requested. The motion was adopted.

Mr. Murphy moved to modify the proposed rule on page twenty-one, Section 3.7.11, and on page sixty-four, Section 3.14.25, by striking the word "twenty" and inserting in lieu thereof, the word "five". The motion was adopted.

Mr. Murphy moved to modify the proposed rule to require that a duplicate application be filed with the local solid waste authority. The motion was adopted.

Mr. Murphy moved that the proposed rule be modified on page 173, Section 5.5.2.b.B, by deleting the word "No". The motion was rejected.

Mr. Warner moved that the proposed rule be modified on page 173, Section 5.5.2.b.B, by deleting the words "No monitoring shall" and inserting in lieu thereof, the words "Monitoring shall not". The motion was adopted.

Mr. Murphy moved that the proposed rule be adopted as modified and amended. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-10-90

TIME: 2:00 p.m.

NAME

Present      Absent      Yeas      Nays

Chambers, Robert "Chuck", Speaker

Murphy, Patrick H, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Roop, Jack

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Murphy, Patrick H, Co-Chair	✓			
Buchanan, Michael	✓			
Burk, Robert W., Jr.	✓			
Faircloth, Larry V.	✓			
Roop, Jack	✓			
Starcher, Virginia	✓			
Burdette, Keith, President				
Jackson, Lloyd, II, Co-Chair	✓			
Chafin, Truman H.				
Manchin, Joe, III	✓			
Tomblin, Earl Ray	✓			
Warner, George	✓			
Wiedebusch, Larry	✓			
TOTAL				

RE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Revised

DATE: 1-10-90 2:00 p.m

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly George E. Jigot	P.O. Box 648 Fairmont	Marion Co, SWA	✓
Gary Teck	Fairmont	Monongahela Power	
Kim Brown Poland	Charleston, WV	W.V. Mamef Assoc.	✓ (S.W. rules)
SCOTT ICARD	" "	APCO	✓ " IF NECESSARY
Elyse Adams	Wheeling	The City of Wheeling	
Ron McLeary	Fairmont	Monongahela Power	
RANDY CAIN	GREENSBURG, PA	Monongahela Power	
Bob Foster	Charleston, WV	Union Carbide Corp	
Kay Howard	Charleston	Health	
John Faltis	36 LAKEVIEW DR MORGANTOWN	ANKER ENERGY	

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-10-90

TIME: 8:30-11:00 AM.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓	✓		
✓			
	✓		
✓			
	✓		
10	2		

Chambers, Robert "Chuck", Speaker

Murphy, Patrick H, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Roop, Jack

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Richard M. Francis	Charleston, WV	Timber Ridge, Inc.	X
John H. Kozak	CHAS.	DIV. OF WORKERS' COMP.	
B. Thomas Battle	Char. WV	Club Group	X Sales Tax
Joe Schlock		Dept Health	
Bill Packard	LUBERIK	LUBERIK PSD	X DNR Rec's
Ron McIlroy	Fairmont	Mon. Power	
Gary Jack	Fairmont	Mon. Power	Possibly
Kim Brown Poland	Charleston	W. Va. Manuf. Assoc.	yes - DNR solid w.
DALE FARLEY	CHARLESTON	APCC	Yes - If needed
FRED STOTTEMYER	Charleston	South Putnam Public Serv. Dist	X yes DNR permit 9003
STEVE GEE	JANE LEW	JANE LEW WATER COMMISSION	X NPDES PERMIT FEES.
Patrick Gallagher	Charleston	WV Manufacturers	
SCOTT ICARD	CHAS	APCO	X SOL WASTE IF NECESSARY
P.B. Rehrig	DNR	DNR	
JOHN BENEDICT	CHAR.	WVAPCC	
LARRY ARNOLD		DIV. OF Health	No
Joe Goffe	Char.	Columbia Gas	
RON KOLBASA	LANCASTER OH	AEP	



REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
<i>Kay Howard</i>	<i>Charleston</i>	<i>Health</i>	
<i>Chet Fleming</i>	<i>CHARLESTON</i>	<i>WV RURAL WATER</i>	
<i>John Montgomery</i>	<i>Charleston</i>	<i>Tax &amp; Revenue</i>	<i>If necessary</i>
<i>Gary A. Jack</i>	<i>Fairmont</i>	<i>Monongahela Power</i>	
<i>Chet Irons Ky</i>	<i>Canton, OH</i>	<i>Ohio Power Co</i>	
<i>Robert S Worden</i>	<i>Charleston</i>	<i>WV Manufacturers Ass'n</i>	
<i>Mark Curran</i>	<i>Columbus, OH</i>	<i>American Elect. Pur.</i>	
<i>Joseph P. Adams</i>	<i>City of Wheeling</i>	<i>Wheeling, W. VA.</i>	

HAND OUT 1-10-90  
LRMRC TAX

2.15 "Commercial production of an agricultural product" means the production of food, fiber, or woodland products (but not timbering activity) by means of cultivation, tillage of the soil or by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, horticultural activity, or any other plant or animal production activity and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing of agricultural or farm products, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof, occurring-on-not-less-than-five-(5)-acres-of-land-and-the-improvements thereon-resulting-in-the-production such production being measured by annual sales of at least one thousand dollars (\$1,000) of such agriculture agricultural or-farming products; Provided, that for the first twelve (12) months after the occurrence of a catastrophe, such as fire, drought or flood, which substantially destroyed the agricultural product being produced or the means for harvesting such product other than merely mechanical breakdowns, or for the first twelve (12) months after the commercial producer of an agricultural product has first commenced such production activity, the requirement of annual sales of at least one thousand dollars (\$1,000) of agricultural products need not be satisfied in order for the activity to be the commercial production of an agricultural product per-annum-through-the-conduct-of-the-business-of-farming-as-the principal-activity-of-the-person-engaging-in-such-agricultural-production,-in-the-manner-described-in-W.-Va.-Code-§-11-1A-18-and-the-regulations-related thereto.

State Tax Department  
Title 100  
Series 15

Definitions

2.40 "Membership fees or bona fide dues" mean those amounts paid by members which entitle and subject such persons to continued membership and to the usual benefits, privileges and obligations of membership in a corporation, organization or association that is organized and operated for the benefit of its members and which is maintained primarily through the payments by its members without regard to individual benefits actually received from the membership corporation, organization or association. Membership fees or bona fide dues do not include any amounts paid for tangible personal property or separate specific services rendered to members by a corporation, organization or association. For example, membership fees or bona fide dues do not include guest fees, food and beverage sales, facility rentals, shop sales and charges for special events. For related material See Sections 52.5 and 70.3 of these regulations.

§ 110-15-52 Amusement Services and Places of Amusement.

52.2.7 Country clubs and other private clubs and organizations that provide entertainment, recreation, sports, dining, or social facilities to members, but only to the extent charges are not considered "bona fide dues" as defined in Section 2 of these regulations. See the following Sections 52.5 and 52.5.1 for further clarification.

52.5 The sales and service tax applies to the receipts from the sale of admissions, by tickets or fixed-fee donations whether by a season subscription or by single ticket purchases, to places at which amusements, entertainment, sports events, seasonal and exhibition games or recreation are provided. The term "admissions" does not include bona fide dues paid solely for the privilege of maintaining membership in a club or other organization that is organized and operated for the benefit of its members and which is maintained primarily through the payments by its members without regard to individual benefits actually received from the membership corporation, organization or association. "Bona fide dues," as defined in Section 2 of these regulations, mean only those amounts periodically paid by members which entitle and subject such persons to continued membership and to the usual benefits, privileges and obligations of membership in a club, other organization or association and shall not include any amounts paid for goods or separate specific services rendered to members by the club or other organization. Taxable sales and services of membership organizations include guest fees, food and beverage sales, facility rentals, shop sales and charges for special events. ~~In order to be exempt, bona fide dues must be separately identified and may not include any charge for services, tangible personal property or for any benefits provided to the members other than membership. The inclusion of such charges in bona fide dues may render the entire amount of such dues subject to tax.~~

