

DECEMBER 10

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Sunday, December 10, 1995, 4:00 p.m. to 7:00 p.m.

Senate Finance Committee Room - M-451

#####

PUBLIC HEARING

1. HEALTH DEPARTMENT - REGULATIONS ON WATER WELLS

#####

2. Approval of Minutes - Meeting November 14 & 15, 1995

3. Review of Legislative Rules:

- a. Environmental Protection/Water Resources/Waste Management
Waste Tire Management Rule
- b. Environmental Protection
Surface Mining Reclamation Rules
- c. Environmental Protection
Solid Waste Management Regulations
- d. Environmental Protection/Water Resources/Solid Waste Management
Sewage Sludge Management Rule
- e. Environmental Protection/Air Quality
Regulation to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds
- f. Environmental Quality Board
Requirements Governing Water Quality Standards

4. Other Business:

Sunday, December 10, 1995

4:00 p.m. - 7:00 p.m. Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin Robert "Chuck" Chambers,
ex officio nonvoting member ex officio nonvoting member

Senate

House

Ross, Chairman
Grubb, Vice Chairman
Anderson
Boley (absent)
Buckalew
Macnaughtan

Douglas, Chairman
Linch, Vice Chairman
Compton
Faircloth
Gallagher
Riggs

PUBLIC HEARING

HEALTH DEPARTMENT - REGULATIONS ON WATER WELLS

Mr. Ross, Co-Chairman, called the public hearing to order.

Wally Pinson, Pinson Drilling; Wayne Walter, Mountain State Water Well Drilling; William Shock, Shocks's Well Service; Paul Hoef, Hoef's Well Drilling; Cindy and Mark Smith, B W Smith Well Drilling; Dan Little, Little's Well Service; Philip Hyre, Hyers Water Well Service; Jack Frame, President-elect of the Water Well Association; and Kay Howard, Department of Health and Human Services, addressed the Committee.

The public hearing was adjourned.

12/3

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE Dec. 10, 1995
Public Hearing

	PLEASE PRINT NAME	PRINT FULL ADDRESS	TITLE--REPRESENTING	CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
1	Wally Pingleton	Pingleton Drilling	Huntington WV	
2	JACK R. FRAMM II	P.O. Box 1907 EIKINS, W. Va. 26241	President W. Va. Well Drillers Assn. Frame Drilling	OT closing
3	Wayne Wachtel	Rt. 2, Box 480 Berkeley Springs, WV 26030	Member. WV Well Drilling Assn.	✓
4	William Shock	Rt 1064 425 MILLSBORO WV	SHOCK WELL SERVICE	✓
5	Adrian Pinner	4030 Piedmont Rd Huntington WV	PINSON BROS Drilling	✓
6	PAUL J HOFE	RR 6 Box 2114 Mtg W.V.	HOFE'S WELL DRG	✓
7	Paul W. HOFE	RR 6 Box 1075 Hedgesville W.V.	HOFE'S WELL DRG	✓
8	Pindy Smith	HC 80 Box 2-A Springfield WV 26763	B.W. Smith Well Drilling	✓
9	Mark Smith	HC 80 Box 2-A Springfield WV 26763	B.W. Smith Well Drilling	✓
10	DAN Little	RR 1 Box 163 Elizabeth WV 26043	Little's well service	✓
11	Thomas Shook	RR 1 Box 422 MILLSTONE WV 25261	SHOCK WELL SERV.	
12	Philip R. Nyre	OWNR Nyres Water Well Service P.O. Box	RR 1 Box 2220-1 French Creek WV 26218	✓
13	Jack R. FRAMM II	P.O. Box 1907 EIKINS, W. Va. 26241	President, W. Va. Well Drillers Assn. FRAMM Drilling Co	✓
14	Kay Howard		Dir Reg. Dev DHPR	Chairman
15	Mike Comer	OWNR Hansford St.	DEP - OWN	IF Needed

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

Mr. Altizer reviewed his abstract on the rule proposed by DEP, Surface Mining Reclamation Rules and stated that the Division has agreed to technical modifications.

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

Mr. Altizer explained to the Committee that there is a recent court decision which could affect the rule proposed by the DEP, Solid Waste Management Regulations. He stated that in his opinion the Committee should proceed with its consideration of the proposed rule pending appeal.

Mr. Macnaughtan moved that the proposed rule lie over until the Committee's January meeting to allow counsel an opportunity to determine which amendments contained in the proposed rule are required by federal regulations. The motion was adopted.

Mr. Altizer explained the rule proposed by the DEP, Sewage Sludge Management Rule, and responded to questions.

Mr. Macnaughtan moved that the proposed rule be amended to reinsert Table III and all references to Table III and to adjust the numbers in the table by changing the concentration of Arsenic to 12.5 and Nickel to 74. The Motion was adopted.

Clifton Browning, State Sewage Sludge Coordinator, for DEP, addressed the Committee and responded to questions.

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

Mr. Altizer reviewed his abstract on the rule proposed by the DEP, Regulation to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds, and stated that the Division has agreed to technical modifications, and he responded to questions.

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

Mr. Altizer explained the rule proposed by the DEP, Requirements Governing Water Quality Standards, and stated that the Division has agreed to technical modifications. He responded to questions from the Committee.

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

Mr. Gallagher, having voted on the prevailing side, moved that the Committee reconsider its action whereby it approved as amended the rule proposed by the DEP, Sewage Sludge Management Rule. The motion was adopted.

Mr. Gallagher, having voted on the prevailing side, moved that the Committee reconsider its action whereby it approved Mr. Macnaughtan's amendment to the proposed rule. The motion was adopted.

Mr. Gallagher moved that Table 3 be modified to provide new metal concentrations, which are as follows: Arsenic 18, Cadmium 5, Chromium 300, Copper 300, Lead 70, Mercury 4, Molybdenum 4, Nickel 74, Selenium 7, and Zinc 500; and that the rule be further modified to require the DEP to refile the rule with the Legislative Rule-Making Review Committee within the next two years. The motion was adopted.

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

The meeting was adjourned.

Dist. 12/10/95 meeting

Statutes authorizing the Dept. of Health
to regulate water well drilling and result.
rule.

WEST VIRGINIA CODE

ANNOTATED

VOLUME 5A

1995 Replacement Volume

*(Including Acts through the 1994 Regular and
First Extraordinary Sessions)*

Prepared by the Editorial Staff of the Publishers

Under the Supervision of

DEBORAH S. TUSSEY
PETER R. ROANE
M. JEFFREY MONROE
LYNN SEUFFERT

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

1995

§ 16-1-5. Composition of department.

There shall be a state department of health which shall consist of the board of health, the director of the department, the subdivisions of the board of health and other employees as hereinafter provided. Any person employed by the state department of health or any local boards of health who on the effective date of this article [July 1, 1977] is a classified civil service employee shall, within the limits contained in section two [§ 29-6-2], article six of chapter twenty-nine of this Code, remain in the civil service system as a covered employee. (1949, c. 101; 1977, c. 102.)

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

§ 16-1-6.

Repealed by Acts 1991, c. 76.

Editor's notes. — Former § 16-1-6 (enacted by Acts 1949, c. 101 and amended by Acts 1961, c. 58; 1974, c. 43; 1976, c. 52; 1977, c. 102; 1986, c. 80), concerning the board of health, the membership, appointment and removal of members, and compensation, was repealed by Acts 1991, c. 76.

§ 16-1-7. Promulgation of rules and regulations; references to board to mean secretary of department of health and human resources.

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof: Provided, That no rules or regulations shall be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of said tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single family dwelling units. The provisions next above notwithstanding, nothing in this section shall be construed to abate the authority of the department of health and human resources to: (1) Restrict the subdivision or development of such tract for any more intense or higher density occupancy than such single family dwelling unit; (2) promulgate and enforce rules and regulations applicable to single family dwelling units for single family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply. The secretary shall have the power to appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and such other areas as it deems

revised article.

* 102. — See Op. Att'y

e. — For a general
alth, see 9A M.J., Health

ement in the delivery
citizens of this State;
ensive continuum of
d future needs at a
are by emphasis on
equal access to all
ncourage the active
ing to the delivery of
of services and costs
iew and regulate the
sts of health care; to
s and to reorganize
here necessary, plan
d efficient delivery of
al health services to

his State. Citizens Con-
Mental Health Ctr. v.
2d (W. Va. 1983).
gn. Dep't of Health v.
a. 693, 301 S.E.2d 783
nsbarger, 171 W. Va. 788,
3); State ex rel. M.K. v.
3 (W. Va. 1984).

advisory council, were
c. 153.

in, meetings, the annual
and offices, was repealed

necessary to advise the secretary on rules and regulations. Such rules and regulations shall include, but not be limited to, the regulation of:

(1) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(2) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems, and the qualifications of personnel connected with any of such facilities, without regard to whether such supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, swimming pools in this state, whether publicly or privately owned;

(3) Food and drug standards, including cleanliness, proscription of additives, proscription of sale, and other requirements in accordance with article seven [§ 16-7-1 et seq.] of this chapter, as are necessary to protect the health of the citizens of this state;

(4) The training and examination requirements for emergency medical service attendants and mobile intensive care paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state which must have emergency medical service attendants and mobile intensive care paramedics employed, and the availability, communications, and equipment requirements with respect thereto;

(5) The collection of data on health status, the health system and the costs of health care;

(6) Other health-related matters which the department of health is authorized to supervise, and for which the rule-making authority has not been otherwise assigned;

(7) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this section, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: Provided, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant style or commercial food service facility: Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year.

Notwithstanding any other provision of this code to the contrary, whenever in this code there is a reference to the state board of health, it shall be construed to mean and shall be a reference to the secretary of the state department of health and human resources. (1949, c. 101; 1975, c. 139; 1977, c. 102; 1979, c. 54; 1991, c. 76; 1992, c. 87.)

Cross references. — Authorization for legislative rules, ch. 64, art. 2.

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

Access to hospital grounds. — State hospitals are limited public forums subject to reasonable restrictions on time, place and manner of solicitation and distribution by nonemployees; this section authorizes reasonable restrictions but not a total ban on access to hospital grounds and premises. Op. Att'y Gen., Nov. 2, 1983, No. 23.

Creation of new regulatory agency does not invalidate old regulations. — Rules and regulations legally promulgated by a state agency in implementation of lawful acts of the legislature are not repealed or revoked or rendered void, invalid or unenforceable merely because the legislature (a) creates a new agency to administer and enforce such laws, rules and regulations, or (b) statutorily reassigns or transfers administration and enforce-

ment of such laws, rules and regulations to another state agency which did not originally promulgate such rules or regulations. Op. Att'y Gen., June 29, 1977.

Current rules and regulations not abolished. — All of the current, legally promulgated rules and regulations of the department (now division) of health, West Virginia board of health, department of mental health and all other agencies and boards affected by chapter 102 of 1977 which implement laws in effect on July 1, 1977, are not abolished or rendered invalid or unenforceable on and after July 1, 1977, by reason of the enactment of chapter 102 of 1977. Op. Att'y Gen., June 29, 1977.

Applied in *Teller v. McCoy*, 162 W. Va. 367, 253 S.E.2d 114 (1978).

Quoted in *Citizens Concerned About Valley Mental Health Center v. Hansbarger*, 309 S.E.2d 17 (W. Va. 1983).

Stated in *Reed v. Hansbarger*, 173 W. Va. 258, 314 S.E.2d 616 (1984).

Cited in *McGraw v. Hansbarger*, 171 W. Va. 758, 301 S.E.2d 848 (1983).

§ 16-1-8. Director of health — Appointment; compensation; qualifications; term; oath and bond; vacancy.

The chief executive officer and administrative head of the department shall be appointed by the governor, with the advice and consent of the senate, and shall serve in the manner prescribed by section two-a [§ 6-7-2a], article seven, chapter six of this Code and shall hereafter be referred to as the director. The annual salary of the director shall be not more than forty-five thousand dollars. In addition thereto, the director shall be reimbursed for all necessary travel incurred in the performance of his duties; except that in the event the expenses are paid, or are to be paid, by a third party, the director shall not be reimbursed by the State. The director so appointed shall be a physician licensed under the laws of this State to practice medicine or a person holding a doctorate degree in public health administration. Such a person shall have not less than four years' experience in health services administration or a related field. The director shall serve at the will and pleasure of the governor and shall not be actively engaged or employed in any other business, vocation or employment, serving full time in the duties of the office as prescribed by this article.

Before entering upon the duties of the office, the director shall take and subscribe to the oath of office prescribed by section five, article four of the Constitution of this State, and shall execute a bond with surety approved as to form by the attorney general and as to sufficiency by the governor in the penal sum of fifteen thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. If a vacancy occurs in the position of director, the governor shall make a temporary appointment until the next session of the legislature, at which time the governor shall present to the senate the nomination for the office.

As used in this chapter, the term "director" shall mean director of the state department of health or his designee. (1949, c. 101; 1977, c. 102.)

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

Authority to approve sanitation systems. — In the context of the state's health laws, the director of health's authority to approve or disapprove proposed sanitation systems is not contingent upon any prior approval of such systems by professional engineers. All that the director or his designee need do is

ascertain whether a proposed system meets with departmental design standards and regulations, or that it meets with the criteria established by qualified department (now division) personnel. Op. Att'y Gen., Sept. 3, 1981, No. 37.

Discharge of bath water, laundry water or kitchen sink water upon ground may constitute a health hazard, which the health department (now division) may abate. 50 Op. Att'y Gen. 342 (1963), opinion rendered under this section as it existed prior to the 1977 revision of this article.

§ 16-1-9. Supervision over local sanitation.

No person, firm, company, corporation, institution or association, whether public or private, county or municipal, shall install or establish any system or method of drainage, water supply, or sewage or excreta disposal without first obtaining a written permit to install or establish such system or method from the commissioner of the bureau of public health or his or her authorized representative. All such systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the commissioner or which have been approved in writing by the commissioner or his or her authorized representative.

Whenever the commissioner of the bureau of public health or his or her authorized representative finds upon investigation that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the commissioner approved in writing by the commissioner or his or her duly authorized representative, the commissioner or his or her duly authorized representative may issue an order requiring the owner of such system or method to make alterations as may be necessary to correct the improper condition. Such alterations shall be made within a reasonable time which shall not exceed thirty days, unless a time extension is authorized by the commissioner or his or her duly authorized representative.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner of the bureau of public health or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau of public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any such system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, who violates any provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five

hundred dollars. The continued failure or refusal of such convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner of the bureau of public health or his or her duly authorized representative is a separate, distinct and additional offense for each twenty-four hour period of such failure or refusal, and, upon conviction thereof, the violator shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such conviction: Provided, That none of the provisions contained in this section apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of environmental protection.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section. (1949, c. 101; 1973, c. 54; 1986, c. 81; 1992, c. 88; 1994, c. 61.)

Cross references. — Authorization for legislative rules, ch. 64, art. 2.

Effect of amendment of 1994. — The amendment substituted "division of environmental protection" for "division of natural resources or the West Virginia air pollution control commission" in the fifth paragraph; and made stylistic changes.

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

W. Va. Law Review. — Wakefield, "Problems Associated With the Management of Solid Wastes: Is There a Solution in the Offing?" 83 W. Va. L. Rev. 131 (1980).

Consultation and advice. — Although the department (now division) of health is obligated to "consult and advise" applicants, it would be unreasonable in light of the department's limited resources to assume that such assistance must approach the degree of intimate consultation required to plan or design large or complex systems. Op. Att'y Gen., Sept. 3, 1981, No. 37.

Liability for approving faulty plans. — The health department (now division) is responsible for approving or disapproving all plans which are submitted to it, but the liability, if any, of the department or its employees for approving faulty plans is a question for judicial determination. Op. Att'y Gen., Sept. 3, 1981, No. 37.

Certification by professional engineer. — The health department (now division) may determine that certain sanitation plans or systems may need the services of a professional engineer, and the department may advise an applicant to that effect, but it may not require

that such plans be approved and certified by a professional engineer. Op. Att'y Gen., Sept. 3, 1981, No. 37.

Fly ash is a solid waste and therefore, pursuant to this section, a permit should be obtained for its disposal. Op. Att'y Gen., Aug. 6, 1974.

Division of water resources has sole jurisdiction to issue permits for disposal of fly ash. Op. Att'y Gen., April 7, 1978.

It is clear that the director has the right to control, suspend or terminate noncomplying landfill operations conducted subsequent to the approval of the permit. Mountaineer Disposal Serv., Inc. v. Dyer, 156 W. Va. 766, 197 S.E.2d 111 (1973).

But the director has no right to prevent inception of business by an otherwise qualifying applicant based upon the past experience of the health department (now division) with an employee of the applicant. Mountaineer Disposal Serv., Inc. v. Dyer, 156 W. Va. 766, 197 S.E.2d 111 (1973).

Even when his refusal is based upon past unsatisfactory operations of applicant's president in the operation of another landfill business. Mountaineer Disposal Serv., Inc. v. Dyer, 156 W. Va. 766, 197 S.E.2d 111 (1973).

The denial of an application for a permit for the interstate disposal of solid waste in this State would be unconstitutional as representing an undue burden on interstate commerce. Op. Att'y Gen., Oct. 10, 1975.

Permit fee for septic tank system. — A county board of health does not have the authority to charge a fee for the issuance of a permit to construct or install a septic tank system. Op. Att'y Gen., Oct. 13, 1976.

64CSR19

TITLE 64
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

SERIES 19
WATER WELL REGULATIONS

§64-19-1. General.

1.1. Scope. -- This legislative rule establishes the certification of water well drillers and the issuance of permits for water well installations and alterations.

1.2. Authority. -- W.Va. Code §16-1-7, §16-1-9 and §16-1-9a

1.3. Filing Date. -- June 27, 1989

1.4. Effective Date. -- July 1, 1989

1.5. Notice of Public Hearing -- July 15, 1987

1.6. Public Hearing -- August 14, 1987

1.7. Final Approval -- This rule was approved by the State Board of Health on August 19, 1988.

1.8. Supersession and Repeal of Former Regulations -- This rule supersedes and repeals Water Well Regulations, West Virginia Legislative Rules, 64 CSR 19, 1984.

§64-19-2. Application and Enforcement.

2.1. Application -- This rule shall apply to all water well drillers and contractors.

2.2. Enforcement -- The enforcement of this rule is vested with the director of the West Virginia department of health or his lawful designee.

§64-19-3. Definitions.

3.1. Application -- The state department of health's standard form(s) for applying for well driller certification, water well permit or permit modification, including any additions, revisions or modifications to the form(s).

3.2. Certified Well Driller -- An individual granted a written certificate by the director to drill, construct, alter or abandon water wells and who meets the requirements of this rule.

3.3. Design Standards -- Those specifications, drawings and other details promulgated by the director to ensure proper location, design, construction, completion and abandonment of water wells.

3.4. Director -- Director of the state department of health or his lawful designee.

3.5. Person -- An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.6. Public Water System or Supply - A public water system is any water system or supply which regularly supplies or offers to supply piped water to the public for human consumption, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen service connections, and shall include: (1) any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition; (3) which does not sell water to any

person; and (4) which is not a carrier conveying passengers in interstate commerce.

3.7. **Water Well** -- Any excavation or penetration in the ground, whether drilled, bored, cored, driven, or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: A water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under chapter 22, 22a or 22b of the code.

3.8. **Water Well Contractor** -- Any individual, partnership, syndicate, association, company, firm, trust, corporation or any other entity that contracts to drill, construct, alter or abandon water wells in the State of West Virginia.

3.9. **Well Completion Report** -- A record accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, water level, depth, size, type and amount of casing installed, location of the well, owner, driller, date well was completed and any other information required by the director.

3.10. **Well Driller** -- An individual that engages in water well drilling, construction, alteration, or abandonment or who supervises these activities.

§64-19-4. Permit to Install.

4.1. On and after the effective date of this rule, no water well contractor shall drill, construct, alter or abandon a water well without applying for a permit to do so from the director. The requirements for application and for permit issuance are set forth in Sections 4.2, 4.3, and 4.5 of this rule.

