

**JANUARY** 1994

TENTATIVE AGENDA  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
SUNDAY, JANUARY 9, 1994, 9:00 A.M. - 5:00 P.M.  
SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meeting December 14, 1993
2. Review of Legislative Rules:
  - a. Division of Health  
Hospital Licensure
  - b. Air Pollution Control Commission  
To prevent and control air pollution from the  
emission of sulfur oxides
  - c. Air Pollution Control Commission  
Requirements for operating permits
  - d. Board of Examiners for Registered Professional Nurses  
Standards for Professional Nursing Practice
  - e. Board of Examiners for Registered Professional Nurses  
Disciplinary Action
  - f. State Commission on Aging  
West Virginia Long-Term Care Ombudsman Program
  - g. Tax Division  
Charitable Raffle Boards and Games
  - h. Division of Environmental Protection  
Groundwater Protection Act Fee Schedule
  - i. Division of Environmental Protection  
Dam Safety Regulations
  - j. Division of Environmental Protection  
Underground Storage Tank Regulations
  - k. Division of Environmental Protection  
Underground Injection Control Fee Schedule
  - l. Division of Environmental Protection  
Commercial Hazardous Waste Management Facility  
Siting Fees

- m. Division of Environmental Protection  
Yard Waste Composting
- n. Division of Environmental Protection  
Lead Acid Battery Regulations
- o. Attorney General  
Legislative Rule Pertaining to the West Virginia  
Consumer Goods Rental Protection Act
- p. Commercial Hazardous Waste Management Facility Siting  
Board  
Commercial Hazardous Waste Management Facility  
Siting Board Certification Requirements
- q. Board of Investments  
Administration of Consolidated Pension Fund
- r. Tax Division  
Pollution Control Facilities
- s. Lottery Commission  
State Lottery Rules
- t. Lottery Commission  
Video Lottery Games
- u. Division of Environmental Protection  
Groundwater Protection Regulations
- v. Division of Environmental Protection  
Groundwater Protection Regulations, Coal Mining  
Operations
- w. Division of Environmental Protection  
Hazardous Waste Management Regulations
- x. Division of Environmental Protection  
Groundwater Quality Standard Variances
- y. Division of Environmental Protection  
Sewage sludge management regulations

3. Other Business:

Sunday, January 9, 1994

9:00 a.m. - 5:00 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

Manchin, Chairman  
Grubb  
Anderson  
Macnaughtan  
Minard  
Boley

Gallagher, Chairman  
Douglas  
Compton  
Huntwork (absent)  
Burk  
Faircloth

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

The minutes of the December 14, 1991 meeting were approved.

Debra Graham, Committee Counsel, reviewed the rule proposed by the Division of Health, Hospital Licensure, stated that the agency has agreed to modifications and answered questions from the Committee. Dr. Lynn Welch, Marshal University, Bill Ashby, WV Association of Professional Paramedics and Ken Jozefczyk, Director of Pharmacies at West Virginia University addressed the Committee and responded to questions.

Mr. Anderson moved that the proposed rule lie over until the Committee's afternoon session. The motion was adopted.

Mike Mowery, General Counsel, House Judiciary, explained that the rule proposed by Air Pollution Control Commission, To prevent and control air pollution from the emission of sulfur oxides, had been laid over at the Committee's November meeting. He reviewed his abstract on the proposed rule. Dave Flannery, Counsel of Pittsburg Steel and Dale Farley, Chief, Division of Air Quality, addressed the Committee and responded to questions.

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

Mr. Mowery reviewed his abstract on the rule proposed by the Air Pollution Control Commission, Requirements for operating permits, and responded to questions from the Committee.

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

Ms. Graham explained the rule proposed by the Board of Examiners for Registered Professional Nurses, Standards for Professional Nursing Practice, and stated that the Board has agreed to technical modifications.

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

Ms. Graham reviewed the rule proposed by the Board of Examiners for Registered Professional Nurses, Disciplinary Action, and stated that the Board has agreed to modifications.

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

Marjorie Martorella, Counsel to the House Committee on Government Organization, reviewed her abstract on the rule proposed by the State Commission on Aging, West Virginia Long-Term Care Ombudsman Program, stated that the Commission has agreed to modifications and responded to questions from the Committee. Carolyn Riffle and Joanne Rich, Commission on Aging, answered questions from the Committee.

Ms. Douglas moved that Section 11.1.2 of the proposed rule be modified to provide that regional and volunteer ombudsman present identification cards to the administrator or his or her designee when entering a long-term care facility. The motion was adopted.

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

Alison Patient, Counsel to the House Finance Committee, explained the rule proposed by the Tax Division, Charitable Raffle Boards and Games, stated that the agency has agreed to modifications and answered questions from the Committee. John Montgomery, Counsel, Tax Division, responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Division of Environmental Protection, Groundwater Protection Act Fee Schedule, stated that the Division has agreed to technical modifications and answered questions from the Committee.

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

Ms. Graham explained the rule proposed by the Division of Environmental Protection, Dam Safety Regulations, and stated that the Division has agreed to technical modifications. Eli McCoy, Chief of the Office of Water Resources, answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Division of Environmental Protection, Underground Storage Tank Regulations, and stated that the Division has agreed to technical modifications. Max Robertson, Chief, Office of Waste Management, answered questions from the Committee.

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

Ms. Graham explained the rule proposed by the Division of Environmental Protection, Underground Injection Control Fee Schedule, and stated that the Division has agreed to technical modifications.

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

Ms. Graham reviewed the rule proposed by the Division of Environmental Protection, Commercial Hazardous Waste Management Facility, Siting Fees, and stated that the Division has agreed to technical modifications. Michael McThomas, representing the WV Manufacturers Association, responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Division of Environmental Protection, Yard Waste Composting, and stated that the Division has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the Division of Environmental Protection, Lead Acid Battery Regulations, and stated that the Division has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the Attorney General, Legislative Rule Pertaining to the West Virginia Consumer Goods Rental Protection Act, and stated that the Attorney General has proposed modifications to the proposed rule. Donald Darling, Senior Deputy Attorney General, Consumer Protection Division, distributed and explained modifications to the proposed rule and answered questions from the Committee..

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

Ms. Graham explained the rule proposed by the Commercial Hazardous Waste Management Facility Siting Board, Commercial Hazardous Waste Management Facility Siting Board Certification Requirements, and stated that the Board has agreed to technical modifications. Mr. Robertson answered questions from the Committee.

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

Mr. Manchin stated that the Division of Health and other interested parties had reached agreement on proposed modifications to

the proposed rule entitled Hospital Licensure. Kay Howard, of the Regulatory Division, Division of Health, explained the proposed modifications and answered questions from the Committee.

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

Ms. Patient reviewed her abstract on the rule proposed by the Board of Investments, Administration of Consolidated Pension Fund, and stated that the Board has agreed to modifications, which she distributed.

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

Ms. Patient explained the rule proposed by the Tax Division, Pollution Control Facilities, stated that the Division has agreed to modifications and responded to questions from the Committee.

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

Ms. Patient reviewed her abstract on the rule proposed by the Lottery Commission, State Lottery Rules, and distributed proposed modifications. Richard Boyle, Director of the Lottery Commission, answered questions from the Committee.

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

Ms. Patient explained that the Committee should request that the rule proposed by the Lottery Commission, Video Lottery Games, be withdrawn. She told the Committee that in October, the Supreme Court of Appeals ruled that the statute authorizing the video lottery was unconstitutional since it did not have sufficiently specific standards by which the agency could promulgate the rule. Therefore, it would be improper to promulgate a rule pursuant to this statute. Mr. Boyle stated that he does not have the authority to withdraw the proposed rule, but that he would recommend the action to the Commission at its next meeting.

Mr. Manchin moved that the proposed rule be withdrawn. The motion was adopted.

Ms. Patient explained her abstract on the rule proposed by the Division of Tax, Business Investment and Jobs Expansion Tax Credit, Small Business Tax Credit, Corporate Headquarters Relocation Tax Credit. Mark Morton, General Counsel for Revenue Operations, responded to questions from the Committee.

Mr. Minard moved that the proposed rule be placed at the foot of the agenda. The motion was adopted.

Mr. Mowery explained the rule proposed by the Division of Environmental Protection, Groundwater Protection Regulations. David

Yousey, representing the WV Manufacturers Association, distributed a list entitled "Agreed Changes to Groundwater Protection Regulations" which contained proposed modifications which had been agreed to by the Division. He also presented the Committee with a second list entitled "West Virginia Manufacturers Association Changes to Proposed Groundwater Protection Regulations" which contained changes proposed by the Association which were not agreed to by the Division. Mr. McCoy addressed the Committee regarding the proposed modifications and changes.

Mr. Minard moved that the proposed rule be modified to include all of the Manufacturers' Association's proposed modifications and changes on both lists. Mr. MacNaughtan asked the Chair if the question was divisible and the Chair ruled that it was. Mr. Minard asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. MacNaughtan moved that the question be divided between the agreed to modifications on the first list and the proposed changes on the second list. The motion was adopted.

Mr. MacNaughtan moved that the Committee modify the proposed rule to include all of the agreed to proposed modifications on the first list, except for No. 2 on that list. Mr. Norm Steemstra, representing the West Virginia Citizen Action Group, and Mr. Flannery addressed the Committee regarding the proposed modifications and answered questions from the Committee. Mr. Grubb requested a roll call vote. The motion was adopted 8-3.

Mr. Burk moved that the Committee amend the proposed rule by incorporating proposed change No. 2 from the second list submitted by the Manufacturers' Association. The motion was adopted. (Subsequent to the meeting, the Division determined that they would accept the proposed change as a modification, making an amendment unnecessary.)