~~52.5.1--For example, if persons paying a membership fee to a country club must also pay fees to use the facilities, such as golf courses, tennis courts and swimming pool, then the fee for membership would be bona fide dues and exempt from sales tax. If payment of the membership fee entitles the member to utilize such facilities of the club, then the entire fee is subject to sales tax.~~

~~52.5.2--Fees paid on an annual basis entitling members of an organization, association or club to services such as the use of swimming pools, tennis courts and other services or facilities, are specifically excluded from the definition of "bona fide dues."~~

52.5.1 Initiation fees and stock purchased from an organization, association or club as a prerequisite for membership, shall be treated the same as "bona fide dues." ~~are not subject to tax so long as they do not entitle members to use such services and facilities without charge.~~

52.5 The sales and service tax applies to the receipts from the sale of admissions, by tickets or fixed-fee donations whether by a season subscription or by single ticket purchases, to places at which amusements, entertainment, sports events, seasonal and exhibition games or recreation are provided. The term "admissions" does not include bona fide dues paid solely for the privilege of maintaining membership in a club or other organization. "Bona fide dues," as defined in Section 2 of these regulations, mean only those amounts periodically paid by members which entitle such persons to continued membership in a club, other organization or association, and "Bona fide dues" may include: the right to gather, meet and socialize to the exclusion of non-members; communications about membership activities; representation about membership concerns before governmental bodies; indicia of membership; isolated, free event to enhance membership collegiality; and incidental benefits as opposed to <sup>the</sup> regular <sub>offerings</sub> systematic services. "Bona fide dues" shall not include any amounts paid for goods or specific services rendered to members by the club or other organization. As a result, "bona fide dues" do not entail regular, systematic access to recreational or amusement facilities. For example, if one benefit attained by a membership fee includes admission to a pool, tennis court or golf course, the member is purchasing more than a "membership." In order to be exempt, bona fide dues must be separately identified and may not include any charge for services, tangible personal property or for any benefits provided to the members other than membership. The inclusion of such charges in membership dues may render the entire amount of such charge subject to tax.

52.5.1 For example, if persons paying a membership fee to a country club must also pay fees to use the facilities, such as golf courses, tennis

courts and swimming pool, then the fee for membership would be bona fide dues and exempt from sales tax. If payment of the membership fee entitles the member to utilize such facilities of the club, then the entire fee, is may be subject to sales tax.

52.5.2 Fees paid on an annual basis entitling members of an organization, association or club to services such as the use of swimming pools, tennis courts and other services or facilities, are specifically excluded from the definition of "bona fide dues."

52.5.3 Initiation fees and stock purchased from an organization, association or club as a prerequisite for membership, are not subject to tax so long as they do not entitle members to use such services and facilities without charge.

TO THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE:  
The Corrective Action Provisions Of  
The DNR Solid Waste Regulations

In the last few days you received from us an open letter reviewing the negotiations on the solid waste rules. As we indicated there might be, there remains an important issue on which agreement could not be reached.

As currently drafted, the provisions of Section 4.11.5. of the DNR solid waste regulations contain requirements for corrective action programs which are required whenever a statistically significant increase is found in a Phase II monitoring parameter. A limited exception is found in 4.11.6. Such a corrective action program must be designed and implemented to achieve background concentrations by removing or treating in place any hazardous constituents that were released by the solid waste facility and that exceed background concentration values. Adjustments to this concentration limit can be made by the Chief in only extremely limited situations.

The problem with this approach is that it assumes and enforces background water quality as the standard. Such an approach does not consider any of the uses to which the water is put and does not make any judgment as to whether there is any actual harm which has resulted from the contamination, however small or great.

These provisions go beyond the legal authority of the DNR to promulgate. Under West Virginia Code §20-5A-3a, the Legislature has empowered the State Water Resources Board to promulgate rules and regulations "setting standards of water quality and effluent limitations to be applicable to the waters of this state, which standards of quality and effluent limitations shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such waters for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof." No such similar powers have been granted to the DNR under the Solid Waste Management Act. Rather, they are to implement the water quality standards of the Board.