4.2. A permit to drill, construct, alter or abandon a water well shall be obtained by either the water well contractor or owner. The permit shall be applied for at least fifteen (15) days prior to the actual well drilling, construction,

alteration or abandonment unless emergency conditions prevail as noted under Section 4.3.

4.3. If emergency conditions or other unavoidable circumstances prohibit meeting the application requirements, the fifteen (15) day period will be waived. Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity, or public health threats. However, under no conditions shall submission of the permit application be made in excess of thirty (30) calendar days after completion of drilling, constructing, altering or abandoning a water well.

4.4. Water wells shall be drilled, constructed, altered or abandoned in accordance with Water Well Design Standards, West Virginia Department of Health Interpretive Rules, 64 CSR 46, and Design Standards for Public Water Supply Systems, West Virginia Department of Health, Interpretive Rules, 64 CSR 42, or plans which have been approved in writing by the director. Such standards shall constitute the minimum standards for the drilling, construction, alteration or abandonment of water wells. Any plans approved by the director pursuant to this rule shall be in substantial compliance with the heretofore mentioned standards.

4.5. Application for permit to construct shall be made to the director on forms prescribed by the director and shall be jointly signed by the water well contractor and owner.

4.6. In the event the permit application is denied, the director shall state, in writing, the reason(s) for denial and furnish same to applicant within fifteen (15) days from receipt of application.

4.7. A permit, unless revoked, shall be valid for a period of one (1) year from date of issuance. In the event construction or alteration is not completed within that time, the director may extend the time limit upon written request by the permittee. Permits are not transferable.

4.8. A permit to install may be revoked or denied by the director for failure to comply with

the provisions of the permit, any applicable provision of the regulations or orders issued pursuant thereto. Such revocation shall be in writing and shall state the reasons for revocation or denial.

4.9. Any person whose application for permit to construct a water well has been revoked or denied may, within thirty (30) days from receipt of permit denial or revocation, request a hearing in accordance with Section 10, Administrative Due Process.

§64-19-5. Bonding of Water Well Contractors.

5.1. Effective January 1, 1990, each water well contractor shall have a current contractor's bond payable to the director upon forfeiture, and liability insurance coverage effective throughout West Virginia in a form determined by the director. The contractor's bond shall be in an amount determined by the director but not exceeding five thousand (\$5,000.00). Lack of a current contractor's bond shall be deemed sufficient grounds for denial of a water well permit.

5.2. Forfeiture of the contractor's bond shall be predicated upon a failure to construct, alter, or abandon a water well in accordance with this rule.

5.3. The surety shall have the option of forfeiting the contractor's bond or completing the well in accordance with rules and standards specified in Section 5.2 of this rule. The entire proceeds of a forfeiture shall be expended by the director to alter or abandon the well in accordance with applicable rules and standards. Any excess therefrom shall be retained by the director and expended for the purpose of altering or abandoning water wells in accordance with applicable rules and standards.

5.4. The surety shall have the option of canceling a contractor's bond after providing notice to the director at least thirty (30) days prior to cancellation.

5.5. In lieu of the bond required by Section 5.1 of this rule, the director may accept an irrevocable letter of credit issued by a bank chartered by the State of West Virginia or a member bank of the federal reserve system.

Confirmation of such irrevocable letter of credit shall be in writing and shall be signed by the issuing or confirming bank.

§64-19-6. Certification of Water Well Drillers.

6.1. There shall be a certified water well driller on-site in direct charge of drilling, construction, altering or abandonment of a water well.

6.2. To be eligible for certification, the applicant must be able to demonstrate a minimum of two (2) years of water well drilling experience under the supervision of a certified well driller.

6.3. Well drillers actively engaged in a water well drilling business as a water well driller on or before June 8, 1984 shall be exempt from the minimum experience requirements.

6.4. An application for certification as a well driller shall be made in writing to the director on a form prescribed by the director. Information required on the form may include, but not be limited to: name, address, education, experience, business name and references.

6.5. The director may suspend, revoke or deny certification if the information on the application form is incomplete, inaccurate, false or misleading, or indicates that the provisions of this rule cannot be met. The director may revoke or suspend the certification of a driller who knowingly violates either this rule or the provisions of a water well permit.

6.6. Certification shall not be transferable or assignable and shall automatically become invalid upon suspension or revocation.

6.7. Certification shall expire five (5) years after date of issuance and may be renewed thirty (30) days before such expiration date.

6.8. When certification has been denied, suspended or revoked, the person thereby affected shall immediately discontinue the drilling, altering, constructing and abandonment of water wells.

6.9. Any person whose application for certification has been denied, or whose certification has been suspended or revoked, may request a hearing in accordance with Section 11, Administrative Due Process, of this rule. The applicant must submit a written request for hearing within thirty (30) days from receipt of denial, suspension, or revocation of certification.

6.10. Denial, suspension or revocation of certification shall be in writing from the director and shall state specific reasons for the denial, suspension or revocation.

6.11. Suspension or revocation of certification shall be preceded by a written notice from the director, at least ten (10) days prior to actual revocation or suspension.

6.12. In addition to filing an application for becoming certified to drill, construct, alter or abandon water wells, the applicant must pass an oral or written examination to assure the director that the applicant is thoroughly familiar with all requirements of applicable laws, regulations and design standards pertaining to water well drilling and construction. Examinations shall be administered by personnel of the West Virginia department of health. A passing grade of seventy per cent (70%) must be obtained before becoming certified. An applicant who has failed an examination must wait thirty (30) days before again taking the examination.

§64-19-7. Identification Numbers of Water Well Rigs and Well Head.

7.1. It shall be the duty of all water well contractors to see that all water well rigs used by them or their employees in the water well drilling business are marked with legible and plainly visible identification numbers at all times.

7.2. The identification number to be used on water well rigs shall be the certification number of the water well driller at the well site who is responsible for the water well drilling operations.

7.3. Certification numbers shall be printed upon each side of every water well rig in numerals of not less than two inches high and such numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that the certification number shall be plainly legible.

7.4. Water well contractors shall see that all water well rigs used by them or their employees in the well drilling business are marked as provided in Section 7.2 and 7.3 of this rule.

7.5. Each well drilling contractor shall securely attach a metal tag or embossed well cap to the well head containing the following information: Contractor's name and address, permit number, depth of well and date of construction or alteration.

§64-19-8. Records of Completed Water Wells.

8.1. Within thirty (30) days after the completion of a water well, the water well contractor shall provide the owner with one (1) copy and the director with two (2) copies of a record indicating the well owner's name, location of the well to include longitude and latitude, drillers name, well depth, geological materials and thicknesses of material penetrated, type/size, and amount of casing, water levels, date of completion, and any other information which may be required by the director. This information shall be provided on forms prescribed by the director.

§64-19-9. Advisory Board.

9.1. The director may establish an advisory board and designate the chairman of said board.

9.2. The advisory board membership shall consist of, but not necessarily be limited to, the following members:

Certified well drillers: 3 members

State health department: 1 member

Local health department: 1 member

West Virginia geological survey: 1 member.

9.3. The duties of the advisory board shall be assigned by the director.

9.4. The director may establish other boards, committees and commissions to assist in carrying out the provisions of this rule.

§64-19-10. Penalties.

10.1. For a Public Water System -- Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who shall violate any provision of this section, or any of the regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred (\$200), and each day's violation shall constitute a separate offense. In addition thereto, the state director of health, or his authorized representative, may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this section, or of any of the regulations or orders issued thereunder, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or other entity recognized by law, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars (\$5,000), and each day's violation shall be grounds for a separate penalty.

10.2. For all Other Water Systems. -- Any person, firm, company, corporation, institution, whether public or private, county or municipal, who shall violate any provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500). The continued failure or refusal of such convicted person, firm, company, corporation, institution, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the state director of

health or his duly authorized representative shall constitute a separate, distinct and additional offense for each twenty four (24) hour period of such failure or refusal, and upon conviction thereof, the violator shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each such conviction.

§64-19-11. Administrative Due Process.

Administrative Due Process. -- Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 CSR 1.

§64-19-12. Severability.

Severability. -- If any provisions of this rule or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are declared to be severable.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Dec. 10, 1975
 TIME: 4:00 - 7:00 p.m.

*Public Hearing
 Regs - Water Wells*

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				

RE:

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/10/95

TIME: 5.30 -

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

	✓			
	✓			
	✓			
	✓			
	✓			
	✓			
	✓			
	✓			
	✓			
	✓			
	✓			

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE Dec 10, 1995

PLEASE PRINT NAME	PRINT FULL ADDRESS	TITLE--REPRESENTING	CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Lillian Chaffin		Environmental Quality Board	
Kim B. Poland	P.O. Box 1741 Charleston, WV	WV Manuf's Assoc	X
Bob Foster	2001 Quamier St. Ches, WV		X
MARVIN GRAY	1108 NORWAY AVE. HUNTINGTON, WV 25705	WV GASOLINE DEALERS ASSOCIATION	X
DAVID YAUSSY	P.O. Box 1441 Chas, WV	WV Manuf's Assoc.	X
Lisa Dosley	1620 Kan. Blvd E Chas WV	Exec Director	X for questions
Shirley Mullett	New Martinsville WV	WCSWA	X
Dale Farley	1558 Washington St Charleston WV 25305	WV DEP/OAQ	X ATCR21 VOC's
Fred Sampson	RR-68, BOX-25 FUYDALE, WV 25713	PEOPLE -	Yes / SWASTE
LARRY ATHA	1615 HANFORD ST CHAS, 25301	WV DEP/OWM/SWMS	as required
Terry Honaker	Rt 4 Box 514 Bluefield WV	City Bluefield	✓
Mike Lomer	OWM - DEP		IF needed.
Clifton Browning	WV DEP - OWR		
BARBARA TAYLOR	WV DEP OWR		

- OAC
Reg. 21

WV
Quality Stat.

*Comm. Info.
Meeting 12/10/95*

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

December 10, 1995

Procedures following Committee Action:

Send committee action report to S/St and all agencies and others who have requested notification.

Prepare 2 complete files - one Senate and one House

Follow up with Agencies to make certain Modified rules are filed within ten days at latest. One copy to S/St office and ten copies to our office with official date stamp from S/St on each copy as this is date inserted in bill of authorization to Senate and House.

Have Attorney to check to see if modifications are correct.

Distribute copies to appropriate persons and offices.

Prepare all complete files for House and Senate with extra copies of modified rule with Clerks of both houses.

Prepare reports to Legislature, signed by Committee Co-Chairs.

Prepare reports to House and Senate Clerks.



*West Virginia Legislature
Legislative Rule-Making Review Committee*

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

(Date Committee takes action)

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: \ (Agency)

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: \ (Title of Rule)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: (copy to other agency representatives)
(copy to interested citizens or corporations)
(copies for Senate and House files)

Dist 12/10/95 meeting



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA

6128 GIDEON RD • HUNTINGTON, WV 25705 • TELEPHONE 304-736-3287

September 1, 1995

The Honorable Vicki Douglas
1003 Chestnut Dr.
Martinsburg, WV 25401

Dear Vicki,

The League of Women Voters urges you to delay until October or November the consideration by the Legislative Rule Making Review Committee of the Solid Waste Management Regulations, 47 CSR 38.

We believe that members of the public need more time to study the regulations so that they can point out benefits or problems of the rules to the legislative committee. There is considerable knowledge about solid waste matters among citizens in West Virginia, but most of them do not have a lawyer to consult with so they need extra time to study the regulations. Generally they did not know that the regulations were being promulgated so did not comment during the comment period.

The League believes public participation is of utmost importance. We hope that you will delay consideration of the solid waste rules so that more West Virginians will have a chance to contact the committee.

Sincerely,

Helen Gibbins, President
League of Women Voters of WV

WETZEL COUNTY SOLID WASTE AUTHORITY

200 North Street, Box 9, • New Martinsville, WV 26155 • Phone: (304) 455-5262

Dist 12/10/95

meeting



December 9, 1995

Legislative Rule-Making
Review Committee
Building 1, Room 152
1900 Kanawha Blvd., E.
Charleston, WV 25305-2126

Dear Legislative Rule-Making Review Committee Member:

The Wetzel County Solid Waste Authority passed an official motion at its September 1995 meeting to vigorously oppose any weakening of Solid Waste Regulation including sewage sludge.

DEP revisions for Title 47 Series 38 Solid Waste Management Regulations include changes inconsistent with current code and beyond the intent of the legislation. We have no problem with changes that must be made to gain primacy, but we vehemently oppose code changes that go beyond that need. Please instruct council to determine which changes are required.

The protections represent years of citizen input and sacrifice to achieve a voice through legislation. For DEP to weaken the protection is not prudent, just, or acceptable. The Authority implores this committee to direct a review of the revisions with a resolve to maintain the full level of protection that the legislation intended. Your actions impact the future of West Virginia and citizens voice.

Judge Stamp's decision is under appeal and changes at this time must be limited to federal requirements to achieve primacy only.

Sincerely,
Rolley Moore
Rolley Moore, Chair

cc Ken Ellison
Dick Cooke

Drst. At 12/10/95 meeting

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Waste Tire Management Rule

Type of Rule: Legislative

Agency: Division of Environmental Protection, Office of Waste Management

Address: 1356 Hansford Street
Charleston, West Virginia 25301

1. Effect of Proposed Rule

<i>Estimated Total Cost for:</i>	<i>Increase</i>	<i>Decrease</i>	<i>Current</i>	<i>Next</i>	<i>Thereafter</i>
<i>Personal Services</i>	see Item 2		\$ 0.0	see Item 2	see Item 2
<i>Current Expense</i>			\$ 0.0		
<i>Repairs and Alterations</i>			\$ 0.0		
<i>Equipment</i>			\$ 0.0		
<i>Other</i>			\$ 0.0		
<i>Total</i>	see Item 2		\$ 0.0		see Item 2

2. Explanation of above estimates: The proposed rule provides for the permitting and enforcement of waste tire storage and/or disposal facilities within this State. The rule provides for the use of monofills, processing facilities, storage cells at existing solid waste facilities, and limited storage allowances at the point of waste tire generation. Most of these activities will require permits, technical assistance, inspections, and some form of general program administration. In performing these activities, this Agency will incur some degree of expense. However, until the program is initiated it is impossible to estimate what those costs will be. It is anticipated that until estimation of costs can be determined all costs will be absorbed by existing funding sources and staff.

3. Objectives of these rules: Senate Bill 1021 passed by the Legislature [§ 20-11-8(c)]

required the Division of Environmental Protection promulgate rules to effectively implement and enforce a program to provide for the proper handling and management of waste tires. This proposed rule provides a means of waste tire collection and record keeping by entities selling new tires to an end user. Additionally, this rule specifies storage and/or disposal methods for waste tires.

4. Explanation of overall economic impact of Proposed Rule:

- A. Economic impact on State Government:** Originally, this rule proposed an assessment fee against all new tires sold in this State. A portion of this fee was to be allocated for the administration and enforcement of this program. However, the current proposal does not impose a fee. Permitting, enforcement, and general administration of this program may have to be absorbed by other funding sources. However, the costs are foreseen as minimal. A small fee is charged on permit applications which should aid in the man-hours needed to process the application.
- B. Economic impact on Political Subdivisions; specific industries; specific groups of Citizens:** The Proposed Rule will mandate a tire retailer to accept waste tires from an end user on a per tire exchange if the end user offers the waste tire for exchange. The retailer shall have the option of charging the end user a fee for the proper disposal of the waste tire. Currently, most tire retailers accept waste tires from their customers and also charge a fee for its proper disposal. Some retailers may be affected by proposed on-site storage limitations and may need to modify their current waste tire storage and removal practices.
- C. Economic impact on Citizens and Public at Large:** No impact on the Citizens and/or the Public at Large is foreseen. It shall remain the option of the consumer to exchange or retain the waste tire once a new one is purchased.

The following is a brief description of the modifications made to the proposed "*Waste Tire Management Rule*" since its initial consideration by the Legislative Rule-Making Review Committee on June 11, 1995.

<u>Section</u>	<u>Modification</u>
1.7 thru 1.9	These sections are not necessary and deemed irrelevant, therefore are being deleted.
2.5.*	Defines the term "Department of Transportation Symbol." This term is used to identify the tires that must be accepted by a tire dealer in exchange for a new tire if offered by the consumer at the time of purchase. Only passenger vehicle, truck, bus, trailer, and motorcycle tires are identified with this symbol.
2.6.*	Defines the term "D.O.T. Regulated Waste Tire." For the purpose of this regulation the term identifies the type of waste tire that must be accepted by a tire dealer if the new tire purchaser offers a tire-for-tire exchange.
2.9.	Defines the term "Storage Cell." This term is used to identify a waste tire storage area at an existing solid waste management facility. It was added in the event that an existing permitted facility desired to manage waste tires.
2.20.	This modification reduced the number of tires that can be stored without a permit. The number was lowered from 1,000 to 100 tires and reduced the retention time of those tires from 12 months down to 3 months.
3.1.1. and 3.1.3.	This modification changed the compliance year from 1995 to 1996.
3.1.3.d.*	This section is deleted. The Section exempted certain tires from regulation. However, the addition of the aforementioned terms will specifically and exclusively include tires originally intended for highway use.
3.2.2.b.*	This modification provides for the use of tire derived material in beneficial application for waste tires.
3.7.1.	This section is modified to give the Chief of the Office of Waste Management the ability to approve the operation of a waste tire management activity without that operation first meeting certain criteria. This ability will provide for the expedient rectification of problems arising from existing tire piles.
3.8.2. thru 3.8.2.d.	This section is modified to require tire dealers to retain records for a period of three years. These records must be made available to this Agency upon

request. The purpose of such a requirement is to periodically monitor the waste tire collection and disposal practices of tire retailers.

- 3.8.3.c.* This section is modified to clarify that only DOT regulated waste tires must be accepted by tire dealers if offered by their customers on a per new tire purchase basis.
- 3.8.3.d.* This section is deleted and now gives the tire dealer the option of charging a disposal fee for each waste tire offered by the customer.
- 3.9. This modification clarified the requirement of bonding and financial assurance for waste tire processing facilities, monofills, and storage cells.
- 3.11. This section mandated a waste tire assessment fee on all new tires sold within this State. The fee was to be used for remediation of existing tire piles, pilot projects, research, and administration, inspection, enforcement, and permitting activities related to a tire management program. This section has been deleted. As proposed, this rule does not establish a program that requires large expenditures by the State. Administration, permitting, and enforcement costs of this rule shall initially be absorbed by existing funding and staff.

* Additional modifications from the modified version of the rule submitted to Joe Altizer on November 16, 1995.

12/04/95

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38G
PROPOSED WASTE TIRE MANAGEMENT RULE

47-38G-1. GENERAL.

1.1. PURPOSE, SCOPE AND APPLICABILITY.

1.1.1. Purpose. This rule is intended to meet the requirements of Chapter 20, Article 11, Section 8(c), as amended. That section directed the Division of Environmental Protection to promulgate rules in accordance with the Solid Waste Management Board Plan established under Chapter 20, Article 11, Section 8(b) to properly handle and manage waste tires and used tires.

1.1.2. Scope. This legislative rule establishes requirements for the proper handling and management of waste tires and used tires including permitting and reporting procedures pertaining to any facility or activity that generates, processes, or otherwise reuses or recycles tires by whatever means.

1.1.3. Applicability. This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste tires and used tires after June 1, 1996 in the State of West Virginia, except as provided in section 3.1 of this rule.

1.2. AUTHORITY: West Virginia Code §22-1-3., §22-1-3a., §20-11-8(c).

1.3. LEGISLATIVE MANDATE: Effective June 1, ~~1995~~ 1996, it will be unlawful to deposit tires in a solid waste facility in West Virginia: Provided, however, That reasonable and necessary exceptions to such prohibition may be, and are, included in this rule (West Virginia Code §20-11-8{a}).

1.4. FILING DATE:

1.5. EFFECTIVE DATE:

1.6. INCORPORATION BY REFERENCE. Whenever state statutes or rules are incorporated into this rule by reference, the reference is to the statute or rule in effect on the effective date of this rule.