Mr. Minard moved that the Committee amend the proposed rule to include the remainder of the Manufacturers' Association's proposed modifications and changes. Dr. McCoy responded to questions from the Committee. Following discussion, Mr. Minard asked unanimous request to withdraw his motion. There being no objection, the motion was withdrawn.

Ms. Douglas moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. Grubb asked unanimous consent that the Committee request an updated opinion from the Attorney General on whether or not an agency can have ex parte communications with interested parties after the comment period on a proposed rule has closed and also whether or not the Committee may direct an agency to meet with interested parties to resolve differences on a proposed rule.

Mr. Minard objected to the request for unanimous consent.



Mr. Grubb moved that the Committee request the Attorney General Opinion. The motion was rejected.

Mr. Gallagher stated that the next rule on the agenda would be the rule proposed by the Division of Tax, Business Investment and Jobs Expansion Tax Credit, Small Business Tax Credit, Corporate Headquarters Relocation Tax Credit, which had been laid over earlier in the meeting.

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

Mr. Mowery reviewed the rule proposed by the Division of Environmental Protection, Groundwater Protection Regulations, Coal Mining Operations, and answered questions from the Committee. Roger Hall, from the Division, Chris Hamilton, WV Coal Association, and Mr. McCoy addressed the Committee and responded to questions.

Mr. Minard requested unanimous consent that the proposed rule be placed at the foot of the agenda. There being no objection, the proposed rule was placed at the foot of the agenda.

Mr. Mowery reviewed his abstract on the rule proposed by the Division of Environmental Protection, Hazardous Waste Management Regulations.

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

Mr. Mowery explained the rule proposed by the Division of Environmental Protection, Groundwater Quality Standard Variances, and answered questions from the Committee. He told the Committee that the proposed rule needs to be modified to adjust the deadlines in the proposed rule.

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

Mr. Mowery stated that the rule proposed by the Division of Environmental Protection, Sewage sludge management regulations, had been laid over from the previous meeting and answered questions from the Committee. Warren Monk, Director, WV Solid Waste Authority, Richard Rodriguez of Rivesville, WV, Tom Deegan, Director, Kanawha County Solid Waste Authority, James Kotcon, Sierra Club, Dave Sutherland, of the Solid Waste Section, WV Environmental Council, addressed the Committee and responded to questions.

Mr. Faircloth moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Marjorie Martorella explained the rule proposed by the Department of Health and Human Resources, Child Advocate Office, Guidelines for Child Support Awards.

Ms. Douglas moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. Gallagher stated that the interested parties had been unable to reach a compromise on the rule proposed by the Division of Environmental Protection, Groundwater Protection Regulations, Coal Mining Operations.

Mr. Grubb moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN. 9, 1994

TIME: 9:00 AM - 5:00 PM

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Brian Gallagher, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Douglas, Vickie

Compton, Mary P.

Huntwork, John

Burdette, Keith, President

Joe Manchin, III Co-Chair

Anderson, Leonard

Grubb, David

Minard, Joseph

Macnaughtan, Don

Boley, Donna

TOTAL

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

RE:

---



---



---



---

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Role-Making Review Committee DATE: JANUARY 9, 1994

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly</u>			
<u>Bill Asbury</u> <i>spoke</i>	<u>P.O. Box 6392 Charleston, WV 25362</u>		X
<u>Carly S Kettle</u>	<u>Commissioner Agency</u>	<u>Commissioner Agency</u>	X
<u>Kyle Howard</u>	<u>DHHR Charleston</u>	<u>DHHR</u>	
<u>Sybil K. Kram</u>	<u>Charleston</u>	<u>DHHR-OHFLAC</u>	<u>If needed.</u>
<u>James N. Mitchell</u>	<u>Charleston</u>	<u>Bd of Examiners RN</u>	✓
<u>Debra B Welch</u> <i>spoke</i>	<u>Grand Nursing Marshall Huntington WV</u>	<u>Marshall Univ WV Nurses Assoc</u>	X
<u>Ruth J Moore</u>	<u>Charleston</u>	<u>WVNA</u>	
<u>MARY C. RANSBURG</u>	<u>Charleston WV</u>	<u>WVNA</u>	
<u>PATRICIA A Liming</u>	<u>LOGAN, WV 25601</u>	<u>WVONE</u>	
<u>Lillian S. Dick</u>	<u>Milton, WV</u>	<u>WV Nurses Ass.</u>	X
<u>Shelia Kyle</u>	<u>Huntington, WV</u>	<u>WVNA</u>	<u>If needed</u>
<u>Janice M. Smith</u>	<u>1302 Kanawha Ave Dunbar, W. Va. 25864</u>	<u>W. Va. Nurses Assoc. + myself RN</u>	<u>If needed</u>
<u>Roy Herzog</u>	<u>Charleston, WV</u>	<u>Regional Ombudsman</u>	
<u>Bruce Perron</u>	<u>1055 Quarrist St, Rm 200 Charleston, WV</u>	<u>Regional Ombudsman Program Local Aid Society</u>	<u>if needed</u>
<u>Rachel Byrd</u>	<u>924 Chappell Rd Charleston WV</u>	<u>WVNA / WVONE</u>	<u>if needed</u>
<u>Dora Calhoun</u>	<u>517 Wagoner Dr Crosshomer WV</u>	<u>WVNA / Staff nurse</u>	<u><del>if</del> if needed</u>
<u>George Velianoff</u>	<u>23 Cedar Dr Hurricane WV</u>	<u>WVONE / CAME</u>	X yes
<u>John MONTGOMERY</u>	<u>CHARLESTON</u>	<u>TAX &amp; REVENUE</u>	<u>AS NEEDED</u>

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			
Dr. Judith Sortet	788 Eastwood Dr Huntington WV	School of Nursing Marshall Univ & WVN	
Dr. Mary Ann Rosaworn	CAME 3200 Mac Campbell Rd	Director of Nursing Research C.A.M.C.	
Dr. Barbara Davis	1902 13th St. Apt 2 Huntington, WV	School of Nursing Marshall University	
Bob Whittier	W. Va. Charleston	W. Va. Hospital Association	Yes
DALE FARLEY Spike	Charleston	WV DEP/OAQ	Will answer questions
MAX ROBERTSON	"	DEP/Waste + Staff/Chief	on 45, 25, 10, 25, 25 Respond as required 30
Jim Doria	O.E.M.S. Charleston	O.E.M.S.	
Clifton Browning	Charleston	WV DEP Water	If asked
David M Flannery Spike	Charleston	Wheeling Pittsburgh Steel	✓ on Air Pollution (Reg 10)
Brian Long	Charleston	WV DEP Dam Safety	if needed
Jerry A. Knight	"	DEPT. of Tax & Revenue	
James J. Alex	"	Dept. of Tax and Revenue	if needed
Robert Redick	"	W.V. Rural Water Assoc.	x (sewage sludge)
Mike McThreas	"	WV Manufacturers Assoc	✓ May Waste
Dave Gauss	"	"	✓ WPLC Reg 30
Bob Hoffman	Chas	TAX & REVENUE	If needed
Sandra Nall	POB 11 Man, WV 25035	WVHA	if needed





DEP - Grandwater  
 "Agreed to"  
 Modifications

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1/9/94

TIME: 2:45

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker			✓	
Brian Gallagher, Co-Chair			✓	
Burk, Robert W., Jr.			✓	
Faircloth, Larry V.			✓	
Douglas, Vickie			✓	
Compton, Mary P.				✓
Huntwork, John				
Burdette, Keith, President				
Joe Manchin, III Co-Chair			✓	
Anderson, Leonard			✓	
Grubb, David				✓
Minard, Joseph			✓	
Macnaughtan, Don				✓
Boley, Donna			✓	
TOTAL				

RE: DEP - Grandwater - WUMAs Assoc Mod -  
agreed to by DEP





**FAX COVER SHEET**

To: Legislative Rule-Making Review Committee

Attention: Deborah Graham Fax #: 352-1829

From: Nancy Tonkin

Date: 11/7/99

Response requested by: \_\_\_\_\_

Cover sheet plus \_\_\_\_\_ pages

If you have questions about the attached \_\_\_\_\_ pages, please call \_\_\_\_\_

Additional remarks and/or instructions:

Here is a letter you may want to distribute  
to your committee on the hospital rule.

January 6, 1994

Ms. Kay Howard, Director  
Office of Regulatory Services  
State Capitol Complex  
Bldg. 3, 5th Floor  
Charleston, WV 25305

Dear Ms. Howard:

Thank you for the opportunity to comment on the proposed legislative rule 16-5B-8. A committee of small and rural directors of nursing met in December and made the following comments and recommendations regarding the proposed rule changes.

64-12-10.3 Medical Records and Reports:

There was agreement with the proposed changes which allow additional professionals to receive and transcribe orders from physicians to the patient chart and record. During our discussion, there was agreement that other professions should only receive orders within their scope of practice. For example, a pharmacist could transcribe the verbal order about increased or changed medications but not on an x-ray order. The nurses in this small and rural committee believe these changes will provide additional, needed flexibility in the smaller facilities where in some cases, the nurses are unavailable to take the telephone order because of other job demands. We believe this will provide a high quality level of care that our West Virginia citizens have come to expect.

As a committee, we are very comfortable with the proposal that the individual hospital medical staff by-laws be the document which identifies what professions within the institution could also receive orders.

We do have a recommendation about this section of the proposed rule: the word "certified" should be changed to "registered". This change would ensure additional protection for the patient.

64-12-12.2.2 Emergency Department:

We support the additional flexibility provided by this change which allows paramedics to work in emergency rooms. There are paramedics currently working in many of our small and rural hospitals, specifically in the emergency departments. This

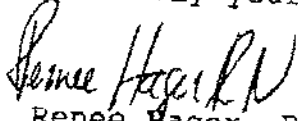
Page 2.

arrangement has generally worked very well. There are still shortages of registered nurses in this state. The additional use of paramedics in the emergency rooms helps to relieve this shortage.