For the past two years, the issue of groundwater quality has been under active debate before the Legislature and the regulatory bodies. It would be entirely inappropriate for this issue to be resolved in the context of these solid waste regulations. Efforts are under way on many fronts to address and resolve the groundwater issues during the upcoming legislative session. That full and free debate and negotiation should be allowed to proceed without making any unnecessary policy decision as to groundwater quality in these solid waste regulations.

Instead, the current provisions of Section 4.11.5. and 4.11.6. should be deleted and replaced with a provision which



essentially describes the existing powers of the Chief of the DNR Division of Water Resources to stop or prevent pollution or to order remedial action as those powers are described in the state's Water Pollution Control Act, West Virginia Code Chapter 20, Article 5A. That act gives the Chief very broad powers to stop polluting actions. Language which would accomplish this goal for all solid waste facilities is attached. We urge you to adopt it at your January 10, 1990 meeting in lieu of the current language.

Appalachian Power Company  
Monongahela Power Company  
Ohio Power Company  
The Potomac Edison Company  
Virginia Electric Power Company  
The West Virginia Manufacturers  
Association

January 3, 1990

Proposed Amendment:

Strike all of section 4.11.5. and 4.11.6. and insert:

4.11.5. Corrective Action Program.

Whenever a statistically significant increase is found in a Phase II or Phase III monitoring parameter, or when groundwater contamination is otherwise identified by the Chief at sites without monitoring programs, which is determined by the Chief to have resulted in a significant adverse effect on an aquifer, and which is attributable to a solid waste facility, the Chief may require appropriate corrective or remedial action pursuant to West Virginia Code Chapter 20, Article 5A and Chapter 20, Article 5F to abate, remediate or correct such pollution. Any such corrective or remedial action order shall take into account any applicable groundwater quality protection standards, the existing use of such waters, the reasonably anticipated uses of such waters, background water quality, and the protection of human health and the environment.

~~4.11.5.B.~~ 4.11.5.b.B. Demonstrate the effectiveness of the corrective action program.

4.11.5.c. The permittee shall design and implement a corrective action program to achieve background concentrations by removing or treating in place any hazardous constituents that were released by the solid waste facility and that exceed background concentration.

4.11.5.c.A. Adjustments to the concentration limits may be made by the Department chief in the following situations:

4.11.5.c.A.(a) Available methods are technically unfeasible;

4.11.5.c.A.(b) Available methods will result in undesirable cross-media effects including, but not limited to, irreparable damages to scenic areas, surface waters, air quality, interconnected aquifers, and habitats of endangered species; or

4.11.5.c.A.(c) Available methods will result in high hazard situations such as unacceptable air contamination, dangers to cleanup personnel, or dangers to the surrounding community from weakening of structural support of roads, buildings, and other structures.

4.11.5.c.B. The time allowed for completion of a corrective action program will be specified by the chief after considering the following factors:

4.11.5.c.B.(a) Protection of human health and the environment;

4.11.5.c.B.(b) Extent of contamination;

4.11.5.c.B.(c) Resource value of the aquifer including:

4.11.5.c.B.(c)(A) Current and future uses;

4.11.5.c.B.(c)(B) Proximity and withdrawal rates of users;

4.11.5.c.B.(c)(C) Groundwater quality;

4.11.5.c.B.(c)(D) The potential damage to wildlife, crops, vegetations, and physical structures caused by exposure to the waste constituents;

4.11.5.c.B.(c)(E) The hydrological characteristics of the facility and surrounding land;

4.11.5.c.B.(c)(F) Groundwater removal and

Proposed Amendment  
to

Jan. 1990 Solid Waste Management Regulations  
pages 104 and 105

Sec 4.5.4.a. Liner System Requirements

. . . Nothing within this section shall be construed to allow installation of any liner system not in conformance with Section 4.5.4.a.E, or Section 4.5.4.a.G of these regulations on areas not lined as of November 30, 1989. Areas where solid waste is or has been disposed of as of November 30, 1989 shall either be closed or retrofitted with a liner system in accordance with the following:

Sec. 4.5.4.a.B Landfills that, have obtained a valid closure permit and by ~~the~~ November 30, 1990 have in place groundwater monitoring wells; effective leachate treatment capability, and sediment control in conformance with the requirements of section 4.5.4.a.R. of these regulations; and have in place a liner underlying the facility that has been proven to the chief to be of

adequate construction may remain in operation until November 30, 1992, at which time such landfill shall be closed in conformance with its permit and these regulations.