~~1.7. DETERMINATION OF ENVIRONMENTAL PROTECTION ADVISORY~~

~~COUNCIL. It is not necessary to make a determination whereas there is no federal counterpart rule.~~

~~1.8. STRINGENCY. In the event of a federal counterpart rule, this rule is no more less stringent than the federal rule; Provided that, the federal rule meets the specific needs of this state.~~

~~1.9. CONSTITUTIONAL TAKINGS DETERMINATION. The Director of the Division of Environmental Protection has determined that this rule will not result a constitutional taking of real property.~~

47-38G-2. DEFINITIONS.

The following definitions specifically apply to this rule and are listed accordingly. All other definitions unique to W. Va. Code §22-15-2 and 47 CSR 38 are fully incorporated into this rule by reference.

2.1. "Access Road" means all roads providing access to a solid waste facility from a road that is under federal, state, or local authority, or internal roads providing access from one portion of the facility to another.

2.2. "Automobile Dealer" means any business engaged in the sale of new automobiles, trucks or motorized recreational vehicles in the State of West Virginia.

2.3. "Bond" means any performance bond or other form of financial assurance provided by W. Va. Code §22-15-11 and the Solid Waste Management Regulations (47 CSR 38).

2.4. "Chief" means the Chief of the Office of Waste Management of the West Virginia Division of Environmental Protection or his authorized representative.

2.5. "Department of Transportation Symbol" means the identification number placed on new tires mandated by the Federal Motor Vehicle Safety Standards for motor vehicles and motor vehicle equipment pursuant to Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

2.6. "D.O.T. Regulated Waste Tire" means any tire that was originally used for those purposes defined under "tire" or "used tire" that is identified with a Department of Transportation Symbol.

~~2.5-2.7.~~ "Sale and/or Selling" includes exchange, consignment, barter, gift, and offer for sale. Sale and/or selling includes the removal of tires from a stock of merchandise by a wholesale distributor, or a retail tire dealer, for its own use.

~~2.6-2.8.~~ "Shredded Waste Tires" means tires or tire derived material, which has been processed by shredding to particle sizes not greater than 72 square inches, or approximately 6 inches by 12 inches.

~~2.9.~~ "Storage Cell" means a dedicated area for long term storage for waste tires or tire derived material located within an approved solid waste disposal facility for the purpose of long term storage for the eventual retrieval for marketing purposes.

~~2.8-2.10~~ "Tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle and may include the following types of tires: passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including military, agricultural, off-the-road, recreational/all terrain vehicle, and slow speed industrial).

~~2.9-2.11.~~ "Tire Dealer" means any person or persons engaged in the business of selling tires to an end user in the State of West Virginia.

~~2.10-2.12.~~ "Tire Derived Material" means any shredded, chipped, crumb rubber or other such tire material that has been processed from a tire, used tire or waste tire.

~~2.11-2.13.~~ "Used Tire" means any tire that was originally used for the purposes defined under "tires", but has sufficient tread life or can be recapped for marketability to be safely reused for those same purposes.

~~2.12-2.14.~~ "Vector" means any insect, rodent, or other organism capable of directly or indirectly transmitting infectious diseases or pathogenic organisms from one person to another or from an animal to a person.

~~2.13-2.15.~~ "Waste Tire Chips" means tires or tire derived materials that have been reduced to particle sizes not greater than 2 inches by 2 inches.

~~2.14-2.16.~~ "Waste Tire" means any tire that was originally used for those purposes defined under "tire", or "used tire" and which has been discarded or is not suitable for its original intended purpose: Provided, That a tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not considered to be a waste tire.

~~2.15.~~2.17. "Waste Tire Hauler" means any person or persons who collects waste tires from a tire dealer or other sources and transports waste tires in this state, but shall not include a person or persons who haul waste tires generated by their own business activity, persons hauling their own tires, or where the hauling of waste tires to a solid waste facility is incidental to business activities. Provided that: a waste tire hauler must be a Certificated Motor Carrier regulated by the WV Public Service Commission to lawfully transport waste tires.

~~2.16.~~2.18. "Waste Tire Monofill" means an approved solid waste facility where waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes, provided that, they are not mixed with any other solid waste.

~~2.17.~~2.19. "Waste Tire Processing Facility or Activity" means a solid waste facility or activity who accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cutting, splitting, shredding, quartering, grinding, etc. or otherwise breaking down waste tires for the purpose of disposal, reuse, recycling and/or marketing.

~~2.18.~~2.20. "Waste Tire Storage" means the temporary containment of waste tires at any facility, property, building, mobile tractor trailer, place of business, private residence, or by any person in a manner that does not constitute solid waste disposal. Provided however, that any waste tires in excess of ~~one (1,000) thousand~~ one-hundred (100) that are stored before or after processing for a period of time in excess of ~~twelve (12)~~ (3) three months, except in a waste tire monofill or storage cell, shall be deemed unlawful disposal and shall constitute an open dump.

~~2.19.~~2.21. "Wholesale Distributor" means a person or persons who distribute tires to tire dealers in this state or to its own retail establishments in this state.

47-38G-3. WASTE TIRE MANAGEMENT AND PERMITTING REQUIREMENTS.

3.1. APPLICABILITY.

3.1.1. **Regulated Facilities and Activities.** This rule applies to any person or persons who generate, collect, transport, store, process, reuse, dispose, or otherwise manage waste tires and used tires after June 1, ~~1995~~ 1996, in the State of West Virginia.

3.1.2. **Penalties.** Any person who willfully or negligently violates the provisions of the "Solid Waste Management Act" Chapter 22, Article 15, or any permit or order issued pursuant to Article 15 or rule pursuant to 47 CSR 38G is subject to the

same criminal penalties as set forth in Chapter 22, Article 11, Section 24.

3.1.3. Reasonable and Necessary Exceptions to Prohibiting Tire Material from Disposal in Landfills. Reasonable and necessary exceptions to the prohibition of depositing waste tires in a solid waste facility, which will occur on June 1, ~~1995~~ 1996 are provided and allowed by Chapter 20, Article 11, Section 8(a). These exceptions include:

3.1.3.a. Waste Tire Monofills. Monofills offer the advantage of providing a long term storage site for waste tires or tire derived material, while minimizing the risk of vector attraction, fire and leachate generation until such time that markets are further developed for reuse and recycling.

3.1.3.b. Alternative Daily Cover. Tire derived material may be substituted for daily cover material at solid waste facilities not to exceed an application frequency of two consecutive days: Provided, however, that the substitution for daily cover material shall not be exempt from the state solid waste assessment fee or monthly tonnage limits imposed on landfills.

3.1.3.c. Reuse as Select Waste. Tire derived material may be beneficially reused as a substitute material for the first eight (8) feet of select solid waste by being placed on the protective cover of the composite liner system and shall be exempt from the state solid waste assessment fee and monthly tonnage limit imposed on landfills when beneficially reused for this purpose: Provided, however, that the permittee is required to keep daily logs and include in the monthly tonnage report the amount (tonnage) of tire derived material beneficially reused for this purpose.

~~**3.1.3.d. Exception For Certain Types of Tires:** Certain types of tires are exempt from this rule including the following: tires with a rim size under twelve (12) inches in diameter, bicycle tires, motorcycle tires and solid rubber tires, split tires or other certain types of tires as determined by the Chief.~~

3.2. PERMITS REQUIRED.

3.2.1. Waste Tire Monofill and Waste Tire Processing Facility. A permit must be obtained from the chief prior to the installation, establishment, construction or operation of a waste tire monofill or waste tire processing facility. Provided that, a portable tire grinder or shredding machine shall not constitute a waste tire processing facility, unless determined otherwise by the chief.

3.2.1.a. Waste Tire Processing Activity. A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to conduct waste tire processing activities at the facility: Provided, That such activities fully comply with this rule.

3.2.1.b. Waste Tire Monofill Storage Cell. A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to install and operate a designated storage cell for the placement of waste tires and/or tire derived material at the facility: Provided, That the designated storage cell is located at least two hundred (200) feet from all solid waste disposal cells and fully comply with this rule.

3.2.2. Exceptions to Permits Required. Waste tires or tire derived material that is used as an alternative or supplemental fuel shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility utilizing such material is permitted and regulated by the Office of Air Quality within the Division of Environmental Protection or other state regulatory agency.

3.2.2.a. Use Of Waste Tires As A Raw Material Feedstock. A facility or pilot project which utilizes waste tires as raw material feedstock in a process such as pyrolysis, cryogenics, (chemical/thermal) or high pressure waterjetting to break down waste tires into their respective constituents of crumb rubber, polyester or nylon fiber, steel belts and other constituents not herein specified to develop new and/or recyclable materials shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility is permitted and regulated including the handling, storage, and stockpiling of waste tires consistent with this rule by the Office of Air Quality, Office of Water Resources or other appropriate state regulatory agency. Additionally, the chief may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.

3.2.2.b. Beneficial Applications For Waste Tires. Whole waste tires or tire derived material which are reused in the application of constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feedhoppers or watering troughs for livestock, playground equipment, boat or truck dock construction, house or building construction, go-cart/motorbike or race track barriers, or other beneficial applications not herein specified, shall not require a solid waste facility permit or be regulated under this rule: Provided, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any

manner where human health or the environment, as determined by the chief, is put at risk. The chief shall have the authority to determine if an unreasonable number of waste tires are being stored ~~and/or~~ for an unreasonable length of time for beneficial application and may take enforcement action including the removal of said tires.

3.3. PERMIT APPLICATION REQUIREMENTS.

3.3.1. Regulatory Requirements. Unless otherwise approved by the chief in writing, all applicants for a waste tire monofill/storage cell or waste tire processing facility permit/activity shall comply with the permit application requirements of 47 CSR 38 Section 3.7., as applicable, and the following additional requirements:

3.3.2. Projected Maximum Quantity/Tonnage Information. The proposed annual quantity/tonnage of waste tires and tire derived material to be received, processed and stored at the processing facility/activity shall be stated in the application. The maximum quantity/tonnage received, processed and stored at any given time, may not exceed a projected (quarterly) three month supply. However, if the applicant can verify a market or an end use for the tire derived material by copies of signed contractual agreements, the applicant may be eligible, if approved by the chief in writing, to receive, process and store at any given time, up to a six month supply: Provided, That no more waste tires and tire derived material shall be received at the facility until the previous maximum quantity/tonnage allowed by the chief to be received, processed and stored has been removed from the facility for marketing.

3.3.3. Market Analysis Information. A market analysis relating to waste tires and tire derived material shall be provided by the applicant including:

3.3.3.a. Identification of Potential and Verified Markets. A listing of specific information utilized by the applicant to identify potential and verified markets for the material to be received and processed at the facility shall be provided. Data supplied must also include any material quality requirements of the potential market contacts, market pricing structures, as available and applicable; and the identification of marketing services available for assistance in product quality or material preparation and transportation.

3.3.4. Flow Diagram. The applicant shall provide a flow diagram along with a narrative description of the operation and activities involving the flow of the waste tires from their receipt, processing into tire derived material, storage and transport to market (end use). There must be sufficient explanation in the flow diagram and narrative descriptions to

explain the complete flow of the proposed facility's operation and activities.

3.3.5. Emergency Response Plan. An emergency response plan must be included in the application that includes, at a minimum, the following:

3.3.5.a. Notification Procedures. A notification procedure to summon emergency assistance from the local police departments, fire departments, Division of Environmental Protection and state or local emergency response teams. This procedure must be posted at the facility's office in a conspicuous location and at the main entrance gate visible and legible to the public.

3.3.5.b. Fire Plan. The application shall include a written fire plan with a description of the procedures to be implemented, detailed map depicting location of existing and/or proposed fire hydrants, water supply lines, fire extinguishers or fire ponds if no fire hydrants are to be included in the facility operation or activity and any other proposed fire control equipment. The fire plan must be designed to effectively control a worst case scenario tire fire which could occur at the facility.

3.4. PERMIT APPLICATION FEES.

3.4.1. Amount. The application fees are two thousand five hundred dollars (\$2,500) for a waste tire processing facility and three thousand dollars (\$3,000) for a waste tire monofill and one thousand dollars (\$1,000) for a waste tire processing activity or waste tire monofill storage cell.

3.4.2. Incomplete Application Fee. The Division of Environmental Protection may require an additional fee of ten percent (10%) of the applicable application fee for any application refiled due to deficiency or incompleteness.

3.5. MINIMUM DESIGN AND CONSTRUCTION REQUIREMENTS FOR A WASTE TIRE PROCESSING FACILITY OR ACTIVITY.

3.5.1. Perimeter Security. A waste tire processing facility or activity must be secured and enclosed within a minimum six (6) foot high woven wire or chain link perimeter fence with a lockable entrance gate and an emergency exit gate at another location.

3.5.2. Grade. No portion of the surface of the ground on which waste tires or tire derived material is stored may be less than two percent or greater than eight percent in grade.

3.5.3. Access Roads. All access roads including fire

lanes/fire breaks and the buffer zone must be designed and constructed for all weather conditions with proper storm drainage provisions.

3.5.4. Access Flow and Restrictions. The facility shall be designed in a manner that restricts unauthorized access. Signs shall be posted at the main entrance gate that direct persons entering the facility during regular business hours to report to the site office.

3.5.5. Storage Plan for Waste Tire and Tire Derived Material. The storage plan must address the receiving and handling of waste tires and tire derived material at, to and from the facility. The plan must address the following items at a minimum:

3.5.5.a. Storage Requirements. The facility or activity must be designed to receive, process and store a quantity/tonnage of waste tires and tire derived material in accordance with the provisions of section 3.3.2. of this rule. Include in the application, the calculations necessary for determining the quantity/tonnage.

3.5.5.b. Other Solid Waste Materials. All miscellaneous solid waste materials generated as a result of operations must be properly disposed at an approved solid waste facility within one week after being received and/or generated at the facility;

3.5.5.c. Size Restriction on Storage Piles. Piles of whole waste tires or tire derived material must not exceed fifteen (15) feet in height, one hundred (100) feet in length and fifty (50) feet in width at the base.

3.5.5.d. Location of Storage Piles. Waste tire and tire derived material storage piles at the proposed facility or activity must be shown on a map in sufficient detail including the length, width and height of each storage pile and the location and dimensions of all fire lanes/fire breaks and buffer zones.

3.5.5.e. Spacing of Storage Piles (Fire Lane/Fire Break). Waste tire and tire derived material storage piles must have a minimum fire lane/fire break spacing of fifty (50) feet between piles at the base and fifty (50) feet from buildings or other structures at the base. Fire lanes/fire breaks must be maintained free of any obstructions at all times so that emergency fire fighting equipment will always have access in the event of an incident.

3.5.5.f. Buffer Zone. A buffer zone of fifty (50) feet wide minimum shall be provided between the perimeter fence and

any storage piles. The buffer zone must be kept clear of weeds, trees, vegetation, debris or other materials that may restrict access to all portions of the facility by emergency fire fighting equipment.

3.5.6. Vector Control Plan. A vector control plan shall be submitted that includes the following:

3.5.6.a. Methods of Vector Control. A description of how storage piles and any fire pond impoundment will be maintained to prevent and/or control mosquito breeding and harborage of disease carrying vectors. Methods of acceptable vector control may include, but are not limited to, the following:

3.5.6.a.A. Covering of Storage Pile. Covering by plastic sheets or other impermeable barriers, other than soil, to prevent the accumulation of precipitation in whole tires;

3.5.6.a.B. Chemical Treatment. Chemical treatment to eliminate harborage or breeding may be utilized, provided, That any chemical treatment program utilized as part of the vector control plan must be approved by the West Virginia Department of Agriculture.

3.6. MINIMUM DESIGN AND CONSTRUCTION REQUIREMENTS FOR A WASTE TIRE MONOFILL OR STORAGE CELL.

3.6.1. Unless otherwise approved by the chief in writing, the following specific requirements must be followed in designing and constructing a waste tire monofill or storage cell.

3.6.1.a. Liner System. A liner system shall consist of the following elements:

3.6.1.a.A. Subbase;

3.6.1.a.B. Compacted soil liner; and

3.6.1.a.C. Leachate collection and protective cover zone.

3.6.1.a.D. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.1. as applicable, shall be prepared and maintained in a bound log book at the site in regard to liner system construction.

3.6.1.b. The subbase portion of the liner system shall consist of a cleared and grubbed natural ground surface capable of supporting the entire liner system.

3.6.1.c. The compacted soil liner shall:

3.6.1.c.A. Be a minimum compacted thickness of one (1) foot;

3.6.1.c.B. Be compacted in six (6) inch lifts;

3.6.1.c.C. Be no more permeable than 1×10^{-6} cm/sec based on laboratory and field testing;

3.6.1.c.D. Be free of particles greater than two (2) inches in any dimension;

3.6.1.c.E. Be placed without damaging the subbase;

3.6.1.c.F. Be placed during a period of time when both the air temperature and the soil temperature are above freezing so that neither the compacted soil nor the subbase are frozen;

3.6.1.c.G. Have a slope of at least two percent (2%) to facilitate the drainage of any leachate across the liner surface; and

3.6.1.c.H. Be designed, operated, and maintained so that the physical and chemical characteristics of the liner and its ability to restrict the flow of constituents, or leachate is not adversely affected by the leachate.

3.6.1.c.I. The construction of the compacted soil liner shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of the leachate collection and protective cover zone.

3.6.1.d. The leachate collection and protective cover zone shall:

3.6.1.d.A. Create a flow zone between the compacted soil liner and waste tires and/or tire derived material more permeable than 1×10^{-3} cm/sec based on laboratory and field testing. The leachate collection zone including the piping system must be designed and placed on a minimum slope of two percent (2%) to facilitate efficient leachate drainage and prevent ponding on the compacted soil liner;

3.6.1.d.B. Be at least nine (9) inches thick;

3.6.1.d.C. Be constructed of soil or earthen materials to ensure that the hydraulic leachate head on the compacted soil liner does not exceed one (1) foot at the expected flow capacity from the drainage area except during

storm events;

3.6.1.d.D. Be comprised of clean soil or earthen materials that contain no debris, plant material, rocks, or other solid material larger than one-quarter (1/4) inch in diameter and no material with sharp edges;

3.6.1.d.E. Be graded, uniformly compacted, and smoothed;

3.6.1.d.F. Be installed in a manner that prevents damage to the compacted soil liner; and

3.6.1.d.G. Contain a perforated piping system capable of intercepting liquid within the leachate collection zone and conveying the liquid to control collection points. The piping system shall also meet the following:

3.6.1.d.G.(a) The slope sizing and spacing of the piping system shall assure that liquids drain efficiently from the leachate collection zone;

3.6.1.d.G.(b) The distance between pipes in the piping system may not exceed one (100) hundred feet on center;

3.6.1.d.G.c The pipes shall be installed perpendicular to the flow;

3.6.1.d.G.(d) The minimum diameter of the perforated pipe shall be four (4) inches with a wall thickness of Schedule 40 or greater;

3.6.1.d.G.(e) The pipe shall be capable of supporting anticipated loads without failure based on facility design;

3.6.1.d.G.(f) Rounded stones or aggregates shall be placed around the pipes of the piping system. The stones or aggregates shall be sized to prevent clogging of the pipes and damage to the composite liner;

3.6.1.d.G.(g) The piping system shall be installed in a fashion that facilitates cleanout, maintenance, and monitoring. Manholes or cleanout risers shall be located along the perimeter of the leachate collection piping system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the piping system by water jet flushing or an equivalent method; and

3.6.1.d.G.(h) The leachate collection system shall be cleaned and maintained as necessary.

3.6.1.d.H. The construction of the leachate collection and protective cover zone shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of waste tires or tire derived material in the monofill.

3.7. GENERAL OPERATIONAL REQUIREMENTS.

3.7.1. General Requirements for a waste tire monofill or processing facility activity. Unless otherwise approved by the Chief in writing, no person may operate a waste tire monofill, processing facility or activity that does not conform to an approved plan of operation and the following:

3.7.1.a. Provisions must be made to secure the facility from theft, vandalism and fire, which may include posting a security guard during non-operational hours if so directed by the chief;

3.7.1.b. Confining windblown material within the operational area and controlling dust and noise;

3.7.1.c. Installing and maintaining surface water diversion ditches around the areas;

3.7.1.d. Access to the monofill facility/activity must be restricted through the use of fencing (woven wire or chain link not less than six feet in height);

3.7.1.e. Effective means must be taken to control flies, rodents, vectors, insects and vermin;

3.7.1.f. A supervisor must be on duty at the facility at all times while it is open;

3.7.1.g. The main entrance gate and emergency exit gate must be kept locked when an attendant is not on duty;

3.7.1.h. All burning is prohibited;

3.7.1.i. All topsoil within the facility construction limits shall be salvaged and stored/seeded within the property boundaries for use in the facility closure; and

3.7.1.j. Whole waste tires must be cut into at least four (4) near equal portions, or split into at least two (2) near equal portions, or shredded or chipped prior to placement in a monofill.