It is particularly important that the paramedics work under the supervision of a registered professional nurse.

Thank you for the opportunity to comment on these proposed changes. We would be happy to testify and provide additional information about these changes.

Sincerely yours,



Renee Hager, RN  
Director of Nursing  
Boone Memorial Hospital

Chairperson,  
Directors of Nursing Small and Rural Committee

Dist 1/9/94

10.3.1.2.

There shall be maintained a system of clinical records and all doctors orders shall be in writing and signed by the physician. Verbal and telephone orders shall be given to licensed or registered health care professionals in the area of training and professional expertise of such individuals, ~~and~~ if authorized by the medical staff policies. Provided, however,

that any verbal or telephone order may be given to a registered professional nurse. Physicians shall countersign all verbal and telephone orders as determined by the medical staff bylaws. A medical plan of care involving registered professional nurses and other health professionals shall be coordinated with the registered professional nurse.

Possible Modification for Hospital Licensure Rule  
January 8, 1994

11.9. Coronary Care Unit.

b. The nursing service shall be under the supervision of a registered professional nurse qualified by training, experience and ability. At least a minimum of one (1) qualified, registered professional nurse with special training shall be on duty at all times to give direct patient care. ~~Additional nursing personnel shall be available consistent with the nursing care required by the patients.~~ Coronary care unit staff shall be under the supervision of a registered professional nurse and may include registered professional nurses, practical nurses and other health care personnel qualified by training and State law to provide emergency care services. If such other health care personnel perform care functions outside of their area of training or expertise, the hospital shall establish a training program and assure that they are trained in whatever health care functions they perform.

The double underlined sentence could be added to Sections 11.10.4.a and 12.2.2.

11.10.4. Staffing. [of Coronary Care Unit]

11.10.4. Staffing. *and*

a. The staffing pattern ~~will~~ shall depend on the type patients admitted, the degree or intensity of the illness, as well as the utilization of ~~nonprofessional practical nurses and other health care personnel qualified by training and State law to provide intensive care services,~~ and the size and physical arrangement of the unit.

12.2. Emergency Department Services.

12.2.2. Personnel---~~There shall be available~~ Professional personnel at all times who are trained in emergency life-saving measures shall be available at all hours the emergency service is open. Also, Either a physician who is a member of the professional medical staff of the hospital shall be available at all times to the emergency department or the hospital shall make arrangements for physician availability. Emergency room staff shall be under the supervision of a registered professional nurse and may include registered professional nurses, practical nurses and other health care personnel qualified by training and State law to provide emergency care services.

*as defined*  
by their job description developed to address their training and expertise. The job description shall not be inconsistent with State law and professional licensing regulations.

*unlicensed  
nurses  
as aides*

which is free from excessive noises of railroads, freight yards, traffic arteries, schools, playgrounds, airports, etc. The site shall not be exposed to smoke, foul odors or dust, or be subject to flooding.

8.2.4. Transportation shall be facilitated by roads which are kept passable at all times. There shall be walks and parking areas provided.

8.2.5. An inspection of the site for a proposed hospital shall be requested in writing and approval shall be obtained from the state department of health director before construction is started.

8.3. New Construction.

8.3.1. ~~For construction of new hospitals required to be licensed, the state department of health has adopted Appendix "A" of the public health service regulations, Part 53, Subpart N, general standards of construction and equipment, pertaining to the construction and modernization of hospital and medical facilities, as amended.~~ Hospitals constructed subsequent to the effective date of this rule shall comply with the General and Psychiatric Hospital sections, as applicable, of the 1992-93 edition of Guidelines for Construction and Equipment of Hospital and Medical Facilities.

8.3.2. ~~Drawings and outline specifications for any new hospital or buildings to be used as a part of or in conjunction with any institution required to be licensed under the provisions of Article 5B, Chapter 16, Code of West Virginia, as amended shall be presented in the schematic and preliminary stages to the state department of health for approval prior to the preparation and submission of final working drawings and specifications, and before construction is begun.~~ Complete construction drawings and specifications for any hospital construction project shall be submitted to the director for review prior to the beginning of work on the project. The drawings and specifications shall include architectural, structural and mechanical drawings and specifications and shall be prepared and signed by an architect registered to practice in West Virginia.

a. ~~Such drawings shall be signed by an architect registered in West Virginia;~~

b. ~~Drawn to a scale of not less than one-eighth inch (1/8") equals a foot; and~~

c. ~~Shall show, properly identified, the general arrangement and construction of the building and location of all fixed equipment;~~

8.4. Additions and Alterations, Conversions and Changes in

*inspect as life support  
in 200, 206  
required*

Dist 1/9/94

TECHNICAL CHANGES RECOMMENDED BY THE LOTTERY  
TO  
179 CSR 1

179-1-2. Definitions

2.3. "Certification" means the day on which the Multistate Lottery Association certifies the number of winners and authorizes the payment of prizes for the POWERBALL game and winners of any other game offered through the Multistate Lottery Association.

2.142. "Instant Game" - A game in which a ticket is purchased and upon removal of a latex covering on the front of the ticket or the opening of the sealed ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to a lottery retailer or to the Lottery for payment.

2.30. "Winner of an instant game" means the holder of an instant lottery ticket determined to have the required match or the specific alignment of the play numbers, digits or symbols or the required sum of the play numbers or digits in accordance with the game rules for the specific game.

2.31. "Winner selection" means the drawing process used by the West Virginia State Lottery Commission to select the winning numbers in games with live televised drawings offered to the public by the Lottery Commission. Those games are Daily 3, Daily 4, Cash 25, POWERBALL, any other game offered through the Multistate Lottery Association and any game labelled as a 'second chance drawing'.

2.2932. "Winning Combination" ~~One or more digits, numbers, or symbols randomly selected by the Lottery in a drawing which has been certified~~ means the drawing process used by the West Virginia State Lottery Commission to select the winning numbers in games with live televised drawings offered to the public by the Lottery Commission. Those games are Daily 3, Daily 4, Cash 25, POWERBALL, any other game offered through the Multistate Lottery Association and any game labelled as a 'second chance drawing'.

179-1-5. Games

5.2.1. Instant game criteria - The price of an instant game ticket shall ~~not be less than one dollar (\$1.00) and not be more than five dollars (\$5.00)~~ except by special promotions authorized by the Director.

Dist 1/9/94

7-38D-6. FEE AND BONDING REQUIREMENTS.

6.1. Applicability. Any producer or importer of sewage sludge for land application shall be subject to non-refundable fees, as described herein, which shall be used to cover the costs of the sewage sludge management program. The fees established herein in paragraphs 6.4.1 and 6.4.2 of this rule shall be assessed on forms prescribed by the Chief of the Office of Water Resources of the Division and shall be paid to said Chief quarterly.

6.2. Water Quality Management Fund. Fees collected for land application shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of W.Va. Code 20-5A-6a except as otherwise specified herein.

6.3. Bonding. -- The Director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the cost of future environmental remediation from producers and importers of sewage sludge.

6.4. Fee Assessments

6.4.1. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee calculated as \$10.00 per actual ton of sludge times the proportion of solids in that sludge for sludge with maximum metals concentrations not exceeding those listed in Table 1 of this rule.

6.4.2. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee calculated as \$15.00 per actual ton of sludge times the proportion of solids in that sludge for sludges with maximum metals concentrations exceeding those listed in Table 1 of this rule but not exceeding the maximum metals concentrations contained in Table 2 of this rule.

6.4.3. All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the division, shall be subject to the same tipping and other fees as levied on the disposal of solid waste under W.Va. Code 20; Provided that no such fees, excepting assessment fees required by this section, shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with the statute and this rule.

6.4.4. Fees generated pursuant to sections 6.4.1 and 6.4.2. shall be reviewed periodically by the director and shall be adjusted as necessary to assure that total collections shall not exceed \$500,000 per year.



Dist 1/9/94

January 9, 1994

To: Chairman, Joint Rule Making and Review Committee  
West Virginia Legislature  
From: Warren Mock, A Director of WVASWA  
Re: Comments for Sewage Sludge Composting Rules

Currently the operating guidelines for sewage sludge composting are federal regs #503, SB 288 and the WV Attorney General's Opinion. Pasquala Mascara has a case filed in federal court challenging SB 288.

~~I think it would be prudent to leave in place what is current WV law and wait until the federal court renders a decision.~~

Another very important consideration and decision for the legislature will be the massive DEP reorganization bill. If this monster is approved with the provision limiting environmental rules to be no more stringent than federal rules, and I hope this does not happen because of sludge regs in particular, then we will open the door to more New York sludge like we did in Wetzel and Brooke counties. Currently a class B sewage sludge facility of 9,999 tons a month has been sited for Grantown in Marion County. This facility has also applied to The PSC for a Certificate of Need. If approved at 9,999 tons monthly, it would be fifteen times or more the volume needed for the cities of Clarksburg, Fairmont and Morgantown.

The massive volume of sewage sludge targeted for WV must be viewed from a long term perspective and the cumulative effect on our land and water. If our city leaders look to the future at this massive sewage sludge burden on WV's environment, they will accept the added cost for local treatment in compliance with SB 288 and rules that carry out those legislative mandates. This will be miniscule cost compared to the expense of less regulation and monitoring leaving virtually unregulated commercialization in sewage sludge.

I urge this committee to take action to strengthen the rules proposed by DEP so they are in harmony with the law enacted in the passage of SB 288.