4.5.4.9.C. landfills that, ~~by November~~ have obtained a valid permit to operate and by November 30, 1990 have in place groundwater monitoring wells, effective leachate treatment capability, sediment control, and a liner in conformance with the requirements of Section

4.5.4.a.B of these regulations may remain in operation in such condition until November 30, 1992, after which date solid waste shall be placed in such facility only over a liner system designed, constructed, operated, and maintained in conformance with these regulations.

4.5.4.a.D. After Nov. 30, 1992 all landfilled solid waste shall be placed above a liner system designed, constructed, operated, and maintained in conformance with these regulations.

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Thursday, January 18, 1990, 3:00 p.m.

1. Approval of Minutes - Meetings January 10, 1990
2. Review of Legislative Rules:
  - a. Department of Natural Resources - State Water Pollution Control Revolving Fund
  - b. Board of Investments - Rules for the Administration of the Consolidated Fund
  - c. Board of Investments - Rules for the Administration of the Consolidated Pension Fund
  - d. State Treasurer - Establishment of Imprest Funds
  - e. Division of Workers' Compensation - Self-insurers Employers
  - f. Department of Commerce, Labor and Environmental Resources, Division of Energy - Surface Mining Reclamation Regulations
3. Other Business:

Thursday, January 18, 1990

3:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Jackson, Chairman  
Chafin  
Manchin, J.  
Tomblim (absent)  
Wiedebusch (absent)  
Warner

Murphy, Acting Chairman  
Buchanan (absent)  
Burk  
Faircloth  
Roop  
Starcher

The meeting was called to order by Mr. Murphy, Co-Chairman.

The minutes of the meeting of January 10, 1990, were approved.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Department of Natural Resources - State Water Pollution Control Revolving Fund. Eli McCoy of the Department of Natural Resources, Joe Schock of the Department of Health, Chet Fleming of WV Rural Water Association and Fred Hypes of the Department of Natural Resources addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Warner moved that the Department withdraw its proposed rule. After further discussion, Mr. Warner asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Jackson moved to modify the rule by removing ultraviolet treatment from the design standards. The motion was adopted.

Mr. Jackson moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Board of Investments - Rules for the Administration of the Consolidated Fund - and stated that the Board had agreed to several minor technical modifications. Craig Slaughter, Chief of Staff of Treasurer's office, and D. Jerry Simpson, Assistant Treasurer, spoke to the Committee regarding the proposed rule and answered questions.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham outlined the provisions of the rule proposed by the Board of Investments - Rules for the Administration of the Consolidated Pension Fund - and stated that the Board had agreed to several minor technical modifications. Messrs. Slaughter and Simpson and Bob Blake, of Charleston, WV, addressed the Committee and answered questions.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the State Treasurer - Establishment of Imprest Funds - and stated that the Treasurer had agreed to several minor technical modifications. Mr. Simpson answered questions from the Committee.

Mr. Roop moved that the Treasurer withdraw the proposed rule. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Worker's Compensation - Self-Insured Employers - and explained that the Division had agreed to several minor technical modifications. Emily Spieler, Commissioner, Workers' Compensation Fund, addressed the Committee and answered questions.

Ms. Starcher moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Dept. of Commerce, Labor and Environmental Resources, Division of Energy - Surface Mining Reclamation Regulations. Karen Susman of Beckley, WV, addressed the Committee regarding several proposed modifications. Roger Hall, Director, Research, Special Projects and Regulatory Affairs, Division of Energy, told the Committee that he had agreed to some of the modifications and that he was still reviewing the others.