3.8. RECORD KEEPING AND REPORTING REQUIREMENTS.

3.8.1. RECORD KEEPING and Reporting Requirements. RECORD KEEPING and reporting requirements for waste tire monofills/storage cells and processing facilities/activities shall include the following:

3.8.1.a. Quarterly Reports. Quarterly reports shall be submitted to the chief prior to the fifteenth day of the next quarterly reporting period on forms provided by, or acceptable to, the chief. More specifically, the report must include:

3.8.1.a.A. Date, quantity and origin of waste tires and tire derived material received at the facility;

3.8.1.a.B. Quantity/tonnage of waste tires and tire derived material processed at the facility;

3.8.1.a.C. Quantity/tonnage of waste tires and tire derived material stored at the facility;

3.8.1.a.D. Name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers transporting waste tires and tire derived material to and from the facility, including the quantity/tonnage of waste tires and tire derived material so transported.

3.8.1.b. Problems, Conditions or Changes. Also, describe in the quarterly report any fires, vector or environmental problems, other conditions, or changes in the facility's operational procedures. In regard to fire, vector or environmental problems which have occurred, describe steps taken to prevent a reoccurrence.

3.8.1.c. Pesticide Application. Identify the name, type and quantities of pesticides used during the reporting period for vector control.

3.8.1.d. Term of RECORD KEEPING. The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.

3.8.2. Annual RECORD KEEPING and Reporting Requirements for Tire Dealers. ~~An annual report is to be submitted to the chief within sixty (60) days of the end of the dealer's fiscal year and must include:~~ Tire dealers must keep records which include the name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the number of waste tires transported from the tire dealer by the waste tire haulers. These records must be made available for inspection by the Chief or by his authorized representative within five (5) days upon request. All records shall be retained for a period of not less than three (3) years.

~~3.8.2.a. The number of new, used and/or retreaded tires sold to customers;~~

~~3.8.2.b. The number of waste tires collected from customers (the tire dealer may accept more waste tires from a customer than the number of new tires purchased); and~~

~~3.8.2.c. The name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the signature of the hauler or their agent transporting waste tires from tire dealer, the number of waste tires transported.~~

~~3.8.2.d. The tire dealer must retain records of the annual report at the place of business for not less than five (5) years.~~

3.8.3. Public Notice Requirements for Tire Dealers. Tire dealers are required to post written notices on at least 8 ½ inch by 11 inch poster clearly visible to all customers and containing the universal recycling symbol and the following language: (Notices are available from the Division of Environmental Protection.)

3.8.3.a. WASTE TIRE MANAGEMENT

3.8.3.b. It is illegal to improperly discard a waste tire in West Virginia;

3.8.3.c. State rules require us to accept D.O.T. regulated waste tires if offered by our customers in exchange for new tires purchased by our customers in a quantity at least equal to the number of new tires purchased at the point of transfer;

~~3.8.3.d. The price of a new tire shall include a waste tire management fee;~~

3.9. BONDING AND FINANCIAL ASSURANCE REQUIREMENTS FOR WASTE TIRE PROCESSING FACILITIES, MONOFILLS AND STORAGE CELLS.

3.9.1. Bonding. Bonding shall be in the amount of \$6,000 per acre with a minimum amount of \$10,000, as specified in Section 22-15-12 of the Code. An additional bond of two dollars per whole waste tire to be received and stored at any given time as projected in the application and/or permit shall be required ~~of waste tire processing facilities, waste tire monofills.~~ Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility, waste tire monofill or storage cell.

3.10. CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE

CELL OR PROCESSING FACILITY/ACTIVITY.

3.10.1. Closure of a Waste Tire Monofill/Storage Cell or Processing Facility/Activity. Should a facility or activity cease operations, or be required to do so by any agency, all of the requirements of 47 CSR 38, Section 6 shall be complied with as applicable including, but not limited to, those specified below:

3.10.1.a. Removal of Miscellaneous Materials. All miscellaneous waste materials including but not limited to wheel rims, hubcaps, paper, trucks, trailers, containers, machinery and other items or debris remaining at the facility at closure shall be removed and taken to a Division of Environmental Protection approved solid waste facility for reuse, recycling and/or disposal as provided in Section 3.9.1 of this rule, no bond may be released until all provisions of this rule have been met.

3.10.1.b. Security During Closure. All trucks, trailers, containers, structures and machinery shall be secured until removed;

3.10.1.c. Revegetation. All disturbed ground shall be graded, mulched and seeded; and

3.10.1.d. Sediment and Erosion Control Structures. Sediment and erosion control structures shall be installed and maintained as necessary to comply with 47 CSR 38 Section 4.5.2.c.

3.10.1.e. Facility Closure Plan. All applicants must submit a closure plan in the permit application.

3.10.2 Storm Water. Storm water and surface water drainage must be directed away from the facility or activity in a manner consistent with state water quality standards.

3.10.3. Closure Cap for a Waste Tire Monofill. A closure cap shall immediately be installed over the final placement of waste tires or tire derived material consisting of:

3.10.3.a. A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material; and

3.10.3.b. A minimum of one (1) foot of intermediate cover soil shall be placed and compacted directly over the filter cloth to create a fire break, minimize the inflow of precipitation and to protect the filter cloth from damage; and

3.10.3.c. A final one (1) foot minimum layer of soil

sloped not less than three percent (3%) nor more than twenty-five percent (25%) grade shall be placed and compacted directly over the intermediate cover and revegetated (amendments, mulch, seed) as applicable in accordance with 47 CSR 38 Section 4.5.6.

3.10.3.d. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.1. as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.

~~3.11. WASTE TIRE ASSESSMENT FEE~~

~~3.11.1. Imposition. On the effective date of this rule, a waste tire assessment fee is hereby levied and imposed upon wholesale distributors engaged in the business of selling new tires to a tire dealer and/or automobile dealers engaged in the business of selling new automobiles, trucks or motorized recreational vehicles in the State of West Virginia. This fee is to be collected at the rate of one dollar and fifty cents per new tire sold to a tire dealer and at the same rate per new tire multiplied by the total number of new tires on any automobile, truck or motorized recreational vehicle sold by an automobile dealer. The fee imposed by this rule shall be in addition to all other fees and taxes levied by law.~~

~~3.11.1.a. Term of Assessment Fee. The fee imposed shall take effect on the effective date of this rule and shall remain in effect through June 30, 2005.~~

~~3.11.1.b. Liability. Each wholesale distributor or automobile dealer is liable for the fee imposed. Each wholesale distributor or automobile dealer who uses new tires, new automobiles, trucks or recreational vehicles in his own business operation in this state is liable for the fee imposed. Each tire dealer who acquires new tires from a person who is not registered with the tax commissioner as a wholesale distributor is liable for the fee imposed.~~

~~3.11.2. Payment and Records. The wholesale distributor or automobile dealer shall pay the fee imposed to the tax commissioner of the State of West Virginia. The fee imposed accrues at the time of sale and shall be remitted monthly for the full amount to the tax commissioner on or before the twentieth (20th) day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the business is required to file returns on forms and in a manner as prescribed by the tax commissioner.~~

~~3.11.3. Dedication of Proceeds. The net proceeds of the waste tire assessment fee collected by the tax commissioner shall be deposited at least monthly in the following designated funds:~~

~~3.11.3.a. Fifty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Reclamation and Environmental Response Fund" which shall be expended by the director for the purposes of reclamation, cleanup and remedial actions at West Virginia tire piles;~~

~~3.11.3.b. Thirty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Enforcement Fund" which shall be expended by the director for administration, inspection, enforcement and permitting activities;~~

~~3.11.3.c. Fifteen percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Management Board Planning Fund" which shall be exclusively dedicated and expended for the purpose of market development, pilot projects, technological research and incentive programs for waste tires and tire derived material; and~~

~~3.11.3.d. Five percent of the net proceeds of the fee collected shall be deposited with the WV Department of Tax and Revenue which shall be expended by the tax commissioner for administering the collection and disbursement of the waste tire assessment fee.~~

RECEIVED

JUN 06 1995

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Legislative Rule Making Review Committee

Rule Title: Waste Tire Management Rule

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Environmental Protection, Water Resources/Waste Management

Address: 1356 Hansford Street
Charleston, West Virginia 25301

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NET	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	112,552		0	112,552	115,000
CURRENT EXPENSE	60,000		0	60,000	60,000
REPAIRS & ALTERNATIONS					
EQUIPMENT	15,600		0	15,600	15,600
OTHER <u>TOTAL</u>	188,152		0	188,152	190,600

2. Explanation of above estimates: 1 tax auditor - \$25,000; 1 tax data entry clerk - \$16,200; 1 SWMS environmental resource specialist III - \$36,852; 1 PPOD program manager - \$36,500; office supplies and equipment - \$20,000 ea. for tax, SWMS and PPOD; 2 leased vehicles, 1 ea. for SWMS and PPOD - \$15,600. Majority of funding will be used to clean up illegal open dump tirepiles and/or contract for their removal.

3. Objectives of these rules: Senate Bill 1021 passed by the legislature required in Chapter 20-11-8(c) that the Division of Environmental Protection promulgate rules to effectively implement and enforce a program to provide for the proper handling and management of waste tires which includes the remediation of numerous illegal open dump tire piles throughout the state. The \$1.50 per waste tire fee X approximately 1.8 waste tires annually = \$2,700,000 annual revenue for program administration.

Rule Title: Waste Tire Management Rule

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. At present, approximately 1.8 million waste tires are properly or improperly disposed in WV annually. It is estimated that it will cost at least \$1.50 per tire to properly manage waste tires. It is also estimated that clean-up of the Inwood Tire Pile and Shorty's Tire Pile will cost approximately 11 million dollars combined.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The proposed rule will impact WV tire dealers, tire wholesalers, and automotive dealers by providing for a waste tire management fee of \$1.50 per new tire.

C. Economic Impact on Citizens/Public at Large.

Most likely increase the retail price for the purchase of a new tire by \$1.50 per tire to provide for the proper management and handling of a waste tire generated from the sale of a new tire.

Date:

10/5/94

Signature of Agency Head or Authorized Representative

Royce Hall



Concerns Industry Has Regarding The Environmental Quality Board's Proposed Changes To Water Quality Standards

A. The Five Mile Rule

Changes to the West Virginia Water Quality Standards (46 C.S.R. 1) that were proposed by the Environmental Quality Board are more stringent than needed to protect human health.

Under the proposed rule, wastewater dischargers that are located more than 100 miles from a public water supply intake must meet the same low discharge limits as a discharger located 1 mile away from the intake.

Dischargers should be subject to strict limits if their wastewater discharge could affect the quality of water drawn into a public water supply. Expensive treatment should not be required where the discharger could have no effect on the public water supply anyway.

Public health is protected if the water drawn into the public water supply meets the criteria established by the Environmental Quality Board for that purpose. Meeting that same criteria outside of mixing zones, for a distance of 5 miles upstream, provides an extra measure of protection. Meeting the same criteria more than 5 miles upstream is overkill and should be deleted from this rule.

The Board's rules for protecting public water supplies are more stringent than those of neighboring states.

Recommendation - The Category A criteria should apply in all areas (except mixing zones) within five miles of a public drinking water intake.

B. Mixing Zones For Bioaccumulative Substances

Denying mixing zones results in much lower permit limits, which requires significant additional treatment and added expense.

A blanket prohibition on mixing zones for substances that may bioaccumulate is unnecessary. Chronic water quality standards are developed after taking into account pollutants' capacity to bioaccumulate. The areas these criteria do not apply make up a small fraction of the total area of streams and rivers inhabited by aquatic life.

Before this stringent restriction is imposed the Board should be required to demonstrate its justification for the restriction and allow public review of any data it is relying upon.

Recommendation - Allow mixing zones for bioaccumulative substances.

Guide to West Virginia Manufacturer Association's Proposal for Changing Water Quality Standards

The West Virginia Manufacturer Association (WVMA) proposes changes to three subsections of the West Virginia Water Quality Standards - §§5.2.c., 5.2.m. and 6.2. The effect of these changes would be to impose Category A criteria for the protection of public water supplies within 5 miles of a public water intake, with more stringent limits allowed one-half mile upstream of an intake. The changes proposed by the WVMA would eliminate the Environmental Quality Board's (EQB) amendments that deny mixing zones for bioaccumulative pollutants and imposed Category A limits even on dischargers a hundred miles from the nearest downstream water intake. The WVMA changes would protect the environment while removing unnecessary burdens on industry.

How to Read This Mark Up

The amendments proposed by the EQB in August, 1995 are left in their original strikethrough and underline form. Language in the EQB's proposed rule that the WVMA would delete is redlined (shadowed), while language the WVMA would add is in bold typeface. After each passage there is a brief italicized clarification of the change the WVMA is advocating.

Proposed Changes to Water Quality Standards

A. Changes to Section 5

5.1. In the permit review and planning process or upon the request of a permit applicant or permittee, the chief may establish on a case-by-case basis an appropriate mixing zone.

5.2 The following guidelines and conditions are applicable to all mixing zones:

a. The chief will assign, on a case-by-case basis, definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones shall take into account the mixing conditions in the receiving stream (i.e. whether complete or incomplete mixing conditions exist). Mixing zones will not be allowed until applicable limits are assigned by the chief in accordance with this section.

b. Concentrations of pollutants which exceed the acute criteria for protection of aquatic life set forth in Appendix E shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the chief. The zone of initial dilution is the area within the mixing zone where initial dilution of the effluent with the receiving water occurs, and where the concentration of the effluent will be its greatest in the water column. Where a zone of initial dilution is assigned by the Chief, the size of the zone shall be determined using one of the four alternatives outlined in Section 4.3.3 of EPA's Technical Support Document for Water Quality-Based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991). Concentrations of pollutants shall not exceed the acute criteria at the edge of the assigned zone of initial dilution. Chronic criteria for

the protection of aquatic life may be exceeded within the mixing zone but shall be met at the edge of the assigned mixing zone.

c. Concentration of pollutants which exceed the criteria for the protection of human health set forth in Appendix E shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau of Public health. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake. No mixing zones for human health criteria shall be assigned for bioaccumulative pollutants. For the purposes of this section, bioaccumulative pollutants are those listed in 40 C.F.R. 132, EPA's Final Water Quality Guidance for the Great Lakes System, Table 6 A, titled "Pollutants that are bioaccumulative chemicals of concern." No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.

The WVMA urges deletion of the redlined language in §5.2.c, above.

m. The Chief may establish for any discharge located one half mile or less upstream of a Category A public water supply intake, effluent limitations for the protection of human health that require additional removal of those pollutants than otherwise would be provided by this section.

The WVMA urges adoption of §5.2.m, above.

B. Changes to Section 6

6.2. Category A -- Water Supply, Public. -- This category is used to describe waters which, after conventional treatment, are used for human consumption. This category includes streams on which the following are located:

- a. All community domestic Water supply systems;
- b. All non-community domestic Water supply systems, (i.e., hospitals, schools, etc.);
- c. All private domestic Water systems; and
- d. All other surface Water intakes where the Water is used for human consumption ;and

This use, and the associated criteria, shall apply to only the stream segment extending upstream from the intake for a distance of five miles. (See Appendix B for partial listing of intakes)

The WVMA urges addition of this language to §6.2., above

~~c. Shall apply to the stream segment extending upstream from the intake for a distance as defined in subsection 7.2.a.B of this series. [(See Appendix B for partial listing of category A waters; see section 7.2.a.B. for additional requirements for category A waters.)~~

The WVMA urges deletion of the redlined material.

C. Changes to Section 7

7.2 Applicability of Water Quality Standards. The following shall apply at all times unless a specific exception is granted in this section:

- a. Water Use Categories as described in Section 6.

A. Based on meeting those Section 6 definitions, tributaries or stream segments may be classified for one or more Water Use Categories. When more than one use exists, they shall be protected by criteria for the use category requiring the most stringent protection.

~~[B. Each segment extending upstream from the intake of a Water supply public (Water Use Category A), for a distance of five(5) miles one-half (1/2) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in Section 8. Provided, however, that In addition, with a that one half (1/4) mile zone extending one half (1/2) mile above the intake, the Chief Office of Water Resources Section, Division of Natural Resources Environmental Protection, may establish for any discharge, effluent limitations for the protection of human health that require additional removal of those pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than either of the two (2) this zones above the intake, the water supply section may include the entire upstream watershed to its headwaters.]~~

The WVMA urges deletion of this subsection.

DECEMBER 12

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, December 12, 1995, 4:00 p.m. to 7:00 p.m.

Senate Finance Committee Room - M-451

- 1. Approval of Minutes - Meeting December 10, 1995**
- 2. Review of Legislative Rules:**
 - a. Governor's Committee on Crime, Delinquency and Correction
Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards**
 - b. Secretary of State
Guidelines for the use of Nicknames and Other Designations on the Ballot**
 - c. Secretary of State
Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty**
 - d. Secretary of State
Numbered Divisions for the Election of Circuit Judges**
 - e. Secretary of State
Combined Voter Registration and Driver Licensing Fund**
 - f. Secretary of State
Official Election Forms and Vendor Authorization**
 - g. Secretary of State
Procedures for Handling Ballots and Counting Write-In Votes in Counties Using Punch Card or Optical Scan Ballots**
 - h. Secretary of State
Standard Size & Format for Rules and Procedures for Publication of the State Register or Parts of the State Register**
 - i. State Election Commission
Regulation of Campaign Finances**
 - j. State Police, WV
West Virginia State Police Professional Standards Investigations**
 - k. Tax Division, State
Bingo**

1. Health, Division of
AIDS-Related Medical Testing and Confidentiality

3. Other Business:

Mr. Buckalew moved that the Committee reconsider its action whereby it approved modifications to the proposed rule. The motion was adopted.

Karen Price and David Youssy, West Virginia Manufacturers Association, and Dale Farley, Office of Air Quality, Norm Steenstra, West Virginia Environmental Council, addressed the Committee regarding the proposed rule and responded to questions from the Committee.

Mr. Buckalew moved that the Committee request that the Division withdraw the proposed rule. A roll call vote was demanded. The motion was adopted 7-5.

Mr. Buckalew moved that the Committee reconsider its action whereby it approved, as modified, the rule proposed by the Division of Environmental Protection, Requirements Governing Water Quality Standards. The motion was adopted.

Mr. Youssy responded to questions from the Committee.

Mr. Buckalew moved that the Committee request that the Division withdraw the proposed rule.

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

Mr. Buckalew moved that the amendments offered by the West Virginia Manufacturers Association be amended into the rule.

Mr. Altizer explained the amendments proposed by the West Virginia Manufacturers Association.

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

Rita Stuart, Associate Counsel, reviewed her abstract on the rule proposed by the Governor's Committee on Crime, Delinquency and Correction, Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards, and stated that the Governor's Committee has agreed to technical modifications.

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

Ms. Stuart explained the rule proposed by the Secretary of State, Guidelines for the Use of Nicknames and Other Designations on the Ballot, and stated that the Secretary of State has agreed to technical modifications.

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

Ms. Stuart reviewed her abstract on the rule proposed by the Secretary of State, Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty.

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

Ms. Stuart explained the rule proposed by the Secretary of State, Numbered Divisions for the Election of Circuit Judges, and stated that the Secretary of State has agreed to technical modifications.

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

Ms. Stuart reviewed her abstract on the rule proposed by the Secretary of State, Combined Voter Registration and Driver Licensing Fund.

Mr. Buckalew moved that the proposed rule be approved. The motion was adopted. Ms. Boley voted "No".

Ms. Stuart explained the rule proposed by the Secretary of State, Official Election Forms and Vendor Authorization.