Warren Mock  
Rt. 12 Box 351  
Morgantown, WV 26505  
Phone: 594 2178

**SUMMARY OF PROVISIONS OF  
ATTORNEY GENERAL'S  
1994 RENT-TO-OWN RULE  
(WITH PROPOSED AMENDMENT)**

**I. SETS OUT METHODS FOR DETERMINING "RETAIL VALUE" THAT DEALERS MUST DISCLOSE AND FROM WHICH THE STATUTORY RATE CAP PASSED LAST YEAR (Retail Value X 2.4) IS CALCULATED. (This rulemaking required by last year's bill.)**

1. NO PARTICULAR METHOD IS REQUIRED.
2. METHODS OTHER THAN THOSE IN THE RULE ARE ALLOWED.
3. THE ONLY METHOD PROHIBITED IS THE USE OF PRICE LISTS OR "MANUFACTURER'S SUGGESTED RETAIL" (WHICH ARE TOO SUBJECT TO MANIPULATION).

**4. APPROVED METHODS IN THE RULE INCLUDE**

- A. Actual retail sales in market area
- B. Markup of from 43% to 82% of dealer's cost (depending on the type of goods)
- C. Retail catalogues
- D. Prices advertised by retailers in market area.
- E. Book Value
- F. Depreciation of used goods

**5. DEALERS ARE REQUIRED TO KEEP RECORDS JUSTIFYING THEIR RETAIL VALUES AND SHOW THEM TO THE CONSUMER OFFICE OF THE ATTORNEY GENERAL ON REQUEST.**

**II. DETAILS THE FORMATS ETC. FOR THE DISCLOSURES OF "RETAIL VALUE", "TOTAL OF PAYMENTS" ETC. REQUIRED BY THE STATUTE FOR PRICE TAGS, CONTRACTS, AND ADVERTISEMENTS. (This rulemaking required by last year's bill.)**

1. ALL THE DISCLOSURES HAVE TO USE THE TERMS SET OUT IN THE STATUTE
2. THE ONLY PRICE TAG FORMAT REQUIREMENT IS THAT NO DISCLOSURE CAN BE "IN FINE PRINT" LESS THAN 3/4 THE

SIZE OF THE ANY OTHER DISCLOSURE (USUALLY THE WEEKLY PAYMENT IS LARGEST SO THE OTHERS CANNOT BE LESS THAN 3/4 THE SIZE OF THE WEEKLY PAYMENT DISCLOSURE).

3. THE CONTRACT DISCLOSURES DO NOT HAVE TO BE IN ANY PARTICULAR FORM (LIKE FEDERAL TRUTH IN LENDING). THEY JUST HAVE TO BE BOLDER THAN OTHER CONTRACT LANGUAGE, GROUPED TOGETHER, LABELED, ON THE SAME PAGE AS THE CONSUMER'S SIGNATURE, AND FILLED IN BEFORE THE CONSUMER SIGNS.
4. PRINTED ADVERTISEMENT ONLY HAVE TO MAKE IF THE PAYMENT AMOUNT IS ADVERTISED. THEN THE DISCLOSURE REQUIREMENTS ARE SIMILAR TO THE REQUIREMENTS FOR PRICE TAGS.
5. RADIO AND TELEVISION ADVERTISEMENTS ONLY HAVE TO MAKE IF THE WEEKLY PAYMENT AMOUNT IS ADVERTISED. THEN THEY JUST HAVE TO BE DISCERNABLE TO THE AVERAGE PERSON.

### III. OTHER PROVISIONS OF THE RULE:

1. PROVIDE FOR LIBERAL CONSTRUCTION TO PROTECT CONSUMERS.
2. CLOSE LOOPHOLES BY REQUIRING THESE KINDS OF CONTRACTS TO BE EITHER "RENT TO OWN AGREEMENTS" OR "CONSUMER CREDIT SALES" -- ONE OR THE OTHER BUT NOT NEITHER.
3. PREVENT THE LAST FEW PAYMENTS FROM BEING HIGHER THAN THE OTHER PAYMENTS.
4. LIMIT THE ABILITY OF DEALERS TO TAKE ADVANTAGE OF PEOPLE WHO GET BEHIND IN THEIR PAYMENTS.
5. PROVIDE LANGUAGE THAT DEALERS CAN USE, BUT DO NOT HAVE TO USE, FOR THE NOTICES TO CONSUMERS OF REINSTATEMENT RIGHTS ETC. REQUIRED BY LAST YEAR'S BILL.
6. CLEAR UP AMBIGUITIES IN THE USE OF THE TERMS "CONSUMER" "PRICE" AND "FINANCIAL ORGANIZATION."

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 22  
LEGISLATIVE RULE PERTAINING TO  
THE WEST VIRGINIA CONSUMER GOODS  
RENTAL PROTECTION ACT

---

§ 142-22-1. General.

1.1 Scope. -- This Rule relates to the regulation of rent-to-own agreements under the West Virginia Consumer Goods Rental Protection Act, W. Va. Code §§ 46A-1-101 et seq. and consumer credit sales under the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46B-1-1 et seq.

1.2. Authority. -- W. Va. Code § 46A-6-103, W. Va. Code § 46A-7-102(e), and W. Va. Code § 46B-3-10.

1.3. Filing date. --

1.4. Effective date. --

1.5. Penalties. -- Except as otherwise indicated, a violation of this rule constitutes a violation of the West Virginia Consumer Goods Rental Protection Act, W. Va. Code § 46B-1-1 et seq.

1.6. Construction.

1.6.1. This rule shall be liberally construed to protect consumers pursuant to the West Virginia Consumer Goods Rental Protection Act W. Va. Code § 46B-1-1 et seq. and the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-1 et seq.

1.6.1. 2.1. The definition of "rent-to-own agreement" in the West Virginia Consumer Goods Rental Protection Act [§ 46B-1-5(17)] and the definition of "consumer credit sale" in the West Virginia Consumer Credit and Protection Act [§ 46A-1-102(13)] shall be construed so that every transaction is either a "consumer credit sale" or a "rent-to-own agreement" if the subject matter of the transaction is personal property which is to be used for personal, family or household purposes, and if a natural person who is not in the business of selling or otherwise dealing with such goods is acquiring rights to ownership of the goods by paying over time, and if such natural persons has the right to use or possession of the property before all payments are made.

1.7. Severability. -- If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof of this rule to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

**§ 142-22-2. Construction Definitions.**

~~2.2~~ 2.1. "Consumer" -- To be a consumer for the purposes of the definition of "consumer" in the West Virginia Consumer Goods Rental Protection Act, W. Va. Code § 46B-1-5(2), the consumer does not have to have entered into a rent-to-own agreement.

~~2.3~~ 2.2. "Financial Organization" -- The term "financial organization" in the West Virginia Consumer Goods Rental Protection Act W. Va. Code § 46B-1-5(8), is limited to banks or savings and loan associations.

~~2.3~~ 2.3. "Market area" means the geographic area around the dealer's place of business at which the dealer enters into rent-to-own agreements with consumers from which consumers usually travel for the purpose of doing business with a dealer or other retailer of consumer goods and is presumed to include the county in which the dealer is located and any contiguous counties.

2.4. "Price" -- The term "price" in the disclosure provisions of the West Virginia Consumer Goods Rental Protection Act W. Va. Code § 46B-3-7(c)(4) means the amount of the periodic payment.

2.5. "Increased Periodic Payments" -- The prohibition in the West Virginia Consumer Goods Rental Protection Act against charging a fee other than a fee specifically allowed by the code at the time ownership of the goods passes to the consumer W. Va. Code § 46B-3-8(2) means that a rent-to-own transaction is prohibited from having one or more periodic payments either at the end of the transaction or at any time after the first regular periodic payment which is larger than any other periodic payment.

2.6. "Limitation on Re-Signed Agreement" -- The limitation on the total of payments in any rent-to-own transaction in the West Virginia Consumer Goods Rental Protection Act W. Va. Code § 46B-3-9(d) means that the total of payments of a rent-to-own agreement between the same consumer, or one of the same consumers, and the same dealer, or the dealer's successor, for the same goods as in a previous agreement shall not be greater than A) The unpaid total of payments for the previous transaction; plus B) Any other charges due as lawfully provided by the previous agreement and unpaid; plus C) The amount of one additional periodic payment as provided in the previous agreement.

2.7. "Retailer" -- The term "retailer" means a person or firm in the business of making substantial bona fide sales of goods to consumers for cash, check, or other legal tender, or for which the purchaser uses a credit card of a firm which is not a person related to the retailer and which is not an individual who is a person related to the retailer: Provided, That a person or firm is not a "retailer" if the person or firm is a person related to a dealer or an individual related to a person related to a dealer as the term "person related to" is defined in W. Va. Code § 46B-1-5(13).

### **§ 142-22-3. Formula or Method for Ascertaining Retail Value.**

3.1. General. -- ~~3.1.1.~~ Retail value does not include any applicable sale, use, privilege, excise or documentary stamp taxes payable upon the transfer of such the goods.

~~3.1.2. "Market area" means the geographic area around the dealer's place of business at which the dealer enters into rent-to-own agreements with consumers from which consumers usually travel for the purpose of doing business with a dealer or other retailer of consumer goods and shall be presumed to include the county in which the dealer is located and any contiguous counties.~~

3.2. "Retail value" may be established by any of the following methods; provided, however, ~~a transaction, etc., establishing retail value must have occurred no more than six (6) months prior to the determination of retail value used in a rent-to-own transaction~~ the sale, the manufacturer's charge, the publication of the catalogue, the publication of values, the advertisement or the other evidence of value relied upon must not have occurred more than one year prior to the first use of the retail value for a particular good.