Mr. Roop moved that the proposed rule lie over until the Committee's meeting on January 23, 1990. The motion was adopted.

Robert Wilkinson, Deputy Secretary of State, told members of the Committee that an amendment had been made to the emergency rule proposed by the West Virginia Economic Development Authority - General Administration of the West Virginia Capital Company Act, Series 1 - and that a similar amendment might be needed for the proposed rule which had been approved by the Committee on September 11, 1989. Ann Shabb, Director of the West Virginia Economic Development Authority, and Jon McBride of the Flying Eagle Corporation, addressed the Committee regarding the proposed rule and answered questions from the Committee.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN. 18, 1990

TIME: 3:00 p.m.

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker				
Murphy, Patrick H, Co-Chair	✓			
Buchanan, Michael				
Burk, Robert W., Jr.	✓			
Faircloth, Larry V.	✓			
Roop, Jack	✓			
Starcher, Virginia	✓			
Burdette, Keith, President				
Jackson, Lloyd, II, Co-Chair	✓			
Chafin, Truman H.	✓			
Manchin, Joe, III	✓			
Tomblin, Earl Ray				
Warner, George	✓			
Wiedebusch, Larry				
TOTAL				

RE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule Making Review

DATE: Thurs., JAN. 18, 1990 3 p.m.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly JON MCBRIDE	PO 1050 LEWISBURG	FLYING EAGLE CORP (SELF)	X
David A. Sizemore	#104 Home St. Beckley W.V.	Flying Eagle Corp.	
Butch FERGUSON	874 Divide Ridge KENNA	Flying Eagle Corp	
<del>Kevin Price</del>	GOLD		
Ann Shabb	GOLD		
CHET FLEMING	CHARLESTON	WV RURAL WATER ASSOC	X REVOLVING LOAN
WILLIAM HEROLD	HEALTH DEPT.	HEALTH DEPT.	
Joe Schock		Health	
GIL DELAURA		WV Hospital Assoc.	
FREDERICK L HYPES	WV DNR	WV DNR	
Rosalie Ortega	WV DNR	WV DNR	
MIKE JOHNSON	WV DNR	WV DNR	
Tom Goodwin	617 Broad St. Chas. WV. 25311	Construction Grants / SRF	
JEFFREY E HERRARD	WV DNR	WV DNR	
JOHN H KOZAK	CHAS	WORKERS' COMP.	
<del>Raymond ...</del>	Chas	WV Assn. PSD'S	
<del>Raymond ...</del>	Beckley	SELF	
Ray T. ...	Chas	DEE	

REG.

3-2-3

3.1 Why not make S.S.# mandatory?

(f) pg.23 within a 100 ft. to within a 1,000 ft.

(3) pg.24 or similar to and similar

(1) pg.25. Including operator if different from permittee

(5) pg.26. Jack, need to question where it's addressed if no action taken

(0) pg.26 Application shall be reviewed thoughly by DOE before approval

(2) pg.27 Change 2"x 2" to 4"x 4"

~~(1) pg.27 Add between 2 and 3 at a minimum, The advertisement will contain:~~

(3) pg.27 Add P.O.Box and route <sup>SC</sup> and street address

(4) Add names of persons with property adjacent to permit area, and anticipated mining by company in same area. *Code, Pg 215 paragraph 2*

(B) pg.28 A separate public notice to will be included with permit advertisement and a separate public notice.

(12) pg.28 Code doesn't address close a public road. W.Va. code pg.315, lines 95-103

(D) pg.28 (Or closure ) possibly delete.

(d) pg.29 Add a copy of the list to be kept at each courthouse.

~~(g) pg.29 Should address Incidental Boundary~~

(a) pg.30 Add Must be notarized address small access roads leading to private dwellings, which may also lead to mining site.

(b) pg.30 Add a waiver is good only for the life time of the permit for which originally signed, *If app. denied waiver is void*

(2) pg.30 Add only through life of original permit.

(7) pg.31 If structure leased or rented by applicant shall be shown on map.