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

Ms. Stuart reviewed her abstract on the rule proposed by the Secretary of State, Procedures for Handling Ballots and Counting Write-In Votes in Counties Using Punch Card or Optical Scan Ballots, and stated that the Secretary of State has agreed to technical modifications. Mary Ratliff, Deputy Secretary of State, addressed the Committee regarding the proposed rule.

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

Ms. Stuart explained the rule proposed by the Secretary of State, Standard Size & Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, and stated that the Secretary of State has agreed to technical modifications.

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

Ms. Stuart reviewed her abstract on the rule proposed by the State Election Commission, Regulation of Campaign Finances, and stated that the Commission has agreed to technical modifications. She and Bill Harrington, Chief of Staff, Secretary of State Office, responded to questions from the Committee.

Mr. Riggs moved that Section 6.7 of the proposed rule be modified to increase \$5 to \$500 and to increase the number of copies from 50 to 2500. The motion was defeated.

Ms. Compton moved that the proposed rule be approved as modified. A roll call was demanded. The motion was adopted on a vote of 6 to 4.

Ms. Stuart explained the rule proposed by the State Police, West Virginia State Police Professional Standards Investigations and stated that the State Police has agreed to technical modifications.

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

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/12/95

TIME: 4:00 - 7:00 pm

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
12				

RE: _____

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/12/95

TIME: 4:00 - 7:00 p.m.

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker
 Douglas, Vickie, Co-Chair
 Linch, Larry, Vice-Chair
 Compton, Mary Pearl
 Faircloth, Larry V.
 Gallagher, Brian
 Riggs, Dale

✓			
✓			
✓	+		
✓			
✓	+		
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

Tomblin, Earl Ray, President
 Ross, Michael, Co-Chair
 Grubb, David, Vice-Chair
 Anderson, Leonard
 Boley, Donna
 Buckalew, Jack
 Macnaughtan, Don

TOTAL

RE: _____

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/12/95

TIME: 4:00 - 7:00 pm.

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

✓			
✓			
✓	✗		
✓			
	✓		
✓			
✓			
✓			
✓			
✓			
✓			

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE 12/12/95

PLEASE PRINT NAME	PRINT FULL ADDRESS	TITLE---REPRESENTING	CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
John Montgomery	CHARLESTON WV	TAX & REVENUE	IF NECESSARY
Lison Chaffield	1615 Nading Ave SE	ENVIRONMENTAL QUALITY	IF needed
Dale Farley	1558 WASHINGTON ST CHARLESTON WV	WV DEP / OAD	Yes, if necessary
MARVIN GRAY	1108 NORWAY AVE HART TOWN WV 25903	WV GASOLINE ASSOCIATION	X WASTE TIRE
Loretta Haddy	1422 Wash. St., E Chas, WV 25301	state Epidemiologist/BPH	IF NEEDED IF NEEDED
Ron Bryant	"	Bur. Public Consultant	---
Kay Howard	CHAS	DHHR	IF NEEDED
Robert Johnson	1422 Wash St, E Chas, WV 25301	STD/HIV PROG/BPH	---
Karen Price	2001 Quarrier St Chas	WVMA	Water Qual. Regs / Reg 21
David Yaussey	PO Box 1791 Chas	WVMA	X Water Quality Standards
James M. Albert	1204 Kanawha Blvd E, Chas	Gov's Common Crime	
Bill Harrington	stad Capib	Sec. of State	IF needed
Mary Batt. fl	" . . .	" . . .	" "
Norm Steenstra	WV-CAG		Water Quality + Reg 21
Kenneth Shaw	WV-DEP	Sm. Bus. Ombudsman	if needed

IF ON
Agenda 4 ..

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/12/95

TIME: 6:15 p.m.

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

			✓
			✓
			✓
		✓	
		✓	
		✓	
		✓	
			✓
		✓	
		✓	
			✓

7 5

RE: Air Quality - Reg 21
Motion to recommend that agency
withdrawal the rule

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/12/95

TIME: 8:45 pm

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

		✓	
		✓	
		✓	
		✓	
			✓
			✓
			✓
		✓	

RE: State Election Commission - Regulation of Campaign
Finances



Dist. at 12/12/95 meeting

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

December 12, 1995

Gretchen O. Lewis
Secretary

The Honorable Mike Ross
The Honorable Vicki V. Douglas
Co-Chairpersons
Legislative Rule-Making Review Committee
Capitol Building
Charleston, West Virginia 25311

Dear Senator Ross and Delegate Douglas:

Re: Proposed Residential Board and Care Home Licensure Rule, 64 CSR 65

The Department recently completed its analysis of and responses to public comments received regarding the proposed revision of **Residential Board and Care Home Licensure Rule, 64 CSR 65**, and filed the agency-approved rule with the Legislative Rule-Making Review Committee and the Secretary of State. Unfortunately, as staff were finishing the rule and the associated documentation, they realized too late that they had erred in determining the new ninety-day post-comment deadline for filing the rule with the Committee, and that the rule would be filed a week late.

The Department respectfully requests that the Committee accept the rule for review despite the late filing, and offers the following explanation for the lengthy time involved in preparing the rule for filing with the Committee.

Development of the proposed rule has been an extensive and time-consuming process. An earlier version of the proposed amended rule, offered for public comment in the summer of 1994, was intended for review by the 1995 Legislature. However, the scope and substance of the comments received indicated the need for a major rewrite and additional opportunity for public comment. The present revision represents an attempt to be sensitive and responsive to provider concerns while continuing to provide necessary protection for and recognition of the needs of residential board and care home residents and families within the limits of existing laws. The revised draft rule was filed for a public comment period ending on July 31, 1995. Upon request, the comment period was extended through August 21, 1995. Again, the Department received extensive comments and suggestions to evaluate.

The Honorable Mike Ross
The Honorable Vicki V. Douglas
Page 2
December 12, 1995

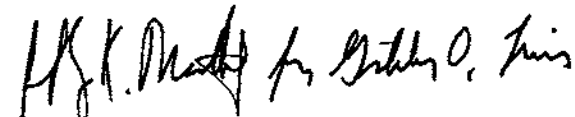
As has been the case throughout the last two years, staff were also working concurrently on a revision of **Personal Care Home Licensure Rule, 64 CSR 14**. Because the two types of facilities have somewhat similar resident populations, the Department believes it important and reasonable to have these two rules the same or similar where appropriate. Therefore, the development process has involved working with the two rules, although because of litigation, the timing constraints have been different. More specific details regarding the personal care home rule will be submitted when the agency-approved revision of that rule is submitted to the Committee later this month.

The Department believes that it would be counterproductive to begin a new public hearing process at this time. It would be more efficient to have the results of legislative review and consideration, rather than to initiate a new public comment process which would be costly, both for providers and the State, and, to some extent, repetitious.

The Department wishes to inform the Committee that it has agreed with Judge Copenhaver to file this rule with the Secretary of State on December 15, 1995 to request approval to put the rule into effect on an emergency basis. The rule is the subject of a court order, and the court and the Department believe that implementation of the provisions of the revised rule are long overdue, from the point of view of improved and clarified protection of residents, for compliance with State and federal law, and to provide providers with a regulatory situation that is more stable and as responsive to their concerns as possible under current law.

I hope that the Committee will accept the rule according to the provisions of W. Va. Code § 29A-3-9. Thank you for your attention in this matter.

Very truly yours,


Gretchen O. Lewis
Secretary

GOL:js

Dist at 12/12/95 meeting

12/12/95

**TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
SERIES 38G
PROPOSED WASTE TIRE MANAGEMENT RULE**

47-38G-1. GENERAL.

1.1. PURPOSE, SCOPE AND APPLICABILITY.

1.1.1. **Purpose.** This rule is intended to meet the requirements of Chapter 20, Article 11, Section 8(c), as amended. That section directed the Division of Environmental Protection to promulgate rules in accordance with the Solid Waste Management Board Plan established under Chapter 20, Article 11, Section 8(b) to properly handle and manage waste tires and used tires.

1.1.2. **Scope.** This legislative rule establishes requirements for the proper handling and management of waste tires and used tires including permitting and reporting procedures pertaining to any facility or activity that generates, processes, or otherwise reuses or recycles tires by whatever means.

1.1.3. **Applicability.** This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste tires and used tires after June 1, 1996 in the State of West Virginia, except as provided in section 3.1 of this rule.

1.2. **AUTHORITY:** West Virginia Code §22-1-3., §22-1-3a., §20-11-8(c).

1.3. **LEGISLATIVE MANDATE:** Effective June 1, ~~1995~~ 1996, it will be unlawful to deposit tires in a solid waste facility in West Virginia: Provided, however, That reasonable and necessary exceptions to such prohibition may be, and are, included in this rule (West Virginia Code §20-11-8{a}).

1.4. **FILING DATE:**

1.5. **EFFECTIVE DATE:**

1.6. **INCORPORATION BY REFERENCE.** Whenever state statutes or rules are incorporated into this rule by reference, the reference is to the statute or rule in effect on the effective date of this rule.

~~1.7. DETERMINATION OF ENVIRONMENTAL PROTECTION ADVISORY~~

~~COUNCIL. It is not necessary to make a determination whereas there is no federal counterpart rule.~~

~~1.8. STRINGENCY. In the event of a federal counterpart rule, this rule is no more less stringent than the federal rule; Provided that, the federal rule meets the specific needs of this state.~~

~~1.9. CONSTITUTIONAL TAKINGS DETERMINATION. The Director of the Division of Environmental Protection has determined that this rule will not result a constitutional taking of real property.~~

47-38G-2. DEFINITIONS.

The following definitions specifically apply to this rule and are listed accordingly. All other definitions unique to W. Va. Code §22-15-2 and 47 CSR 38 are fully incorporated into this rule by reference.

2.1. "Access Road" means all roads providing access to a solid waste facility from a road that is under federal, state, or local authority, or internal roads providing access from one portion of the facility to another.

2.2. "Automobile Dealer" means any business engaged in the sale of new automobiles, trucks or motorized recreational vehicles in the State of West Virginia.

2.3. "Bond" means any performance bond or other form of financial assurance provided by W. Va. Code §22-15-11 and the Solid Waste Management Regulations (47 CSR 38).

2.4. "Chief" means the Chief of the Office of Waste Management of the West Virginia Division of Environmental Protection or his authorized representative.

2.5. "Department of Transportation Symbol" means the identification number placed on new tires mandated by the Federal Motor Vehicle Safety Standards for motor vehicles and motor vehicle equipment pursuant to Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

2.6. "D.O.T. Regulated Tire" means any tire that was originally used for those purposes defined under "tire" or "used tire" or meets the definition of "waste tire" that is identified with a Department of Transportation Symbol.

~~2.5.2.7. "Sale and/or Selling" includes exchange, consignment, barter, gift, and offer for sale. Sale and/or selling includes the removal of tires from a stock of merchandise by a wholesale distributor, or a retail tire dealer, for its own use.~~

~~2-6-2.8.~~ "Shredded Waste Tires" means tires or tire derived material, which has been processed by shredding to particle sizes not greater than 72 square inches, or approximately 6 inches by 12 inches.

~~2.9.~~ "Storage Cell" means a dedicated area for long term storage for waste tires or tire derived material located within an approved solid waste disposal facility for the purpose of long term storage for the eventual retrieval for marketing purposes.

~~2-8-2.10~~ "Tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle and may include the following types of tires: passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including military, agricultural, off-the-road, recreational/all terrain vehicle, and slow speed industrial).

~~2-9-2.11.~~ "Tire Dealer" means any person or persons engaged in the business of selling tires to an end user in the State of West Virginia.

~~2-10-2.12.~~ "Tire Derived Material" means any shredded, chipped, crumb rubber or other such tire material that has been processed from a tire, used tire or waste tire.

~~2-11-2.13.~~ "Used Tire" means any tire that was originally used for the purposes defined under "tires", but has sufficient tread life or can be recapped for marketability to be safely reused for those same purposes.

~~2-12-2.14.~~ "Vector" means any insect, rodent, or other organism capable of directly or indirectly transmitting infectious diseases or pathogenic organisms from one person to another or from an animal to a person.

~~2-13-2.15.~~ "Waste Tire Chips" means tires or tire derived materials that have been reduced to particle sizes not greater than 2 inches by 2 inches.

~~2-14-2.16.~~ "Waste Tire" means any tire that was originally used for those purposes defined under "tire", or "used tire" and which has been discarded or is not suitable for its original intended purpose: Provided, That a tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not considered to be a waste tire.

~~2.15-2.17.~~ "Waste Tire Hauler" means any person or persons who collects waste tires from a tire dealer or other sources and transports waste tires in this state, but shall not include a person or persons who haul waste tires generated by their own business activity, persons hauling their own tires, or where the hauling of waste tires to a solid waste facility is incidental to business activities. Provided that: a waste tire hauler must be a Certificated Motor Carrier regulated by the WV Public Service Commission to lawfully transport waste tires.

~~2.16-2.18.~~ "Waste Tire Monofill" means an approved solid waste facility where waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes, provided that, they are not mixed with any other solid waste.

~~2.17-2.19.~~ "Waste Tire Processing Facility or Activity" means a solid waste facility or activity who accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cutting, splitting, shredding, quartering, grinding, etc. or otherwise breaking down waste tires for the purpose of disposal, reuse, recycling and/or marketing.

~~2.18-2.20.~~ "~~Waste Tire Storage~~" means ~~the temporary containment of one thousand (1,000) or less waste tires at any facility, property, building, mobile tractor trailer, place of business, private residence, or by any person in a manner that does not constitute solid waste disposal. Provided however, that any waste tires in excess of one (1,000) thousand that are stored before or after processing for a period of time in excess of twelve (12) months, except in a waste tire monofill or storage cell, shall be deemed unlawful disposal and shall constitute an open dump.~~

~~2.19-2.20.~~ "Wholesale Distributor" means a person or persons who distribute tires to tire dealers in this state or to its own retail establishments in this state.

47-38G-3. WASTE TIRE MANAGEMENT AND PERMITTING REQUIREMENTS.

3.1. APPLICABILITY.

3.1.1. **Regulated Facilities and Activities.** This rule applies to any person or persons who generate, collect, transport, store, process, reuse, dispose, or otherwise manage waste tires and used tires after June 1, ~~1995~~ 1996, in the State of West Virginia.

3.1.2. **Penalties.** Any person who willfully or negligently violates the provisions of the "Solid Waste Management Act" Chapter 22, Article 15, or any permit or order issued pursuant to Article 15 or rule pursuant to 47 CSR 38G is subject to the

same criminal penalties as set forth in Chapter 22, Article 11, Section 24.

3.1.3. Reasonable and Necessary Exceptions to Prohibiting Tire Material from Disposal in Landfills. Reasonable and necessary exceptions to the prohibition of depositing waste tires in a solid waste facility, which will occur on June 1, ~~1995~~ 1996 are provided and allowed by Chapter 20, Article 11, Section 8(a). These exceptions include:

3.1.3.a. Waste Tire Monofills. Monofills offer the advantage of providing a long term storage site for waste tires or tire derived material, while minimizing the risk of vector attraction, fire and leachate generation until such time that markets are further developed for reuse and recycling.

3.1.3.b. Alternative Daily Cover. Tire derived material may be substituted for daily cover material at solid waste facilities not to exceed an application frequency of two consecutive days: Provided, however, that the substitution for daily cover material shall not be exempt from the ~~state solid waste assessment fee or monthly tonnage limits imposed on landfills.~~

3.1.3.c. Reuse as Select Waste. Tire derived material may be beneficially reused as a substitute material for the first eight (8) feet of select solid waste by being placed on the protective cover of the composite liner system and shall be exempt from the state solid waste assessment fee and monthly tonnage limit imposed on landfills when beneficially reused for this purpose: Provided, however, that the permittee is required to keep daily logs and include in the monthly tonnage report the amount (tonnage) of tire derived material beneficially reused for this purpose.

~~**3.1.3.d. Exception For Certain Types of Tires:** Certain types of tires are exempt from this rule including the following: tires with a rim size under twelve (12) inches in diameter, bicycle tires, motorcycle tires and solid rubber tires, split tires or other certain types of tires as determined by the Chief.~~

3.1.4. Prohibitions. Temporary containment or long term storage of waste tires is prohibited and is deemed unlawful disposal and shall constitute an open dump, unless such temporary containment or long term storage is conducted in strict accordance with the provisions of this rule.

3.2. PERMITS REQUIRED.

3.2.1. Waste Tire Monofill and Waste Tire Processing Facility. A permit must be obtained from the chief prior to

the installation, establishment, construction or operation of a waste tire monofill or waste tire processing facility. Provided that, a portable tire grinder or shredding machine shall not constitute a waste tire processing facility, unless determined otherwise by the chief.

3.2.1.a. Waste Tire Processing Activity. A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to conduct waste tire processing activities at the facility: Provided, That such activities fully comply with this rule.

3.2.1.b. Waste Tire Monofill Storage Cell. A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to install and operate a designated storage cell for the placement of waste tires and/or tire derived material at the facility: Provided, That the designated storage cell is located at least two hundred (200) feet from all solid waste disposal cells and fully comply with this rule.

3.2.2. Exceptions to Permits Required. Waste tires or tire derived material that is used as an alternative or supplemental fuel shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility utilizing such material is permitted and regulated by the Office of Air Quality within the Division of Environmental Protection or other state regulatory agency.

3.2.2.a. Use Of Waste Tires As A Raw Material Feedstock. A facility or pilot project which utilizes waste tires as raw material feedstock in a process such as pyrolysis, cryogenics, (chemical/thermal) or high pressure waterjetting to break down waste tires into their respective constituents of crumb rubber, polyester or nylon fiber, steel belts and other constituents not herein specified to develop new and/or recyclable materials shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility is permitted and regulated including the handling, storage, and stockpiling of waste tires consistent with this rule by the Office of Air Quality, Office of Water Resources or other appropriate state regulatory agency. Additionally, the chief may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.

3.2.2.b. Beneficial Applications For Waste Tires. Whole waste tires or tire derived material which are reused in the application of constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feedhoppers or watering troughs for livestock, playground equipment, boat or truck dock

construction, house or building construction, go-cart/motorbike or race track barriers, or other beneficial applications not herein specified, shall not require a solid waste facility permit or be regulated under this rule: Provided, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the chief, is put at risk. The chief shall have the authority to determine if an unreasonable number of waste tires are being stored and/or for an unreasonable length of time for beneficial application and may take enforcement action including the removal of said tires.

3.3. PERMIT APPLICATION REQUIREMENTS.

3.3.1. Regulatory Requirements. Unless otherwise approved by the chief in writing, all applicants for a waste tire monofill/storage cell or waste tire processing facility permit/activity shall comply with the permit application requirements of 47 CSR 38 Section 3.7., as applicable, and the following additional requirements:

3.3.2. Projected Maximum Quantity/Tonnage Information. The proposed annual quantity/tonnage of waste tires and tire derived material to be received, processed and stored at the processing facility/activity shall be stated in the application. The maximum quantity/tonnage received, processed and stored at any given time, may not exceed a projected (quarterly) three month supply. However, if the applicant can verify a market or an end use for the tire derived material by copies of signed contractual agreements, the applicant may be eligible, if approved by the chief in writing, to receive, process and store at any given time, up to a six month supply: Provided, That no more waste tires and tire derived material shall be received at the facility until the previous maximum quantity/tonnage allowed by the chief to be received, processed and stored has been removed from the facility for marketing.

3.3.3. Market Analysis Information. A market analysis relating to waste tires and tire derived material shall be provided by the applicant including:

3.3.3.a. Identification of Potential and Verified Markets. A listing of specific information utilized by the applicant to identify potential and verified markets for the material to be received and processed at the facility shall be provided. Data supplied must also include any material quality requirements of the potential market contacts, market pricing structures, as available and applicable; and the identification of marketing services available for assistance in product quality or material preparation and transportation.

3.3.4. Flow Diagram. The applicant shall provide a flow diagram along with a narrative description of the operation and activities involving the flow of the waste tires from their receipt, processing into tire derived material, storage and transport to market (end use). There must be sufficient explanation in the flow diagram and narrative descriptions to explain the complete flow of the proposed facility's operation and activities.