3.2.1 New and Used Goods; Actual Sales -- The retail value of new and used goods may be established as the price at which goods of substantially similar quality <sup>6</sup>and quantity and substantially similar features changed hands in a bona fide retail sale between one or more willing sellers <sup>7</sup>retailers and willing buyers in the normal course of business of the seller. The proof may come from only one seller retailer, but the goods must be sold to more than one buyer. The seller or sellers, and the buyer or buyers, must not be a person related to a dealer or to an individual who is related to a person related to a dealer. The transaction must take place in the same market area in which goods to which the retail value is assigned are marketed. The buyer must have paid with cash ~~or a~~ check <sup>8</sup>, other legal tender and not a credit card or a credit card of a firm which is not a person related to the retailer and which is not an individual who is a person related to the retailer: Provided, that sales made by a buyer who used a credit card of a firm that is related to the retailer may be used if the seller is one approved by the attorney general as a seller who makes substantial sales for cash, check or other legal tender or who makes substantial sales in which the purchaser uses a credit card of a firm which is not a person related to the retailer and which is not an individual who is a person related to the retailer.

3.2.1.1 Any dealer may apply to the attorney general for approval of the use of

sales by a retailer using a credit card of a person or firm related to the retailer. The attorney general may require reasonable data from the applicant with regard to a request for approval. The attorney general must act upon the request within a reasonable time in light of the data supplied by the applicant, the availability and difficulty in obtaining data, and the requested applicability of the use of the sales. An applicant may request a hearing on the attorney general's initial denial of the application. The request for hearing shall be a contested case for the purposes of chapter 29A of the West Virginia Code.

3.2.2. New Goods; Mark Up -- The retail value of new goods may be established by multiplying the supplier's charge, including freight, to the dealer by the following percentages and adding that amount to the supplier's charge:

<sup>9</sup>For kitchen and major appliances: ~~30%~~ 56%  
For electronics: ~~36%~~ 56%  
For furniture: ~~40%~~ 67%  
For jewelry: ~~45%~~ 82%  
For other household goods: ~~40%~~ 67%

3.2.2.1 In order to use this method no rebates, discounts, incentives, or other value may be received from the manufacturer by the dealer must be deducted from the ~~manufacturer's~~ supplier's charge.

<sup>10</sup>3.2.2.2 The dealer's supplier's cost must be determined using the cost from the supplier of the goods which is not a person related to a dealer or an individual who is related to a person related to a dealer, as the term "person related to" is defined in the West Virginia Consumer Goods Rental Protection Act.

3.2.3. New Goods; Catalogues -- The retail value of goods may be established by the use of a <sup>11</sup>current catalogue of a ~~seller~~ retailer who is not a person related to a dealer or an individual who is a person related to a dealer, as the term "person related to" is defined by the West Virginia Consumer Goods Rental Protection Act W. Va. Code § 46B-1-5(13) retailer. However, ~~such a~~ the catalogue may only be used if the seller's ~~current catalogues~~ current catalogues are approved by the attorney general as a seller who makes substantial sales for cash <sup>12</sup>~~and not for payment over time by credit card or otherwise. , check, or other legal tender or who makes substantial sales in which the purchaser uses a credit card of a firm which is not a person related to a dealer and which is not an individual who is a person related to a dealer.~~

3.2.3.1. Any dealer may apply to the attorney general for approval of ~~such~~ a catalogue for use by that dealer. The attorney general may require reasonable data from the applicant with regard to ~~such~~ a request for approval. The attorney general must act upon ~~such~~ request within a reasonable time in light of the data supplied by the applicant, the availability and difficulty in obtaining data, and the requested applicability of use of the seller catalogue. An applicant may request a hearing on the attorney

general's initial denial of ~~such~~ the application. ~~Such a~~ The request for hearing shall be a contested case for the purposes of chapter 29A of the Code of West Virginia Code.

<sup>13</sup>3.2.4 New or Used Goods; Advertised Price. The retail value of new or used goods may be established by the posted or advertised price of a retailer in the same market area for the same goods or goods of like type, features, quality and quantity.

~~3.2.5~~ 3.2.4. Used Goods; Book Value -- The retail value of used goods may be established by the use of publications which are generally distributed and used and generally relied upon by persons and organizations other than rent-to-own dealers as stating fair market value. Used goods shall not have a retail value greater than the retail value assigned to that item when the item was offered as new.

~~3.2.6~~ 3.2.5. Used Goods; Depreciation -- The retail value of used goods may be established by using straight line depreciation of the goods over eighteen months of actual rental based on a <sup>14</sup>new retail value established as allowed by this rule or the West Virginia Consumer Goods Rental Protection Act, W. Va. Code § 46B-1-1 et seq.

### 3.3. Limitations --

3.3.1. Used goods shall not have a retail value greater than the retail value assigned to that item when the item was offered as new.

<sup>15</sup>3.3.2. "List Price" or Manufacturer's Suggested Retail" may not be used to determine retail value.

~~3.3.~~ 3.4 Record Retention -- A dealer shall keep sufficient records to document the retail value of any good. The type of records to be kept shall be dependent on the method adopted to determine retail value. If the actual sales method is used, records kept shall be the records of sales gathered by the dealer and any surveys or summaries made by the dealer. If the mark up method is used, the dealer shall maintain the supplier's invoice or other supplier's records of the price to the dealer of the goods including rebates, discounts, incentives, or other value received by the supplier from the dealer. If the catalogue method is used, the catalogues shall be kept. If the book value valuation method is used, the publication used must be kept. If a depreciation valuation method is used, the valuation calculation must be kept together with the records used for the valuation of the new retail value. If the advertising method is used, then the retailer's actual advertisement must be kept. If another method is used, then the dealer must keep records made at the time the valuation was made, and if the dealer relied upon records which were not the dealer's, those records must be kept. All such records shall be retained for the period of time any good is owned by the dealer whether or not the good is the subject of a rental agreement. All such records shall be subject to inspection by any member of the public during the dealer's regular business hours. Records of a manufacturer's charge under 3.2.2 shall be a manufacturer's document. In addition to any other powers of the attorney general and any other duties of dealers



provided by law, the attorney general may make reasonable requests for retail value records of a dealer or dealers to survey or investigate retail value pricing by dealers and any dealer shall respond to such a request with thirty days.

3.4 Disapproval of Methods. The methods set out in §§ ~~3.2.2, 3.2.3, 3.2.4, and 3.2.5~~ §3.2 may be used until the attorney general, after a contested case pursuant to Chapter 29A of the West Virginia Code or other appropriate judicial determination, disapproves this method because of disparity of the results of one of the aforesaid methods for determining retail value as compared to retail value as established by the actual sales method in § 3.2.1.

~~§ 142-22-4. Disclosures:~~

~~4.1. General—All disclosures required under the West Virginia Consumer Goods Rental Protection Act shall be clearly communicated and conspicuously placed so as to be reasonably understandable and, if in writing, legible. The disclosures in a rent-to-own agreement shall appear on the page where the signature of the consumer is to be signed and such disclosures should be grouped together.~~

~~4.2. Format of Disclosures—~~

~~4.2.1. Rent to Own Agreements and Price Tags—A disclosure to be contained in a rent to own agreement or price tag shall be in substantial compliance with the following format and language:~~

- ~~1. THIS ITEM RENTS FOR \$ \_\_\_\_\_ PER  
\_\_\_\_\_  
(Periodic Payment)  
\_\_\_\_\_  
(Rental Period)~~
- ~~2. YOU CAN OWN THIS ITEM IF YOU RENT IT FOR  
\_\_\_\_\_  
(Total No. Rental Periods)~~
- ~~3. IF YOU RENT THIS ITEM FOR THE FULL TIME TO OWN  
IT YOU WILL PAY A TOTAL OF \_\_\_\_\_ (PLUS  
\_\_\_\_\_  
(Total of all Payments)  
ANY ADDITIONAL TRANSFER CHARGES SHOWN IN THE WRITTEN  
AGREEMENT).~~
- ~~4. THE RETAIL VALUE (CASH SALE PRICE IN THIS AREA)  
OF THIS ITEM IS \$ \_\_\_\_\_ THE BALANCE OF  
\_\_\_\_\_  
(Retail Value)  
TOTAL OF PAYMENTS SHOWN IN NO. 3 ABOVE, IN THE AMOUNT OF  
\$ \_\_\_\_\_, IS THE RENT TO OWN CHARGE OR  
\_\_\_\_\_  
(Rent To Own Charge)  
AMOUNT YOU WILL PAY MORE THAN RETAIL VALUE TO OBTAIN~~

OWNERSHIP THROUGH A RENT TO OWN AGREEMENT.

5. THIS ITEM IS ( ) NEW

( ) PREVIOUSLY RENTED  
OR OTHERWISE USED

6. THE TOTAL OF ALL PAYMENTS SHOWN IN NO. 3 OF  
\$ MAY NOT BE MORE THAN 2.4

(Total No. of all Payments)  
TIMES THE RETAIL VALUE OF \$  
(Retail Value)

Dislosures contained in the rent to own agreement shall be larger in type size than 90%  
of the printed matter in such agreement. Dislosures in a price tag shall all be of an  
equal size.

4.2.2. A separate disclosure shall be required for each good or item which  
is the subject of a rent to own agreement. When multiple goods or items are the subject  
of one rent to own agreement the disclosure made in the body of this agreement may be  
an aggregate of the values for all goods covered, PROVIDED that the individual price  
tag disclosure for each individual item (or a copy) be attached to and become a part of  
the rent to own agreement.

4.3. Advertisements

4.3.1. Printed advertisements mentioning price shall contain disclosures  
in the format and language set forth in § 4.2.1 of this rule.

4.3.2. Radio and television advertisements mentioning price shall contain  
all required disclosures which shall be communicated orally in a reasonably  
understandable manner for the average hearer of the advertisement. Television  
advertisements may contain only printed disclosures if conspicuously displayed for a  
reasonable period of time which would allow a person of average ability to read the  
English language to read and comprehend the disclosures.