(17) pg.32 Address utility lines

- (21) pg.33 Jack, Check and see if refuse piles should be addressed
- (6) pg.37 Add to be approved by Dam Control Office of State of W.V.
- (a) pg.39 Check (close)
- (1) pg.39 Check (closed)
- (2) pg.39 Post 5 signs- 4'x 6' - along affected roadway with public information.
- (4) pg.39 Address how the commissioner will notify public of decision?
- (3) pg.40 Coordinate with universities, state institutions and federal. Only one per county per year limit.

(unexpected damages -permittee shall be responsible.)

pg.47 Jack, where is refuse taken and what happens if refuse is sold- tax purposes, etc.?

(b) pg.55 Add It shall be required by the applicant

(2) pg.64 Add No transfers allowed when there are outstanding violations and penalties until fines are paid in full. *or correct all violations - pay fees*

(3) Add persons with adjacent property be notified by certified mail and listed in the ads in newspaper.

(7) pg.65 Add one statement shall be signed by permit supervisor

3.26 pg.65 Add Must run legal ad in local newspaper for 4 consecutive weeks allowing for public comment.

(2) pg.70 Change 20 percent to 10 percent, maximum of 5 acres Not 50.

50 acres for stripmining is not incidental  
AND Notify property owners adjacent to operation by certified mail and run ad in newspaper.

3.30 pg.71 Is 2 1/2 years advisable? *not more last 2 yrs. Every 6 mos.*

4.4 pg.84 What is stated in handbook? *what is handbook*

4.7 pg.84 Define reasonable means, this is too vague.

4.8 Does Commissioner have authority under act?

*ck* — Explain alternative routes —

pg.87 Culvert has to be not less than 100 sq. in. opening but not limited to and able to pass 1 yr., 24 hr. storm

(c) pg.97 Add at nearest DOE office.

(e) pg.97 Strike operator line 5 add commissioner

(a) pg.100 No less than 4<sup>1/2</sup>" x 6" public notice *Bold border / NAMES legible / min.*

6.8 (a) pg. 107 Inform in writing, Add by certified mail

(1) pg.107 Pictures for pre-blast survey must be taken by Instamatic camera. Copies observed by person or persons conducting the survey and home owners.

One set of pictures sealed and left at home owners, and one set sealed and left with survey information.

7.1 (a) pg.109 Specify timely manner.

(b) Define properly managed.

*pg. 148*  
13.1(a) Needs to <sup>Approval</sup> be like reg. permit App. - Advertisement-like reg permit  
P.O. Box and street or Route number required.

(1) Add S.S.#

(3) P.O. Box and street <sup>or</sup> and Route plus S.S. #

(4) P.O. Box and Street and Route plus S.S. #

(13) pg.149 Add Notify adjacent property owners of intent to prospect:

Need to advertise in local paper, name, address, Box, Route or street number, phone, adjacent property owners, 4" x 6" map, nearest P.O. quadrants, discharge into what tributary, method of prospecting, time frame, public comment time allowed.

*COPIES  
need to  
be provided*

~~13.2~~ (a) pg.150 Can or should prospecting coal, for purpose of testing to check quality of coal, to be sold?  
*OK*

(3) pg.161 D.N.R. do testing

(7) pg. 171 One signed by permit supervisor

(b) Add Site must be secured at time of inactive status, so that no public harm will occur as a result of inactive status.

(f) pg.172 D.O.E. inspect monthly to insure cessation in effect and public safety protected.

19.1 (2) pg. 208 Specify what evidence is acceptable.

(5) pg. 209 STRIKE / please check code. pg 246 (5)(d)

Trying to make it more difficult for the public.

This is spelled out plainly by law in W.V. code.

(e) pg.210 What would constitute frivolous?

(g) pg.210 Think petition should be considered before making decision because the public's first awareness is from newspaper advertisement.

(k) pg.211 He shall begin compiling a data base system (see pg. 213) state code.

(c) pg.212 Add 4"x 6" legal ad in paper

(e) pg.212 At what point in procedure would this be required to be compiled by commissioner. Please check code.