3.3.5. Emergency Response Plan. An emergency response plan must be included in the application that includes, at a minimum, the following:

3.3.5.a. Notification Procedures. A notification procedure to summon emergency assistance from the local police departments, fire departments, Division of Environmental Protection and state or local emergency response teams. This procedure must be posted at the facility's office in a conspicuous location and at the main entrance gate visible and legible to the public.

3.3.5.b. Fire Plan. The application shall include a written fire plan with a description of the procedures to be implemented, detailed map depicting location of existing and/or proposed fire hydrants, water supply lines, fire extinguishers or fire ponds if no fire hydrants are to be included in the facility operation or activity and any other proposed fire control equipment. The fire plan must be designed to effectively control a worst case scenario tire fire which could occur at the facility.

3.4. PERMIT APPLICATION FEES.

3.4.1. Amount. The application fees are two thousand five hundred dollars (\$2,500) for a waste tire processing facility and three thousand dollars (\$3,000) for a waste tire monofill and one thousand dollars (\$1,000) for a waste tire processing activity or waste tire monofill storage cell.

3.4.2. Incomplete Application Fee. The Division of Environmental Protection may require an additional fee of ten percent (10%) of the applicable application fee for any application refiled due to deficiency or incompleteness.

3.5. MINIMUM DESIGN AND CONSTRUCTION REQUIREMENTS FOR A WASTE TIRE PROCESSING FACILITY OR ACTIVITY.

3.5.1. Perimeter Security. A waste tire processing facility or activity must be secured and enclosed within a minimum six (6) foot high woven wire or chain link perimeter fence with a lockable entrance gate and an emergency exit gate at another location.

3.5.2. Grade. No portion of the surface of the ground on which waste tires or tire derived material is stored may be less than two percent or greater than eight percent in grade.

3.5.3. Access Roads. All access roads including fire lanes/fire breaks and the buffer zone must be designed and constructed for all weather conditions with proper storm drainage provisions.

3.5.4. Access Flow and Restrictions. The facility shall be designed in a manner that restricts unauthorized access. Signs shall be posted at the main entrance gate that direct persons entering the facility during regular business hours to report to the site office.

3.5.5. Storage Plan for Waste Tire and Tire Derived Material. The storage plan must address the receiving and handling of waste tires and tire derived material at, to and from the facility. The plan must address the following items at a minimum:

3.5.5.a. Storage Requirements. The facility or activity must be designed to receive, process and store a quantity/tonnage of waste tires and tire derived material in accordance with the provisions of section 3.3.2. of this rule. Include in the application, the calculations necessary for determining the quantity/tonnage.

3.5.5.b. Other Solid Waste Materials. All miscellaneous solid waste materials generated as a result of operations must be properly disposed at an approved solid waste facility within one week after being received and/or generated at the facility;

3.5.5.c. Size Restriction on Storage Piles. Piles of whole waste tires or tire derived material must not exceed fifteen (15) feet in height, one hundred (100) feet in length and fifty (50) feet in width at the base.

3.5.5.d. Location of Storage Piles. Waste tire and tire derived material storage piles at the proposed facility or activity must be shown on a map in sufficient detail including the length, width and height of each storage pile and the location and dimensions of all fire lanes/fire breaks and buffer zones.

3.5.5.e. Spacing of Storage Piles (Fire Lane/Fire Break). Waste tire and tire derived material storage piles must have a minimum fire lane/fire break spacing of fifty (50) feet between piles at the base and fifty (50) feet from buildings or other structures at the base. Fire lanes/fire breaks must be maintained free of any obstructions at all times

so that emergency fire fighting equipment will always have access in the event of an incident.

3.5.5.f. Buffer Zone. A buffer zone of fifty (50) feet wide minimum shall be provided between the perimeter fence and any storage piles. The buffer zone must be kept clear of weeds, trees, vegetation, debris or other materials that may restrict access to all portions of the facility by emergency fire fighting equipment.

3.5.6. Vector Control Plan. A vector control plan shall be submitted that includes the following:

3.5.6.a. Methods of Vector Control. A description of how storage piles and any fire pond impoundment will be maintained to prevent and/or control mosquito breeding and harborage of disease carrying vectors. Methods of acceptable vector control may include, but are not limited to, the following:

3.5.6.a.A. Covering of Storage Pile. Covering by plastic sheets or other impermeable barriers, other than soil, to prevent the accumulation of precipitation in whole tires;

3.5.6.a.B. Chemical Treatment. Chemical treatment to eliminate harborage or breeding may be utilized, provided, That any chemical treatment program utilized as part of the vector control plan must be approved by the West Virginia Department of Agriculture.

3.6. MINIMUM DESIGN AND CONSTRUCTION REQUIREMENTS FOR A WASTE TIRE MONOFILL OR STORAGE CELL.

3.6.1. Unless otherwise approved by the chief in writing, the following specific requirements must be followed in designing and constructing a waste tire monofill or storage cell.

3.6.1.a. Liner System. A liner system shall consist of the following elements:

3.6.1.a.A. Subbase;

3.6.1.a.B. Compacted soil liner; and

3.6.1.a.C. Leachate collection and protective cover zone.

3.6.1.a.D. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to liner system construction.

3.6.1.b. The subbase portion of the liner system shall consist of a cleared and grubbed natural ground surface capable of supporting the entire liner system.

3.6.1.c. The compacted soil liner shall:

3.6.1.c.A. Be a minimum compacted thickness of one (1) foot;

3.6.1.c.B. Be compacted in six (6) inch lifts;

3.6.1.c.C. Be no more permeable than 1×10^{-6} cm/sec based on laboratory and field testing;

3.6.1.c.D. Be free of particles greater than two (2) inches in any dimension;

3.6.1.c.E. Be placed without damaging the subbase;

3.6.1.c.F. Be placed during a period of time when both the air temperature and the soil temperature are above freezing so that neither the compacted soil nor the subbase are frozen;

3.6.1.c.G. Have a slope of at least two percent (2%) to facilitate the drainage of any leachate across the liner surface; and

3.6.1.c.H. Be designed, operated, and maintained so that the physical and chemical characteristics of the liner and its ability to restrict the flow of constituents, or leachate is not adversely affected by the leachate.

3.6.1.c.I. The construction of the compacted soil liner shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of the leachate collection and protective cover zone.

3.6.1.d. The leachate collection and protective cover zone shall:

3.6.1.d.A. Create a flow zone between the compacted soil liner and waste tires and/or tire derived material more permeable than 1×10^{-3} cm/sec based on laboratory and field testing. The leachate collection zone including the piping system must be designed and placed on a minimum slope of two percent (2%) to facilitate efficient leachate drainage and prevent ponding on the compacted soil liner;

3.6.1.d.B. Be at least nine (9) inches thick;

3.6.1.d.C. Be constructed of soil or earthen materials to ensure that the hydraulic leachate head on the compacted soil liner does not exceed one (1) foot at the expected flow capacity from the drainage area except during storm events;

3.6.1.d.D. Be comprised of clean soil or earthen materials that contain no debris, plant material, rocks, or other solid material larger than one-quarter (1/4) inch in diameter and no material with sharp edges;

3.6.1.d.E. Be graded, uniformly compacted, and smoothed;

3.6.1.d.F. Be installed in a manner that prevents damage to the compacted soil liner; and

3.6.1.d.G. Contain a perforated piping system capable of intercepting liquid within the leachate collection zone and conveying the liquid to control collection points. The piping system shall also meet the following:

3.6.1.d.G.(a) The slope sizing and spacing of the piping system shall assure that liquids drain efficiently from the leachate collection zone;

3.6.1.d.G.(b) The distance between pipes in the piping system may not exceed one (100) hundred feet on center;

3.6.1.d.G.(c) The pipes shall be installed perpendicular to the flow;

3.6.1.d.G.(d) The minimum diameter of the perforated pipe shall be four (4) inches with a wall thickness of Schedule 40 or greater;

3.6.1.d.G.(e) The pipe shall be capable of supporting anticipated loads without failure based on facility design;

3.6.1.d.G.(f) Rounded stones or aggregates shall be placed around the pipes of the piping system. The stones or aggregates shall be sized to prevent clogging of the pipes and damage to the composite liner;

3.6.1.d.G.(g) The piping system shall be installed in a fashion that facilitates cleanout, maintenance, and monitoring. Manholes or cleanout risers shall be located along the perimeter of the leachate collection piping system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the piping system by water jet flushing or an equivalent method; and

3.6.1.d.G.(h) The leachate collection system shall be cleaned and maintained as necessary.

3.6.1.d.H. The construction of the leachate collection and protective cover zone shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of waste tires or tire derived material in the monofill.

3.7. GENERAL OPERATIONAL REQUIREMENTS.

3.7.1. General Requirements for a waste tire monofill or processing facility activity. Unless otherwise approved by the Chief in writing, no person may operate a waste tire monofill, processing facility or activity that does not conform to an approved plan of operation and the following:

3.7.1.a. Provisions must be made to secure the facility from theft, vandalism and fire, which may include posting a security guard during non-operational hours if so directed by the chief;

3.7.1.b. Confining windblown material within the operational area and controlling dust and noise;

3.7.1.c. Installing and maintaining surface water diversion ditches around the areas;

3.7.1.d. Access to the monofill facility/activity must be restricted through the use of fencing (woven wire or chain link not less than six feet in height);

3.7.1.e. Effective means must be taken to control flies, rodents, vectors, insects and vermin;

3.7.1.f. A supervisor must be on duty at the facility at all times while it is open;

3.7.1.g. The main entrance gate and emergency exit gate must be kept locked when an attendant is not on duty;

3.7.1.h. All burning is prohibited;

3.7.1.i. All topsoil within the facility construction limits shall be salvaged and stored/seeded within the property boundaries for use in the facility closure; and

3.7.1.j. Whole waste tires must be cut into at least four (4) near equal portions, or split into at least two (2) near equal portions, or shredded or chipped prior to placement in a monofill.

3.7.2. General Requirements for Tire Dealers. Tire dealers shall be required to accept D.O.T. regulated tires if offered by their customers in exchange for tires purchased in a quantity equal to the number of tires purchased at the point of transfer.

3.7.2.a. A tire dealer may temporarily contain one thousand (1,000) or less waste tires on the premises for a period not exceeding ninety (90) days, unless otherwise approved by the chief in writing. The temporary containment shall be in a safe and orderly manner which does not constitute solid waste disposal.

3.8. RECORD KEEPING AND REPORTING REQUIREMENTS.

3.8.1. RECORD KEEPING and Reporting Requirements. RECORD KEEPING and reporting requirements for waste tire monofills/storage cells and processing facilities/activities shall include the following:

3.8.1.a. Quarterly Reports. Quarterly reports shall be submitted to the chief prior to the fifteenth day of the next quarterly reporting period on forms provided by, or acceptable to, the chief. More specifically, the report must include:

3.8.1.a.A. Date, quantity and origin of waste tires and tire derived material received at the facility;

3.8.1.a.B. Quantity/tonnage of waste tires and tire derived material processed at the facility;

3.8.1.a.C. Quantity/tonnage of waste tires and tire derived material stored at the facility;

3.8.1.a.D. Name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers transporting waste tires and tire derived material to and from the facility, including the quantity/tonnage of waste tires and tire derived material so transported.

3.8.1.b. Problems, Conditions or Changes. Also, describe in the quarterly report any fires, vector or environmental problems, other conditions, or changes in the facility's operational procedures. In regard to fire, vector or environmental problems which have occurred, describe steps taken to prevent a reoccurrence.

3.8.1.c. Pesticide Application. Identify the name, type and quantities of pesticides used during the reporting period for vector control.

3.8.1.d. **Term of RECORD KEEPING.** The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.

3.8.2. **Annual RECORD KEEPING and Reporting Requirements for Tire Dealers.** ~~An annual report is to be submitted to the chief within sixty (60) days of the end of the dealer's fiscal year and must include:~~ Tire dealers must keep records which include the name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the number of waste tires transported from the tire dealer by the waste tire haulers. These records must be made available for inspection by the Chief or by his authorized representative within five (5) days upon request. All records shall be retained for a period of not less than three (3) years.

~~3.8.2.a. The number of new, used and/or retreaded tires sold to customers;~~

~~3.8.2.b. The number of waste tires collected from customers (the tire dealer may accept more waste tires from a customer than the number of new tires purchased); and~~

~~3.8.2.c. The name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the signature of the hauler or their agent transporting waste tires from tire dealer, the number of waste tires transported.~~

~~3.8.2.d. The tire dealer must retain records of the annual report at the place of business for not less than five (5) years.~~

3.8.3. **Public Notice Requirements for Tire Dealers.** Tire dealers are required to post written notices on at least 8 ½ inch by 11 inch poster clearly visible to all customers and containing the universal recycling symbol and the following language: (Notices are available from the Division of Environmental Protection.)

3.8.3.a. **WASTE TIRE MANAGEMENT**

3.8.3.b. It is illegal to improperly discard a waste tire in West Virginia;

3.8.3.c. State rules require us to accept D.O.T. regulated waste tires if offered by our customers in exchange for new tires purchased by our customers in a quantity at least equal to the number of new tires purchased at the point of transfer;

3.8.3.d. ~~The price of a new tire shall include a waste~~

tire management fee; A fee may be charged by the tire dealer for the proper disposal of the waste tire.

3.9. BONDING AND FINANCIAL ASSURANCE REQUIREMENTS FOR WASTE TIRE PROCESSING FACILITIES, MONOFILLS AND STORAGE CELLS.

3.9.1. Bonding. Bonding shall be in the amount of \$6,000 per acre with a minimum amount of \$10,000, as specified in Section 22-15-12 of the Code. An additional bond of two dollars per whole waste tire to be received and stored at any given time as projected in the application and/or permit shall be required of ~~waste tire processing facilities, waste tire monofills.~~ Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility, waste tire monofill or storage cell.

3.10. CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE CELL OR PROCESSING FACILITY/ACTIVITY.

3.10.1. Closure of a Waste Tire Monofill/Storage Cell or Processing Facility/Activity. Should a facility or activity cease operations, or be required to do so by any agency, all of the requirements of 47 CSR 38, Section 6 shall be complied with as applicable including, but not limited to, those specified below:

3.10.1.a. Removal of Miscellaneous Materials. All miscellaneous waste materials including but not limited to wheel rims, hubcaps, paper, trucks, trailers, containers, machinery and other items or debris remaining at the facility at closure shall be removed and taken to a Division of Environmental Protection approved solid waste facility for reuse, recycling and/or disposal as provided in Section 3.9.1 of this rule, no bond may be released until all provisions of this rule have been met.

3.10.1.b. Security During Closure. All trucks, trailers, containers, structures and machinery shall be secured until removed;

3.10.1.c. Revegetation. All disturbed ground shall be graded, mulched and seeded; and

3.10.1.d. Sediment and Erosion Control Structures. Sediment and erosion control structures shall be installed and maintained as necessary to comply with 47 CSR 38 Section 4.5.2.c.

3.10.1.e. Facility Closure Plan. All applicants must submit a closure plan in the permit application.

3.10.2 Storm Water. Storm water and surface water drainage

must be directed away from the facility or activity in a manner consistent with state water quality standards.

3.10.3. Closure Cap for a Waste Tire Monofill. A closure cap shall immediately be installed over the final placement of waste tires or tire derived material consisting of:

3.10.3.a. A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material; and

3.10.3.b. A minimum of one (1) foot of intermediate cover soil shall be placed and compacted directly over the filter cloth to create a fire break, minimize the inflow of precipitation and to protect the filter cloth from damage; and

3.10.3.c. A final one (1) foot minimum layer of soil sloped not less than three percent (3%) nor more than twenty-five percent (25%) grade shall be placed and compacted directly over the intermediate cover and revegetated (amendments, mulch, seed) as applicable in accordance with 47 CSR 38 Section 4.5.6.

3.10.3.d. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.

~~3.11. WASTE TIRE ASSESSMENT FEE~~

~~3.11.1. Imposition. On the effective date of this rule, a waste tire assessment fee is hereby levied and imposed upon wholesale distributors engaged in the business of selling new tires to a tire dealer and/or automobile dealers engaged in the business of selling new automobiles, trucks or motorized recreational vehicles in the State of West Virginia. This fee is to be collected at the rate of one dollar and fifty cents per new tire sold to a tire dealer and at the same rate per new tire multiplied by the total number of new tires on any automobile, truck or motorized recreational vehicle sold by an automobile dealer. The fee imposed by this rule shall be in addition to all other fees and taxes levied by law.~~

~~3.11.1.a. Term of Assessment Fee. The fee imposed shall take effect on the effective date of this rule and shall remain in effect through June 30, 2005.~~

~~3.11.1.b. Liability. Each wholesale distributor or automobile dealer is liable for the fee imposed. Each wholesale distributor or automobile dealer who uses new tires, new automobiles, trucks or recreational vehicles in his own business operation in this state is liable for the fee imposed. Each tire dealer who acquires new tires from a person who is~~

~~not registered with the tax commissioner as a wholesale distributor is liable for the fee imposed.~~

~~3.11.2. Payment and Records. The wholesale distributor or automobile dealer shall pay the fee imposed to the tax commissioner of the State of West Virginia. The fee imposed accrues at the time of sale and shall be remitted monthly for the full amount to the tax commissioner on or before the twentieth (20th) day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the business is required to file returns on forms and in a manner as prescribed by the tax commissioner.~~

~~3.11.3. Dedication of Proceeds. The net proceeds of the waste tire assessment fee collected by the tax commissioner shall be deposited at least monthly in the following designated funds:~~

~~3.11.3.a. Fifty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Reclamation and Environmental Response Fund" which shall be expended by the director for the purposes of reclamation, cleanup and remedial actions at West Virginia tire piles;~~

~~3.11.3.b. Thirty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Enforcement Fund" which shall be expended by the director for administration, inspection, enforcement and permitting activities;~~

~~3.11.3.c. Fifteen percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Management Board Planning Fund" which shall be exclusively dedicated and expended for the purpose of market development, pilot projects, technological research and incentive programs for waste tires and tire derived material; and~~

~~3.11.3.d. Five percent of the net proceeds of the fee collected shall be deposited with the WV Department of Tax and Revenue which shall be expended by the tax commissioner for administering the collection and disbursement of the waste tire assessment fee.~~

Dist 12/12/95 meeting



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

December 15, 1995

Gaston Caperton
Governor

Fred VanKirk, P.E.
Secretary
Commissioner of Highways

Senator Mike Ross, Co-Chair
Legislative Rulemaking Review Committee
Room MB47
State Capitol
Charleston, West Virginia 25305

Delegate Vicki V. Douglas, Co-Chair
Legislative Rulemaking Review Committee
Room MB47
State Capitol
Charleston, West Virginia 25305

Dear Senator Ross and Delegate Douglas:

Re: Revisions to Rule 45CSR21; Emissions of Volatile Organic Compounds

The West Virginia Department of Transportation has closely followed the development of the above referenced rule because of its implications regarding possible highway funding and construction sanctions. As you are aware, the rule has been developed by the West Virginia Division of Environmental Protection, Office of Air Quality (OAQ), and proposes to amend the existing 45CSR21 by relaxing certain requirements on industry. We are particularly concerned about possible revisions beyond those proposed by OAQ that may further relax requirements for large facilities. We appreciate this opportunity to bring our concerns to your attention.

The attached paper summarizes the WVDOT/DOH position regarding the rule. This office strongly supports the OAQ rule as presently proposed. We oppose further modifications which might jeopardize our ability to meet federal air quality conformity requirements. These requirements are mandated for areas that fail to meet air quality standards, and they continue to apply once an area is redesignated to maintenance area status. However, the requirements become much more difficult - if not impossible - to meet if the area slips again into an ozone non-attainment designation.

Senator Mike Ross
Delegate Vicki V. Douglas
December 15, 1995
Page 2

Achieving attainment of air quality standards has proven to be an extremely challenging and arduous task for many areas of the county. Control of volatile organic compounds is generally considered necessary to attain and maintain the ozone standards. We believe that continued maintenance will become more difficult in the future, even under the best of circumstances. As can be seen on the attached charts, ozone levels in our maintenance areas have been increasing over the past few years. They have reached the point that ozone exceedances have already occurred, threatening a return to non-attainment conditions.