4.4. Telephone communications

4.4.1. A dealer shall make all disclosures required by W. Va. Code §  
46B-3-7(b) in any "telephone communication with a potential customer."  
4.4.2. For purposes of this rule, a "telephone communication with a  
potential customer" means a telephone conversation:  
4.4.2.1. Initiated by the dealer for the purpose of soliciting the  
consumer to enter into a rent to own transaction with the dealer during which a price for  
a specific item is discussed; or

~~4.4.2.2. Initiated by the consumer for the purpose of inquiring about a rent-to-own transaction during which the price for a specific item is discussed. A dealer's obligation to make the disclosures required under this subsection shall be deemed satisfied, if, after the dealer offers to provide or attempts to provide the disclosures, the consumer affirmatively states that he or she does not wish to hear the disclosures; provided, however, that if the consumer subsequently requests the disclosures, the dealer shall provide them.~~

16§ 142-22-4. Disclosures.

4.1 General -- All disclosures required under the West Virginia Consumer Goods Rental Protection Act shall be clearly communicated and conspicuously placed so as to be reasonably understandable and, if in writing, legible.

4.2. Rent-to-Own Agreements.

4.2.1. Every rent to own agreement must disclose the "retail value", the "rent-to-own charge", the "rental period", the "number of payments", the "Periodic" or "Weekly" or "Monthly" payment amount, the "total of all payments", and whether the goods are "new", "used" or "previously rented".

4.2.2. The disclosures set out in the section 4.2.1 must be made on every rent-to-own agreement before it is signed by the consumer. The disclosures may be made within sentences or phrases as long as the phrases or sentences are grouped together without intervening phrases or sentences. The disclosures must be on the same page and the same side of the page that the consumer signs. The terms labeling the disclosures must be explained. The disclosures must be grouped together: The terms labeling the disclosures must immediately precede or follow the disclosures being made. If the disclosures are not made within the sentences or phrases explaining the terms labeling the disclosures, the explanations may be made elsewhere though they must be grouped together without intervening information on the same side of the page signed by the consumer.

4.2.3. A separate disclosure shall be required for each good or item which is the subject of a rent to own agreement. When multiple goods or items are the subject of one rent-to-own agreement the disclosure made in the body of this agreement may be an aggregate of the values for all goods covered, PROVIDED that the individual price tag disclosure for each individual item (or a copy) be attached to and become a part of the rent-to-own agreement.

4.2.4. The disclosure and the terms labeling the disclosures must be in type that is bolder and larger than the surrounding type and 90% of the remainder of the printing in the contract. If the disclosures are handwritten must be printed and must be larger and no less dark than the terms labeling the disclosures.

4.2.5. The disclosures must be labeled with the exact terms used in

subsection 4.2.1 except:

4.2.5.1. The term "Periodic" does not have to be used to label the disclosure of the periodic payment if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY" or "MONTHLY" are used instead of "Periodic".

4.2.5.2. The rental period disclosure does not have to be separately labeled if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY" or "MONTHLY" are used to label the disclosure of the payment amount.

#### 4.3 Display Label.

4.3.1. Every item displayed to a potential rent-to-own customer by a dealer must have a label attached to it or posted on top of the item which must disclose the "retail value", the "rent-to-own charge", the "rental period", the "number of payments", the "Periodic" or "Weekly" or "Monthly" payment amount, the "total of all payments", and whether the goods are "new", "used" or "previously rented". No disclosure or label of any disclosure may be less than 3/4 the size of any of the other disclosures. The disclosures must be grouped together. The terms labeling the disclosures must immediately precede or follow the disclosures being made.

4.3.2. The disclosures must be labeled with the exact terms used in subsection 4.2 except:

4.3.3.1. The term "Periodic" does not have to be used if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY" or "MONTHLY" are used instead of "Periodic" in disclosing the periodic payment amount.

4.3.3.2. The rental period disclosure does not have to be separately labeled if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY" or "MONTHLY" are used to label the disclosure of the payment amount.

#### 4.4 Printed advertisements.

4.4.1. Any printed advertisement which communicates a periodic payment amount must also disclose the "retail value", the "rent-to-own charge", the "rental period", the "number of payments", the "total of all payments", and whether the goods are "new", "used" or "previously rented". No disclosure can have type smaller than the capital letters in six point type of an inch. No disclosure can be less than one sixth the size of any of the other disclosures. The disclosures must be grouped together. The terms labelling the disclosures must immediately precede or follow the disclosure being made.

4.4.2. The disclosures must be labeled with the exact terms used in subsection 4.4.1, except:

4.4.2.1. The term "Periodic" does not have to be used if the terms

"WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY" or "MONTHLY" are used instead of "Periodic" in disclosing the periodic payment amount.

4.4.2.2. The rental period disclosure does not have to be separately labeled if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY" or "MONTHLY" are used to label the disclosure of the payment amount.

4.5 Radio and Television -- Radio and television advertisements which communicate a periodic payment amount shall also disclose all of the other disclosures required to be on the price tag except the rent-to-own charge. Each disclosure must be labeled or described using the terms for the disclosures which must be on the price tag. Television advertisements may contain only printed disclosures if conspicuously displayed for a reasonable period of time which would allow a person of average reading ability to read and comprehend the disclosures.

#### 4.6. Telephone communications --

4.6.1. A dealer shall make all disclosures required by W. Va. Code § 46B-3-7(b) in any "telephone communication with a potential customer."

4.6.2. For purposes of this rule, a "telephone communication with a potential customer" means a telephone conversation:

4.6.2.1. Initiated by the dealer for the purpose of soliciting the consumer to enter into a rent-to-own transaction with the dealer during which a periodic payment amount is communicated;

4.6.2.2. Initiated by the consumer for the purpose of inquiring about a rent-to-own transaction during which a periodic payment amount is communicated. A dealer's obligation to make the disclosures required under this subsection ~~shall be deemed~~ is considered satisfied, if, after the dealer offers to provide or attempts to provide the disclosures, the consumer affirmatively states that he or she does not wish to hear the disclosures; provided, however, that if the consumer subsequently requests the disclosures, the dealer shall provide them.

#### § 142-22-5. Termination Notice.

5.1. A dealer's notice to terminate a rent-to-own agreement shall be presumed to satisfy the requirements of the statute if it is in substantial compliance with the following format and language:

#### NOTICE OF TERMINATION AND NOTICE OF RIGHT TO REINSTATE

You have failed to make your payment(s) due on \_\_\_\_\_ . Your rent-to-own agreement will terminate

seven days from your receipt of this notice. You have failed to make your payment(s) in the total amount of \$\_\_\_\_\_.

A late charge of \$\_\_\_\_\_ has been added to the amount you owe under your rent-to-own agreement.

You may voluntarily surrender possession of the goods rented under your rent-to-own agreement by making them available to the dealer at the place where the goods are located.

#### NOTICE OF RIGHT TO "REINSTATEMENT" OF YOUR RIGHT TO OBTAIN OWNERSHIP OF GOODS

You have been using item(s) which you got from a rent-to-own dealer. The rent-to-own agreement gave you the right to own the item(s) if you paid all of the periodic payments. Now you may have returned the item(s) to the dealer (or the dealer may have picked them up or repossessed them from you), or you may just be behind on the payment and the dealer is seeking payment or return of the goods.

You may have the right to "reinstate" the agreement even though the dealer has the item(s) back. This means you can pick up making the payments where you left off. The dealer will return possession of the item(s) to you. (If the dealer has already rented the item(s) you had to someone else, the dealer must give you goods that are the same or better than what you had before.) And, you will have the same right to eventually own the item(s), if you finish the terms of the agreement, that you ~~did~~ had before.

You have 60 days from the last day of the last rental period for which you made a payment (90 days if you have paid 40% or more of the payments) to go to the dealer and "reinstate" the agreement. If the dealer has had to repossess or has tried to repossess the goods two time in the past, the dealer does not have to let you "reinstate" the agreement.

If you want to "reinstate" the agreement and obtain ownership of the goods, you only have to go to the dealer and do the following:

- 1) Pay the dealer any payments that have come due which you have not paid, but only if those payments are due for periods of time when you actually had the item(s) in your possession; and
- 2) Pay the dealer any other fees provided in the written agreement which have become due, but have not been paid; and

3) Pay the dealer a reinstatement fee of not <sup>17</sup>~~less~~ more than \$5.00 if that fee is in the written agreement and if the dealer has possession of the item(s).

5.2. A dealer's notice to terminate will be effective for purposes of the seven-day notice period upon actual receipt by the consumer. However, the seven-day notice period is to be calculated exclusive of the day of its receipt. The burden of establishing actual receipt ~~shall be~~ is on the dealer, PROVIDED that notice made by regular mail properly addressed and mailed to the last known address of the consumer shall be presumed to have been received by the consumer, and to have been received on the third day following its mailing.

**§ 142-22-6. Transfer of Warranties.**

6.1. At such time as maintenance of the goods becomes the responsibility of the consumer through a transfer of ownership or otherwise, the dealer shall advise the consumer of any manufacturer's or supplier's warranty that may apply to the goods and any details regarding the warranty and the transfer of the warranty.

6.2. A dealer may comply with subsection 6.1 of this section by:

6.2.1. establishing that the consumer has a copy of the manufacturer's warranties;

6.2.2. providing the consumer with a written notice that any remaining manufacturer's warranties are transferred to the consumer, if permitted by the terms of the warranties;

6.2.3. providing the date(s) on which the warranties commenced; and

6.2.4. offering to answer any questions the consumer may have concerning the warranties.