19.7 (1) pg.214 Communities would fall into this category

20.1 pg.216 Inspection Frequencies, Please read W.V. code pg.299 lines 43-49

(1) pg.216 Partial is not addressed in code.

(3) pg.216 Change quarterly to 2 weeks.

(4) pg.216 Change partial to complete.

(b) pg. 217 SOME line 3 explain - partial not addressed in state code.

(c) pg.218 Abatement. Code states 75 days pg.302, line 14 change all 90 days to 75 days.

(b) pg.223 Shall included operator if different than permittee.

(c) pg.223 line 3 check same or related. Code state PATTERN of violation.  
Pg 246 (5)  
Any 3 violations of the same nature or not would constitute a pattern.

(b) pg.225 Code of W.V., 302 line 12-32 States 15 days NOT 30 days

(a) pg.231 Add on-site operator if different than permittee.

(b) pg.231 Change 30 days to 15 days

(c) pg.235 Define emergency

Note  
pg 229, paragraph (3) section (D) Add for post mining land use changes (This whole paragraph is not addressed properly in reg: (pertaining to post-mine land use changes

pg 224 no more than 3 years to reclaim

(c)

pg 226 Each 1/2 acre, grading and planting to be kept current.

(16)



**JANUARY 23**



AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, January 23, 1990 - 4:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting January 18, 1990
2. Review of Legislative Rules:
  - a. Department of Commerce, Labor and Environmental Resources, Division of Energy - Surface Mining Reclamation Regulations
  - b. WV Economic Development Authority - General Administration of the WV Capital Company Act
  - c. Department of Health and Human Resources - Implementation of Omnibus Health Care Payment Act Provisions
  - d. Department of Health and Human Resources - Implementation of Omnibus Health Care Act
3. Other Business:

Tuesday, January 23, 1990

4:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Jackson, Chairman  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch  
Warner

Murphy, Acting Chairman  
Buchanan (absent)  
Burk  
Faircloth  
Roop  
Starcher (absent)

The meeting was called to order by Mr. Jackson, Co-Chairman.

The minutes of the meeting of January 18, 1990, were approved.

Michael McThomas, Associate Counsel, reviewed the proposed modifications to the rule proposed by the Department of Commerce, Labor and Environmental Resources, Division of Energy - Surface Mining Reclamation Regulations. Roger Hall, Director, Research, Special Projects and Regulatory Affairs, Division of Energy, answered questions from the Committee.

Mr. Murphy moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Murphy moved that the Committee withdraw its September 13, 1989, approval of the rule proposed by the West Virginia Economic Development Authority - General Administration of the WV Capital Company Act. The motion was adopted.

Mr. Jackson told members of the Committee that the proposed rule was again before them. Ann Shaab, Director of the West Virginia Economic Development Authority, and Jon McBride of the Flying Eagle Corporation, addressed the Committee regarding the proposed rule and answered questions. Ms. Shabb explained several proposed modifications to the proposed rule.

Mr. Murphy moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, reviewed the rule proposed by the Department of Health and Human Resources - Implementation of Omnibus Health Care Payment Act Provisions and stated that the Department had agreed to several minor technical modifications. David Lambert,

Assistant Attorney General, representing the Department of Health and Human Resources, explained the proposed rule and answered questions from the Committee.

Mr. Murphy moved that the proposed be approved as modified. The motion was adopted. Mr. Faircloth voted "No".

Ms. Graham reviewed her abstract on the rule proposed by the Department of Health and Human Resources - Implementation of Omnibus Health Care Act and stated that the Department had agreed to several minor technical modifications. Mr. Lambert answered questions from the Committee. George Rider of the West Virginia Medical Association, answered questions from the Committee.

Mr. Warner moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JANUARY 23, 1990

TIME: 4:00 p.m.

NAME

<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
✓			
	✓		
✓			
✓			
✓			
	✓		
✓			
✓			
✓			
	✓		
✓			
✓			

Chambers, Robert "Chuck", Speaker

Murphy, Patrick H, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Roop, Jack

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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