As the charts also illustrate, transportation sources represent a relatively small portion of total emissions in West Virginia, and their emissions reduction potential is proportionately even lower. At the same time, any further reductions from transportation sources would be most difficult to obtain. Should any of our maintenance areas fail to maintain air quality standards, penalties on this agency would be inordinately harsh and would be felt most directly by West Virginia motorists.

Any revisions to Section 40 that would relax existing state standards beyond the level proposed by OAQ would place our transportation program in several counties in very serious jeopardy. It would be difficult to over-emphasize the threat to many needed highway projects should any of our regions revert to air quality non-attainment status. We believe the OAQ has proposed a fair and reasoned approach to this issue, and we urge your support for the revisions proposed by that office. We would be happy to discuss this matter further with you or to answer any questions you might have.

We urge you to take a few moments to review the attached summary and charts, and to consider the implications to our state's transportation program as you review and recommend legislative revisions to existing air quality rules.

Very truly yours,

Original Signed by
Fred VanKirk

Fred VanKirk
Secretary -
Commissioner of Highways

FV:Ww

Attachments

PROPOSED REVISIONS TO SECTION 40
REGULATION OF VOLATILE ORGANIC COMPOUNDS

WVDOT-DOH POSITION
December 1995

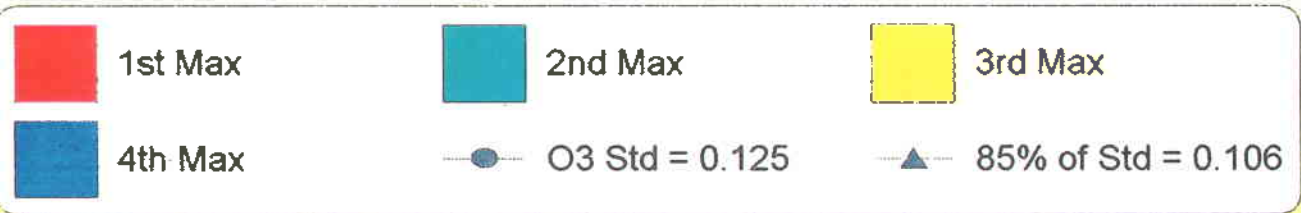
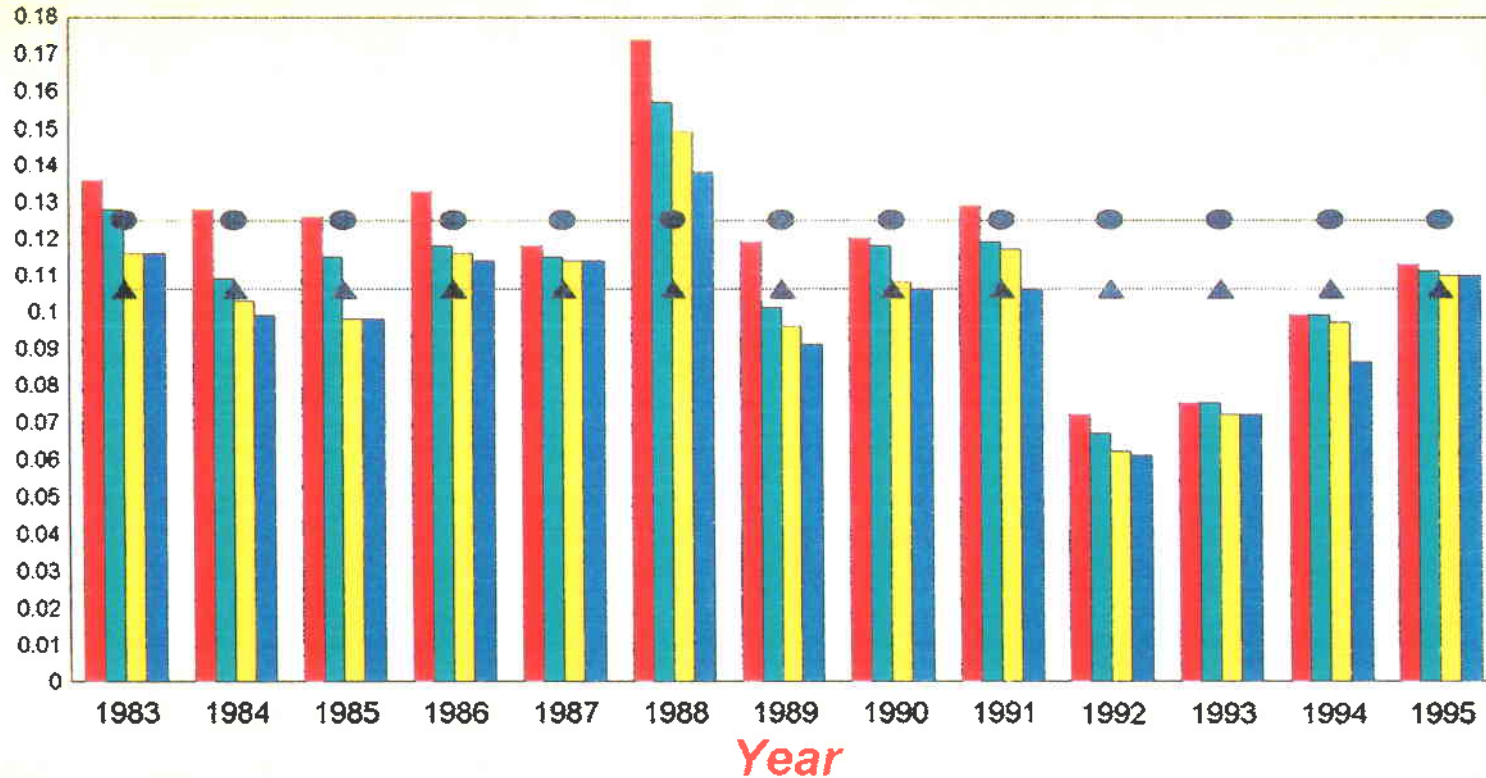
- Federal law enacted as part of the Clean Air Act Amendments of 1990 states that transportation plans, programs, and projects within air quality non-attainment areas must meet strict air quality "conformity" requirements promulgated by the Federal EPA.
- With regard to air quality and its regulation, Cabell-Wayne, Kanawha-Putnam, and Wood Counties are the areas of major concern to West Virginia's transportation program at this time. These counties were formerly designated non-attainment for ozone.
- A decline in emissions in the early Nineties (attached charts 1, 2, and 3) enabled the above non-attainment areas to be redesignated (by the Federal EPA) to maintenance status. This had the effect of easing conformity requirements somewhat. However, as shown in the attached charts, ozone levels are again approaching or exceeding allowable standards in these counties.
- Highways are among the first to receive Federal sanctions in the event of an area slipping into non-attainment. Such sanctions can amount to a virtual freeze on Federal-aid highway funds in the affected counties. Should any of the above counties slip back into non-attainment, capacity-improving projects there would be jeopardized.
- Sample projects of concern would be the proposed regional airport, if it were located in Putnam County, and its proposed access roads; capacity-improving projects in the I-64 corridor in Kanawha, Putnam, Cabell and Wayne Counties; the proposed I-73 corridor highway in Wayne County; improvements to 8th Avenue in Huntington; the Merrick Creek connector in Cabell County; upgrading of US 35 to four lanes in Putnam County; the completion of Appalachian Corridor "D" in Wood County; and several other projects intended to add roadway capacity in these counties.
- Autos only account for 24.3% of the total emissions, as shown in attached chart 4. Section 40 Point Sources account for 40.8% of the total.
- Emission reductions from a vehicular Inspection and Maintenance Program would account for only 1.6% of possible reductions (attached chart 5). Section 40 emitters could account for a 32.6% reduction.

- Waiting for violations to trigger redesignation to non-attainment, and the consequent activation of contingency measures, would mean that highways and motorists would be hit first. However, they represent the source least able to reduce emissions in the above counties.
- Under existing Federal law, EPA may require an Inspection and Maintenance Program if a maintenance area reverts to non-attainment.
- Should the Inspection and Maintenance Program(s) not prove effective, Transportation Control Measures may have to be proposed by West Virginia and approved by EPA. These Transportation Control Measures could directly affect the way West Virginia motorists in the affected counties could use their vehicles, as well as the costs for such use. Transportation Control Measures have proven very unpopular in other states.
- Although West Virginia motorists would almost certainly view Transportation Control Measures as extreme, experience in other states has shown these measures to be relatively ineffective in reducing overall emissions.
- Any area that fails to meet certain Clean Air Act Amendments requirements for two years can face a Federal Implementation Plan developed for that area by EPA.
- WVDOT supports the WVOAQ's proposed Section 40 legislation and believes that it should be enacted without modification to avoid transportation project delays and the possible imposition of an Inspection and Maintenance Program for motor vehicles.

Charleston (Kanawha-Putnam), WV

Recorded Ozone Maximums: 1983-1995

Hourly Peak Ozone Levels: ppm

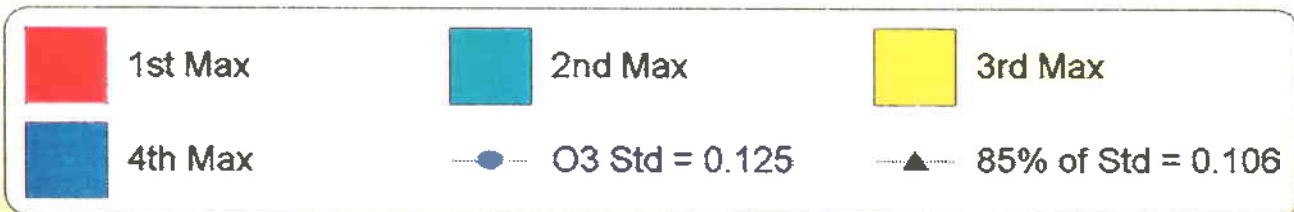
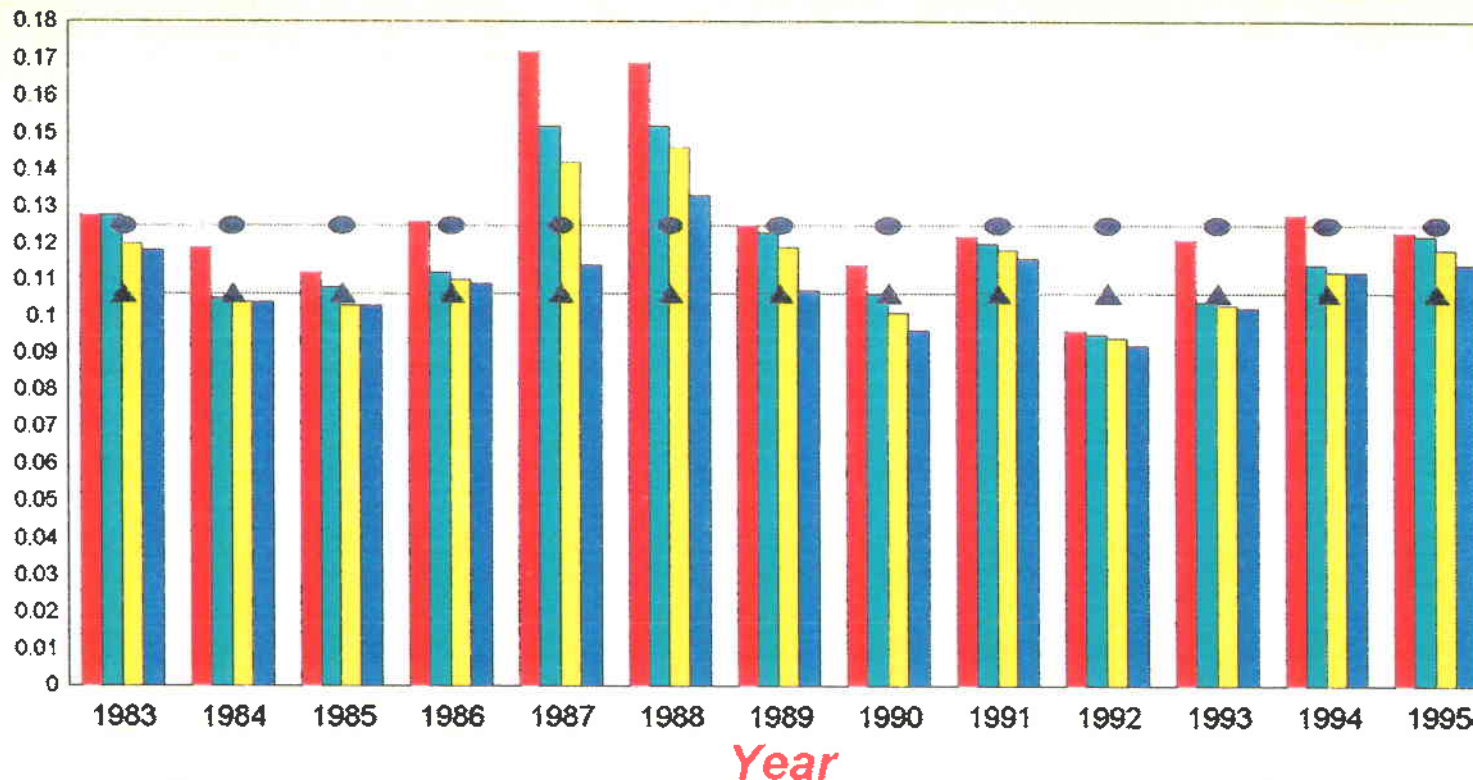


4 exceedances (above top line) in any 3 year period is considered a violation.

Parkersburg (Wood), WV

Recorded Ozone Maximums: 1983-1995

Hourly Peak Ozone Levels:ppm

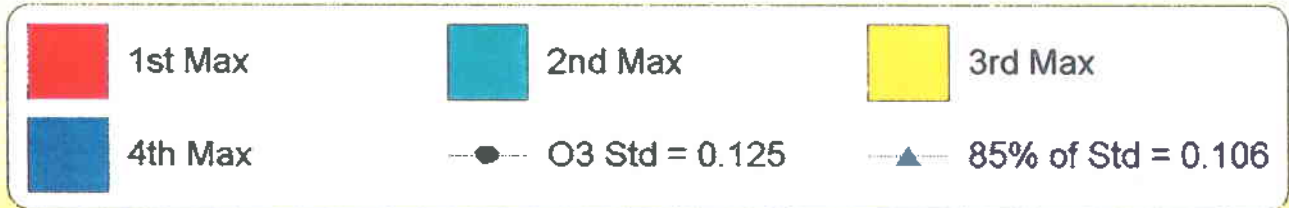
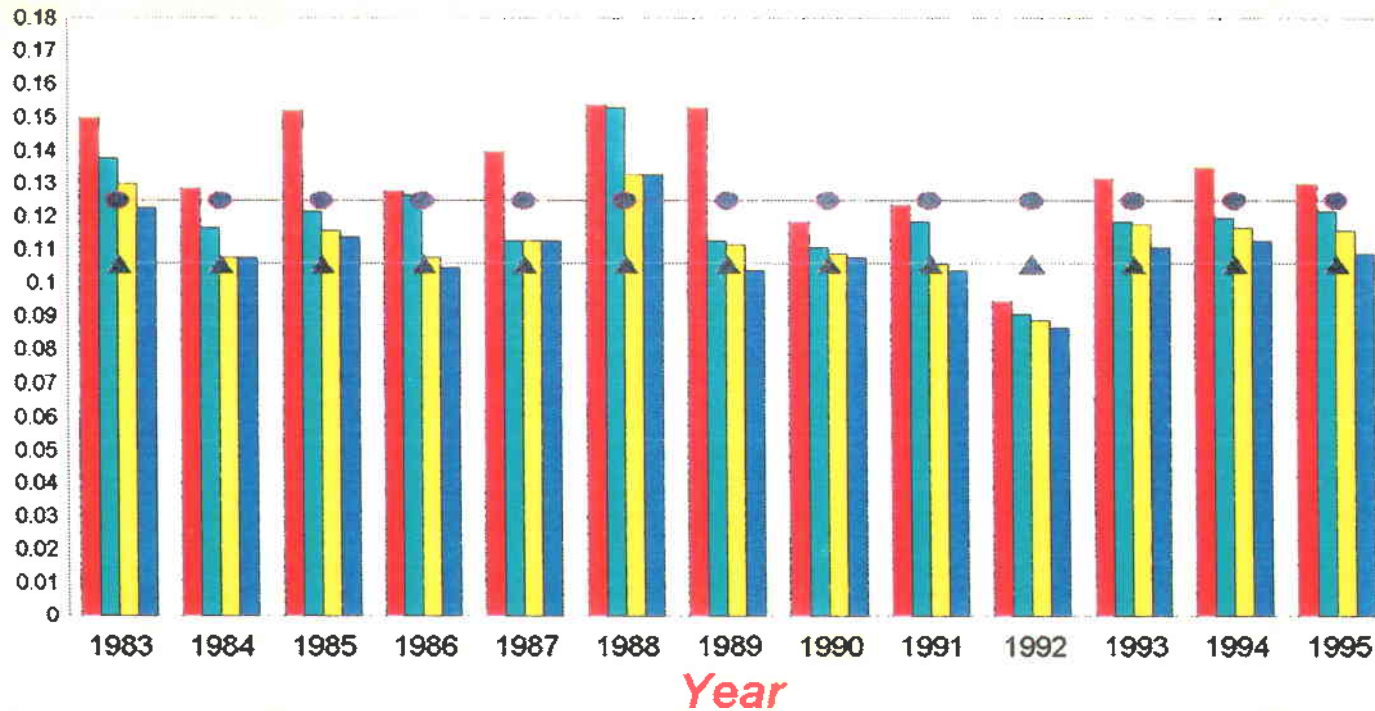


4 exceedances (above top line) in any 3 year period is considered a violation.

Huntington (Cabell-Wayne), WV

Recorded Ozone Maximums: 1983-1995

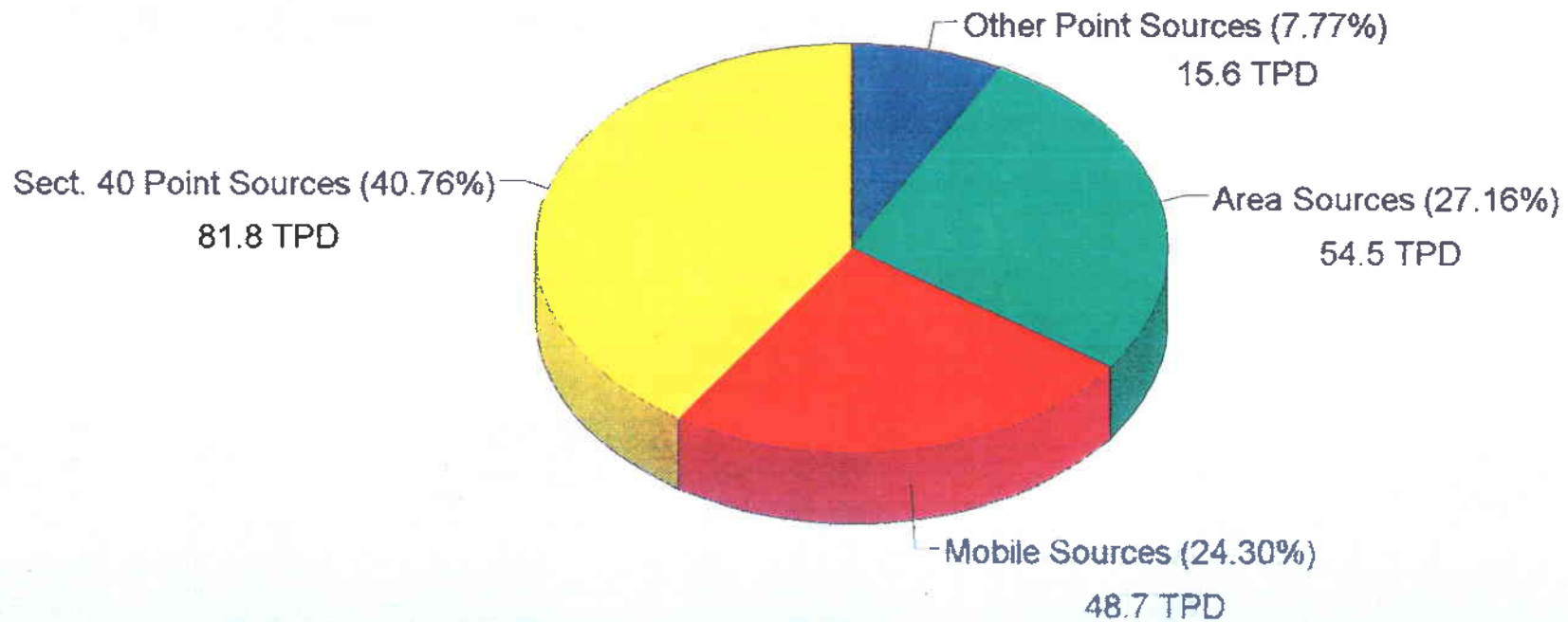
Hourly Peak Ozone Levels:ppm



4 exceedances (above top line) in any 3 year period is considered a violation.