## ENDNOTES

- 1.This language is moved from the next Section which was renamed "Definitions".
- 2.Moved here from 3.1.2
- 3.This new definition is added to define a term used in the redrafting of several of several later sections.
- 4.This paragraph was moved to the definition section.
- 5.This change was made to accommodate the dealers who though the 6 month limitation in the proposed rule would not fit with some of the valuation methods proposed. It will also mean they will not have to make the retail value calculation as often.
- 6.This term is used in the statute.
- 7.Uses newly defined term above.
- 8.This change responds to a complaint by the dealers that it would be too difficult to find only sales that were made for cash.
- 9.A technical drafting error was made in the original Rule. The percentages were mistakenly drafted to apply to the wholesale price instead of too the retail price.
- 10.This change and the one above were made to accommodate the small dealers' complaint that they do not buy directly from the manufacturer. It still prevents a holding company which owns both rent-to-own retail companies and appliance wholesale companies from avoiding the caps on last year's bill by marking up prices when the good pas through its wholesale subsidiary.
- 11.See endnote 5
- 12.This change was made to accommodate dealers who said a sale for pure cash was too hard to find.



13.This additional means of valuation was suggested by the dealers and adopted.

14.Clean up.

15.Some of the larger rent-to-own dealers make are among the largest wholesale purchasers in the country of electronics from manufacturers. It would be too easy for such a large purchaser to say to a manufacturer, "I'll order 10,000 televisions from you, but only if you have your secretary sit down and type up this price list on your stationary."

16.This section was re-written to respond to the complaints of the dealers that they proposed disclosures were too cumbersome.

17.Clean-up to match the statute.

AGREED CHANGES TO GROUNDWATER PROTECTION REGULATIONS  
47 CSR 58

1. Delete the word "radiological" from the definition of "contamination", Section 2.2.

2. Replace Section 2.7 with the following:

"Industrial establishment" means any facility or activity regulated by the Office of Water Resources or the Office of Waste Management which has the potential to contaminate groundwater. "Industrial establishment" does not include any facility or activity regulated under W.Va. Code Chapters 22, 22A or 22B.

3. Add the following language to the end of subsection 2.6:

"but does not include any area used for secondary containment."

4. Delete Section 3.

5. Replace the language in Section 5.3.1. with the following:

Existing areas used for outdoor, non-containerized storage or disposal of raw materials, products or wastes shall be evaluated for their potential to contaminate groundwater. Where substantial potential exists, the areas shall have runoff/infiltration control systems. Placement of groundwater monitoring stations may be necessary to determine if contamination has occurred or is occurring.

6. Replace Section 5.9.1 and 5.9.2 with the following language:

5.9.1 - Existing facilities not currently monitoring groundwater shall do so upon order of the Director if the Director reasonably believes that an industrial establishment is causing or has caused contamination of groundwater.

5.9.2 - Industrial establishments may submit such baseline data and monitoring information as they deem appropriate to meet the requirements of the Act and this rule, including information necessary to determine existing quality.

5.9.3 - New facilities shall monitor ground water upon order of the Director if the Director reasonably believes that an industrial

establishment has the potential to contaminate ground water.

7. Delete Section 9.2.
8. Delete Section 10 and replace it with the following:

"Nothing in this rule relieves any person of an obligation to pay fees as required by 47 C.S.R. 55."
9. Deletion of Section 12 and replacing it with the following:

The Director may, in his discretion, waive some or all of the requirements of this rule.
10. Deletion of current Section 13 and replacing it with the following:

§ 47-58-13 Appeals

- 13.1 Any person ordered or requested to take any action pursuant to this rule may appeal such order or request to the Water Resources Board as provided in W.Va. Code §20-5M-11.
- 13.2 Any person against whom enforcement action is initiated pursuant to Section 11 of this rule may appeal to the Water Resources Board as provided in W. Va. Code §20-5M-11.

**West Virginia Manufacturers Association Changes to  
Proposed Groundwater Protection Regulations  
47 CSR 58**

1. Delete Section 5.10
2. Delete Section 6. In the alternative, replace the language currently found in Section 6.1 with the following:

1M {  
Where a statute, rule, ordinance or other legal requirement (other than W.Va. Code Chapter 20, Article 5M and rules promulgated pursuant thereto) provides authority to regulate facilities and activities which may adversely affect groundwater, and such facilities and activities are not regulated by another groundwater regulatory agency, including another Office of the Division of Environmental Protection, the Director may require such facility or activity to comply with any or all of the requirements of this rule which the Director reasonably determines to be necessary for the implementation of W.Va. Code Chapter 20, Article 5M.

3. Delete Section 8.2 and replace § 8.1 with the following:

It shall be unlawful for the owner or operator of an industrial establishment, or any person required to take action under Section 6 of this rule, to cause contamination of groundwater.

4. Delete Section 9. In the alternative, delete the language currently found at Section 9.1 and replace it with the following:

The Division has authority to order persons to conduct reasonable remedial actions at industrial establishments and sites where the Director has exercised jurisdiction pursuant to Section 6 of this rule.

5. Add the following definition to the regulation;

"Existing quality" is that concentration of a substance present in the groundwater (1) at an existing facility, the first time after the effective date of this rule that such substance is quantified or measured and (2) at a new facility, before construction of a facility.

Dist'd 1/9/94

MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: Dale Moncer  
Office of Waste Management *DM*

Michael P. McThomas, Counsel *MPM*  
West Virginia Manufacturers' Association

DATE: January 7, 1994

RE: Commercial Hazardous Waste Management Facility Siting Fees  
47 CSR 35A

=====

In accordance with discussions between the Office of Waste Management ("OWM") and the West Virginia Manufacturers Association ("WVMA") concerning the above referenced rule proposed for promulgation by the Division of Environmental Protection, the following language has been agreed to which will address the issue of responsibility for legal expenses attributable to an applicant for site approval of a commercial hazardous waste management facility. Accordingly, the the OWM and the WVMA respectfully request the Legislative Rule-Making Review Committee to modify the proposed rule to reflect the agreed language.

The proposed modification is as follows:

3.2. The application fee shall underwrite the necessary expenses of the Board, and the administrative, professional and the support services provided by the Division of Environmental Protection and any other participating state agencies. In addition to the fee, all legal expenses associated with processing of the application shall be billed to the applicant. The applicant is responsible for all legal expenses associated with processing the application the

applicant will be responsible for all legal expenses incurred by the Board in response to a challenge to the issuance of a grant of siting approval by the Board, but the applicant is not responsible for compensating the Board for the legal costs associated with processing the application or any action or suit brought by the applicant against the State.

New language is underlined and the language to be deleted is stricken through.

This language should address the concern that the applicant should not be responsible for compensating the Board for legal expenditures where the applicant finds itself in a position adverse to the Board's interests. However, it would be palatable for the applicant to subsidize the Board in its legal expenses associated with a challenge from a third-party to the issuance of siting approval to the applicant. In practice it is likely the applicant would necessarily become an intervenor to protect its interest in a grant of siting approval. Therefore, the legal expenses associated with such a defense will ultimately be absorbed by the applicant. In theory the Board's expense in such a situation for legal services should be minimal to nonexistent in light of the applicant's desire to see a favorable resolution of any litigation which may be initiated.

The proposed modification will serve the intended purpose of avoiding any conflict which may arise in compensating for legal fees of the Board in defense of an action brought by the applicant while still allowing some recovery of legal costs associated with defending the Board's action in issuing site approval for a commercial hazardous waste management facility.

The position of the WVMA has been and will continue to be that legal expenses of the Board should be charged against the \$60,000 application fee. In

recognition of the WVMA's position, the OWM agrees that not all legal fees should be chargeable against the applicant.

Thus, the WVMA and the OWM urge the members of the Legislative Rule-Making Review Committee to accept this modification to the Commercial Hazardous Waste Management Facility Siting Fees.

c: Debra Graham

MODIFICATIONS SUGGESTED BY DELEGATE DOUGLAS

SECTION 11

We agree to modify section 11 as follows:

11.1.2. Regional and volunteer ombudsman are given identification cards which are presented to the administrator or his or her designee when entering a long-term care facility and to employees, residents and others thereafter.



*Marie - files*

Posted in the following offices:  
Senate President, House Speaker,  
Senate Clerk, House Clerk, Legis-  
lative Services and Secretary of  
State's office.

1/10/94  
Date

**MEETING NOTICE**

On call of the Cochairs, the Legislative Rule-Making Review Committee will hold a special meeting on Wednesday, January 12, from 9:00 - 12 Noon in the Senate Finance Committee Room for the purpose of considering rules and any other business that may come before it.

Debra Graham  
Attorney  
Legislative Rule-Making Review  
Committee  
340-3286

*Minutes  
book*

*Copies posted & copy to press room*

## SPECIAL MEETING

### AGENDA

#### LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

WEDNESDAY, JANUARY 12, 1994, 9:00 A.M. - 12:00 NOON

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meeting January 9, 1994
2. Review of Legislative Rules:
  - a. Health and Human Resources, Child Advocate Office  
Guidelines for Child Support Awards
  - b. Department of Health and Human Resources  
Distribution of State Aid Funds to Local Boards  
of Health
  - c. Division of Environmental Protection  
Groundwater Protection Regulations, Coal Mining  
Operations
  - d. Division of Environmental Protection  
Sewage sludge management regulations
3. Other Business:

Authorize counsel to draft bills of authorization on all rules considered by the Committee and to introduce them in each house on behalf of the chairmen

Tuesday, January 10, 1994

3:00 - 4:00 p.m.

Supreme Court Opinion on Agency Rules  
and Regulations  
Authorized 6-28-93

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Manchin, Chairman  
Grubb, Vice Chairman (absent)  
Minard

Gallagher, Chairman  
Staton  
Burk

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

The minutes of the December 14, 1993, meeting were approved.

Mike Mowery, General Counsel, House Judiciary, reviewed the action taken at the last Committee meeting and discussed the drafting of resolutions to accomplish the Committee's recommendations.

Mr. Burk moved that the Committee's counsel be authorized to draft Senate and House resolutions amending the Senate and House Rules to provide for the announcement of the availability of copies of the proposed rules at the respective Clerks' desks and to cause the resolutions to be introduced in the appropriate house. The motion was adopted.

Mr. Burk moved to recommend to the Joint Committee on Government and Finance that, upon passage of the resolutions, a test case be brought in the State Supreme Court on a single bill of authorization introduced for that purpose. The motion was adopted.

The meeting was adjourned.

Tuesday, January 10, 1994

3:00 - 4:00 p.m.

Supreme Court Opinion on Agency Rules  
and Regulations  
Authorized 6-28-93

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Manchin, Chairman  
Grubb, Vice Chairman (absent)  
Minard

Gallagher, Chairman  
Staton  
Burk

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

The minutes of the December 14, 1993, meeting were approved.

Mike Mowery, General Counsel, House Judiciary, reviewed the action taken at the last Committee meeting and discussed the drafting of resolutions to accomplish the Committee's recommendations.

Mr. Burk moved that the Committee's counsel be authorized to draft Senate and House resolutions amending the Senate and House Rules to provide for the announcement of the availability of copies of the proposed rules at the respective Clerks' desks and to cause the resolutions to be introduced in the appropriate house. The motion was adopted.

Mr. Burk moved to recommend to the Joint Committee on Government and Finance that, upon passage of the resolutions, a test case be brought in the State Supreme Court on a single bill of authorization introduced for that purpose. The motion was adopted.

The meeting was adjourned.

**JANUARY** 12

**SPECIAL MEETING**

Wednesday, January 12, 1994

9:00 - 11:30 a.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

Manchin, Chairman  
Grubb  
Anderson  
Macnaughtan  
Minard  
Boley

Gallagher, Chairman  
Douglas  
Compton  
Huntwork  
Burk  
Faircloth

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

Marjorie Martorella, Counsel to the House Committee on Government Organization, reviewed the rule proposed by the Department of Health and Human Resources, Child Advocate Office, Guidelines for Child Support Awards, which had been laid over at the Committee's previous meeting. Bob Wilkerson, of the Child Advocate Office, addressed the Committee and stated that the Office would be willing to modify the proposed rule to contain the provisions of the proposed procedural rule and would also be willing to make any other necessary modifications. Delegate Richard Staton addressed the Committee and responded to questions.

Ms. Compton moved that the proposed rule be modified by adding the provisions of the procedural rule. The motion was adopted.

Ms. Douglas moved that the Committee request that the Office withdraw the proposed rule. The motion was adopted.

Debra Graham explained the rule proposed by the Department of Health and Human Resources, Distribution of State Aid Funds to Local Boards of Health, and stated that the Department has agreed to minor technical modifications.

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

Mr. Gallagher informed the Committee that there was still no agreement between the interested parties regarding the rule proposed by the Division of Environmental Protection, Groundwater Protection Regulations, Coal Mining Operations.

Mr. Minard moved that the Committee request that the Division withdraw the proposed rule. The motion was adopted.

Mr. Gallagher told the Committee that the rule proposed by the Division of Environmental Protection, Sewage sludge management regulations had been explained previously and that proposed modifications would be in order. Mr. MacNaughtan distributed and explained several proposed modifications. David Callaghan, Director of the Division of Environmental Protection, Eli McCoy, Office of Water Resources and Nelson Robinson, representing the WV Municipal League, answered questions from the Committee.

Mr. MacNaughtan moved that the proposed rule be modified to incorporate his suggested modifications. The motion was adopted.

Mr. Grubb moved to modify the proposed rule by deleting Section 4.1.8 of the proposed rule. Mike Mowery responded to questions from the Committee. Mr. Grubb requested unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Ms. Douglas' motion, from the previous meeting, that the proposed rule be as modified was adopted

Mr. Minard moved that Counsel be authorized to draft bills of authorization for the proposed rules acted upon by the Committee. The motion was adopted.

Mr. Manchin moved that the names of each member of the Committee be placed on the bills of authorization. The motion was adopted.

Mr. Gallagher updated the Committee on the recommendations of the Committee working on the Supreme Court Opinion on Agency Rules and Regulations.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN. 12, 1994

TIME: 9:00 A.M.

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Brian Gallagher, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Douglas, Vickie

Compton, Mary P.

Huntwork, John

Burdette, Keith, President

Joe Manchin, III Co-Chair

Anderson, Leonard

Grubb, David

Minard, Joseph

Macnaughtan, Don

Boley, Donna

TOTAL

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

RE:

---



---



---



---



REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule-Making Review

DATE: Wed. JAN 12, 1994

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Robert Lodecka	Charleston	WV. Rural Water	✓
Nelson Robinson	"	WV Municipal League	✓
✓ Bob Wilkinson	Huntington	Child Advocate Office	✓
Douglas R. Ames	Fairmont	CITY OF FAIRMONT	✓
Mary Hentles	Charleston	Bureau of Public Health, DH & HE	
Kari Howard	"	"	
David McMillan	WV Legal Servs Pkwy	Charleston	
Sallye Twell	Char	CAO	
Catherine Rodriguez	Riverside WV	Pantow District Council	✓
Arthur Puskas	Grant Town W.Va	City of Grant Town	
Mary Browne	Grant Town W.Va	City of Grant Town	
Robert Pollock	2253 Fairmont, W.Va.	North American Recycling	
Bill Moss	City of Weirton	City of Weirton	
A.D. Masterton	200 Municipal Plaza, Weirton	City of Weirton	
K.O. Dameron	Charleston	WV Mining & Reclamation	✓ YES - on Groundwater
STEVE HEYSEK	Summersville	City of Summersville	✓
FRED FOGLEMAN	SUMMERSVILLE	CITY OF SUMMERSVILLE	
William Gower	GRANT TOWN WVA	Town of Grant	





Dist 1/12/94

3.2.1.k. Land that has less than 6 inches of soil over bedrock or an impervious pan.

3.2.1.l. Land containing soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

3.2.2. No person or entity shall be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants listed in Table 3 of this rule, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc, to be determined based, at a minimum, upon cumulative loading rates of 40 CFR, 503.13(b)(2) and 503.12(e)(2) and soil testing requirements developed under these regulations.

3.2.2.a. The director shall assign an individual and lifetime loading rate for each land application site by considering background soil concentrations and maximum allowable pollutant concentrations as per Table 1 and Table 3 of this rule.

3.2.3. No land, except a solid waste facility, shall be allowed to accept or store so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land.

3.2.4. No person shall be allowed to store sewage sludge at a land application site for a period longer than one week; except, storage shall be allowed for no longer than three months where provisions, approved by the Chief, have been made to prevent leachate runoff into surface or groundwater. Septage storage shall only be allowed in-tank and for no more than three days.

3.2.5. No person shall be allowed to land apply sludge except during the hours of daylight.

### 3.3. Sewage Sludge Processing Facility Operational and Design Requirements

3.3.1. Sewage sludge processing facilities must adhere to the following requirements:

3.3.1.a. Areas used for processing, curing and storage of raw materials, intermediate and final products, loading and unloading areas, impoundments, pipelines, ditches, pumps and drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Storage of finished products from the facility shall be limited to one year.

TABLE 1

MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE  
FOR APPLICATION TO CROPLAND

Metal	Concentration (mg/kg)
Zinc	2500
Copper	1000
Nickel	200
Cadmium	10
Lead	250
Mercury	10
Chromium	1000
Molybdenum	18
Selenium	36
Arsenic	41

TABLE 2

MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE  
FOR LAND APPLICATION

Metal	Concentration (mg/kg)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

TABLE 3

## MAXIMUM ALLOWABLE SOIL CONCENTRATIONS

Metal	Concentration (mg/kg)
Arsenic	5.7
Cadmium	1.4
Chromium	140.0
Copper	140.0
Lead	35.0
Mercury	2.0
Molybdenum	2.5
Nickel	28.0
Selenium	5.0
Zinc	350.0

47-38D-6. FEE AND BONDING REQUIREMENTS.

6.1. Applicability. Any producer or importer of sewage sludge for land application shall be subject to non-refundable fees, as described herein, which shall be used to cover the costs of the sewage sludge management program. The fees established herein in paragraphs 6.4.1 and 6.4.2 of this rule shall be assessed on forms prescribed by the Chief of the Office of Water Resources of the Division and shall be paid to said Chief quarterly.

6.2. Water Quality Management Fund. Fees collected for land application shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of W.Va. Code 20-5A-6a except as otherwise specified herein.

6.3. Bonding. -- The Director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the cost of future environmental remediation from producers and importers of sewage sludge.

6.4. Fee Assessments

6.4.1. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee calculated as \$10.00 per actual ton of sludge times the proportion of solids in that sludge for sludge with maximum metals concentrations not exceeding those listed in Table 1 of this rule.

6.4.2. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee calculated as \$15.00 per actual ton of sludge times the proportion of solids in that sludge for sludges with maximum metals concentrations exceeding those listed in Table 1 of this rule but not exceeding the maximum metals concentrations contained in Table 2 of this rule.

6.4.3. All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the division, shall be subject to the same tipping and other fees as levied on the disposal of solid waste under W.Va. Code 20; Provided that no such fees, excepting assessment fees required by this section, shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with the statute and this rule.

6.4.4. Fees generated pursuant to sections 6.4.1 and 6.4.2. shall be reviewed periodically by the director and shall be adjusted as necessary to assure that total collections shall not exceed \$500,000 per year.