WV Ozone Maintenance Areas

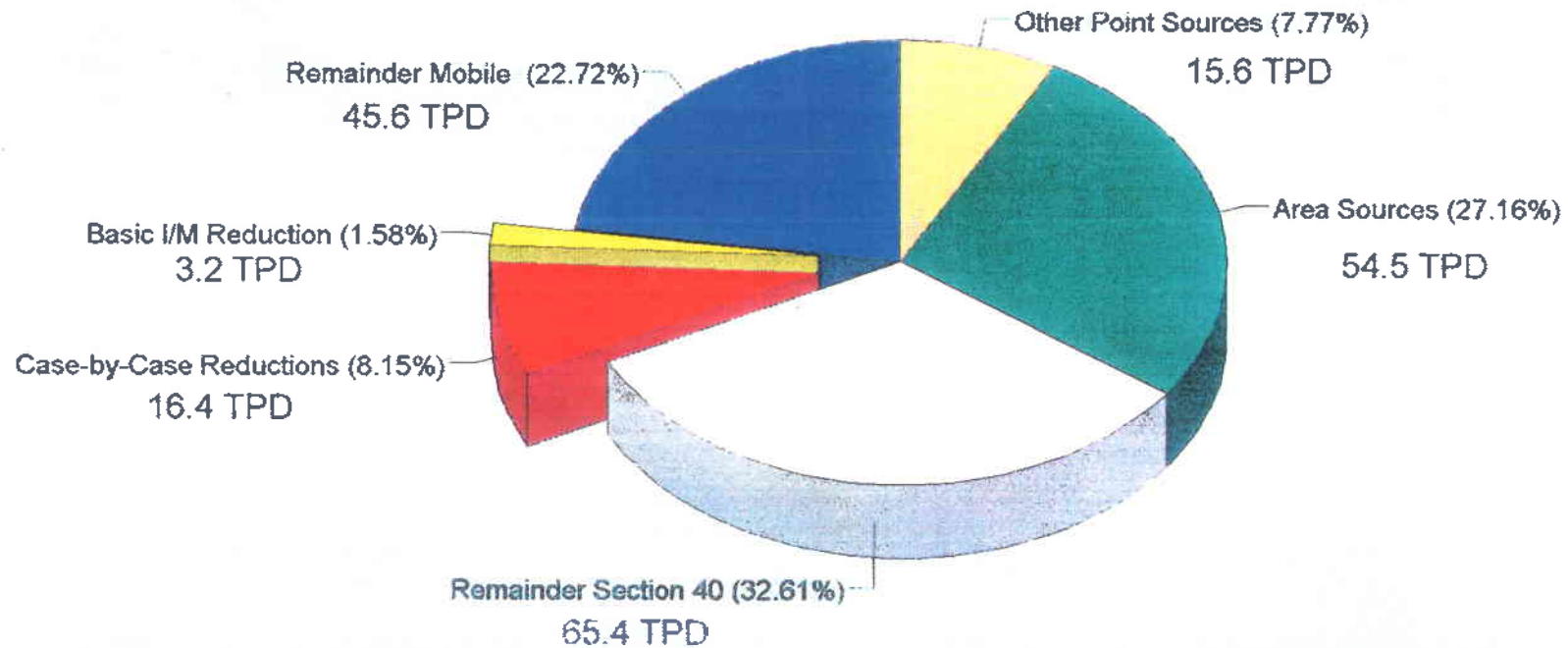
1990 VOC Emissions, Aggregate [Tons Per Day (TPD)]



Percentages (%) are fractions of 1990 man-made VOC emissions, aggregate for all maintenance areas.

Ozone Maintenance Areas

Comparison of Potential Reduction Programs' Effectiveness



**Based on 1990 Emission Levels [Tons per Day (TPD)]
Case-by-Case Reductions Assume 20% VOC Decrease**

Percentages (%) are fractions of 1990 man-made VOC emissions, aggregate for all maintenance areas.



ENVIRONMENTAL QUALITY BOARD

1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126
(304) 558-4002

Fax: (304) 558-0899

Gaston Caperton
Governor

Charles R. Jenkins
Chairman

December 12, 1995

Delegate Vicki Douglas and Senator Mike Ross, Cochairs
Legislative Rule-Making Review Committee
Building 1, Room 152
1900 Kanawha Blvd.
Charleston, West Virginia 25305-0470

RE: Legislative Rule 46 CSR 1, Requirements Governing Water Quality Standards

Dear Delegate Douglas and Senator Ross :

As you are aware, the Board has submitted proposed revisions to the rule identified above for consideration by your committee in the upcoming legislative session. Those revisions alter the provision known as the "five mile rule," which restricts discharges in the zone above drinking water intakes.

The West Virginia Manufacturers Association recently approached the Board's technical advisor, seeking to negotiate certain changes in the proposed revisions to the five mile rule. The Board has declined to negotiate further with the WVMA on the proposed rule.

The Board's decision not to engage in further negotiations on this rule is based on our commitment to the public comment process established for legislative rulemaking activities. As you are aware, the prospect of revisions to the five mile rule resulted in significant public interest during the 1995 legislative session. Since that time, the Board has made a strong effort to provide the public with ample opportunity to comment on the proposed revisions to the five mile rule. The Board held two public meetings to accept comments on the proposed changes as well as a 30 day public comment period during which we received numerous comments addressing a variety of concerns about amending the five mile rule.

The Board considered these comments carefully and, in fact, revised the proposed version of our rule to address some of the concerns raised during the comment period. We believe that the proposal before you is a fair compromise which alleviates the economic hardship of the current requirement while ensuring the protection of the waters which serve as the drinking water supply for the citizens of the state. The Board feels that to consider further changes requested by the WVMA after the close of the public comment period would be unfair to the many other parties who showed an interest in and provided comments on the proposal.

We appreciate your consideration of this matter and look forward to assisting you in your consideration of the proposed rule.

Sincerely,

A handwritten signature in cursive script that reads "Charles R. Jenkins".

Charles R. Jenkins, Ph.D.
Chairman

Dist. 12/12/95
Meeting

ENVIRONMENTAL QUALITY BOARD

1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126
(304) 558-4002

Gaston Caperton
Governor

Fax: (304) 558-0899

Charles R. Jenkins
Chairman

December 12, 1995

Delegate Vicki Douglas and Senator Mike Ross, Cochairs
Legislative Rule-Making Review Committee
Building 1, Room 152
1900 Kanawha Blvd.
Charleston, West Virginia 25305-0470

RE: Legislative Rule 46 CSR 1, Requirements Governing Water Quality Standards

Dear Delegate Douglas and Senator Ross :

As you are aware, the Board has submitted proposed revisions to the rule identified above for consideration by your committee in the upcoming legislative session. Those revisions alter the provision known as the "five mile rule," which restricts discharges in the zone above drinking water intakes.

The West Virginia Manufacturers Association recently approached the Board's technical advisor, seeking to negotiate certain changes in the proposed revisions to the five mile rule. The Board has declined to negotiate further with the WVMA on the proposed rule.

The Board's decision not to engage in further negotiations on this rule is based on our commitment to the public comment process established for legislative rulemaking activities. As you are aware, the prospect of revisions to the five mile rule resulted in significant public interest during the 1995 legislative session. Since that time, the Board has made a strong effort to provide the public with ample opportunity to comment on the proposed revisions to the five mile rule. The Board held two public meetings to accept comments on the proposed changes as well as a 30 day public comment period during which we received numerous comments addressing a variety of concerns about amending the five mile rule.

The Board considered these comments carefully and, in fact, revised the proposed version of our rule to address some of the concerns raised during the comment period. We believe that the proposal before you is a fair compromise which alleviates the economic hardship of the current requirement while ensuring the protection of the waters which serve as the drinking water supply for the citizens of the state. The Board feels that to consider further changes requested by the WVMA after the close of the public comment period would be unfair to the many other parties who showed an interest in and provided comments on the proposal.

We appreciate your consideration of this matter and look forward to assisting you in your consideration of the proposed rule.

Sincerely,

A handwritten signature in cursive script that reads "Charles R. Jenkins".

Charles R. Jenkins, Ph.D.
Chairman

Concerns Industry Has Regarding The Environmental Quality Board's Proposed Changes To Water Quality Standards

A. The Five Mile Rule

Changes to the West Virginia Water Quality Standards (46 C.S.R. 1) that were proposed by the Environmental Quality Board are more stringent than needed to protect human health.

Under the proposed rule, wastewater dischargers that are located more than 100 miles from a public water supply intake must meet the same low discharge limits as a discharger located 1 mile away from the intake.

Dischargers should be subject to strict limits if their wastewater discharge could affect the quality of water drawn into a public water supply. Expensive treatment should not be required where the discharger could have no effect on the public water supply anyway.

Public health is protected if the water drawn into the public water supply meets the criteria established by the Environmental Quality Board for that purpose. Meeting that same criteria outside of mixing zones, for a distance of 5 miles upstream, provides an extra measure of protection. Meeting the same criteria more than 5 miles upstream is overkill and should be deleted from this rule.

The Board's rules for protecting public water supplies are more stringent than those of neighboring states.

Recommendation - The Category A criteria should apply in all areas (except mixing zones) within five miles of a public drinking water intake.

B. Mixing Zones For Bioaccumulative Substances

Denying mixing zones results in much lower permit limits, which requires significant additional treatment and added expense.

A blanket prohibition on mixing zones for substances that may bioaccumulate is unnecessary. Chronic water quality standards are developed after taking into account pollutants' capacity to bioaccumulate. The areas these criteria do not apply make up a small fraction of the total area of streams and rivers inhabited by aquatic life.

Before this stringent restriction is imposed the Board should be required to demonstrate its justification for the restriction and allow public review of any data it is relying upon.

Recommendation - Allow mixing zones for bioaccumulative substances.

Guide to West Virginia Manufacturer Association's Proposal for Changing Water Quality Standards

The West Virginia Manufacturer Association (WVMA) proposes changes to three subsections of the West Virginia Water Quality Standards - §§5.2.c., 5.2.m. and 6.2. The effect of these changes would be to impose Category A criteria for the protection of public water supplies within 5 miles of a public water intake, with more stringent limits allowed one-half mile upstream of an intake. The changes proposed by the WVMA would eliminate the Environmental Quality Board's (EQB) amendments that deny mixing zones for bioaccumulative pollutants and imposed Category A limits even on dischargers a hundred miles from the nearest downstream water intake. The WVMA changes would protect the environment while removing unnecessary burdens on industry.

How to Read This Mark Up

The amendments proposed by the EQB in August, 1995 are left in their original strikethrough and underline form. Language in the EQB's proposed rule that the WVMA would delete is redlined (shadowed), while language the WVMA would add is in bold typeface. After each passage there is a brief italicized clarification of the change the WVMA is advocating.

Proposed Changes to Water Quality Standards

A. Changes to Section 5

5.1. In the permit review and planning process or upon the request of a permit applicant or permittee, the chief may establish on a case-by-case basis an appropriate mixing zone.

5.2 The following guidelines and conditions are applicable to all mixing zones:

a. The chief will assign, on a case-by-case basis, definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones shall take into account the mixing conditions in the receiving stream (i.e. whether complete or incomplete mixing conditions exist). Mixing zones will not be allowed until applicable limits are assigned by the chief in accordance with this section.

b. Concentrations of pollutants which exceed the acute criteria for protection of aquatic life set forth in Appendix E shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the chief. The zone of initial dilution is the area within the mixing zone where initial dilution of the effluent with the receiving water occurs, and where the concentration of the effluent will be its greatest in the water column. Where a zone of initial dilution is assigned by the Chief, the size of the zone shall be determined using one of the four alternatives outlined in Section 4.3.3 of EPA's Technical Support Document for Water Quality-Based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991). Concentrations of pollutants shall not exceed the acute criteria at the edge of the assigned zone of initial dilution. Chronic criteria for

the protection of aquatic life may be exceeded within the mixing zone but shall be met at the edge of the assigned mixing zone.

c. Concentration of pollutants which exceed the criteria for the protection of human health set forth in Appendix E shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau of Public health. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake. No mixing zones for human health criteria shall be assigned for bioaccumulative pollutants. For the purposes of this section, bioaccumulative pollutants are those listed in 40 C.F.R. 132, EPA's Final Water Quality Guidance for the Great Lakes System, Table 6.A, titled "Pollutants that are bioaccumulative chemicals of concern." No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.

The WVMA urges deletion of the redlined language in §5.2.c, above.

m. The Chief may establish for any discharge located one half mile or less upstream of a Category A public water supply intake, effluent limitations for the protection of human health that require additional removal of those pollutants than otherwise would be provided by this section.

The WVMA urges adoption of §5.2.m, above.

B. Changes to Section 6

6.2. Category A -- Water Supply, Public. -- This category is used to describe waters which, after conventional treatment, are used for human consumption. This category includes streams on which the following are located:

- a. All community domestic Water supply systems;
- b. All non-community domestic Water supply systems, (i.e., hospitals, schools, etc.);
- c. All private domestic Water systems; and
- d. All other surface Water intakes where the Water is used for human consumption ;and

This use, and the associated criteria, shall apply to only the stream segment extending upstream from the intake for a distance of five miles. (See Appendix B for partial listing of intakes)

The WVMA urges addition of this language to §6.2., above

~~e. Shall apply to the stream segment extending upstream from the intake for a distance as defined in subsection 7.2.a.B of this series. [(See Appendix B for partial listing of category A waters, see section 7.2.a.B. for additional requirements for category A waters.)~~

The WVMA urges deletion of the redlined material.

C. Changes to Section 7

7.2 Applicability of Water Quality Standards. The following shall apply at all times unless a specific exception is granted in this section:

- a. Water Use Categories as described in Section 6.

A. Based on meeting those Section 6 definitions, tributaries or stream segments may be classified for one or more Water Use Categories. When more than one use exists, they shall be protected by criteria for the use category requiring the most stringent protection.

~~[B. Each segment extending upstream from the intake of a Water supply public (Water Use Category A), for a distance of five(5) miles one-half (1/2) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in Section 8. Provided, however, that in addition, with a that one half (1/2) mile zone extending one half (1/2) mile above the intake, the Chief, Office of Water Resources Section, Division of Natural Resources Environmental Protection, may establish for any discharge, effluent limitations for the protection of human health that require additional removal of those pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than either of the two (2) this zones above the intake, the water supply section may include the entire upstream watershed to its headwaters.]~~

The WVMA urges deletion of this subsection.

PROPOSED REVISIONS TO SECTION 40
REGULATION OF VOLATILE ORGANIC COMPOUNDS

WVDOT-DOH POSITION
December 1995

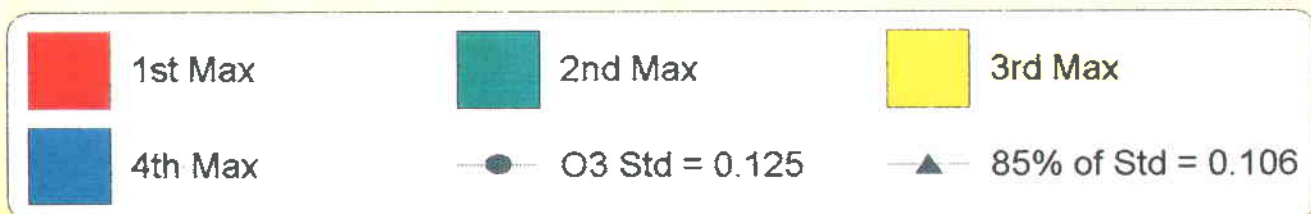
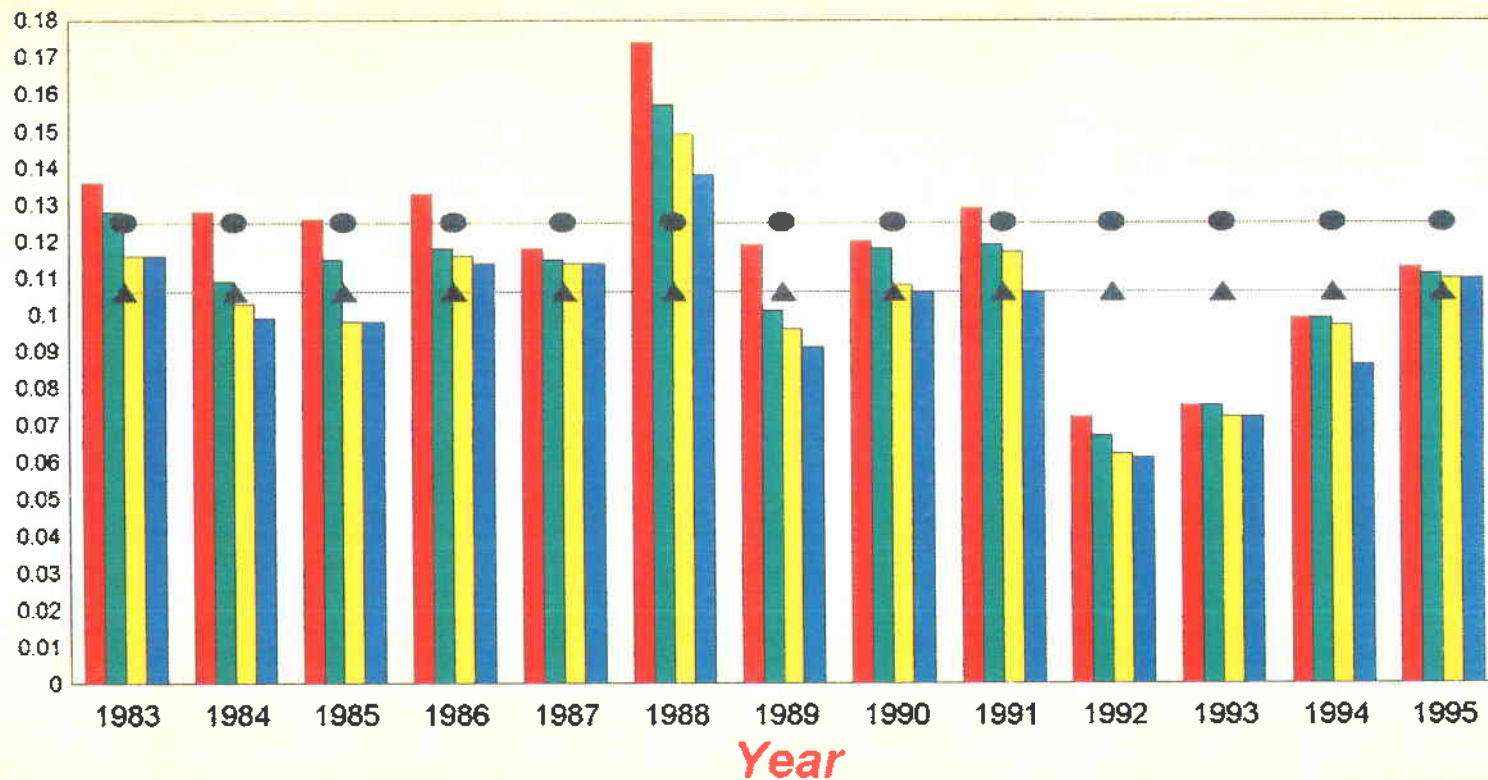
- Federal law enacted as part of the Clean Air Act Amendments of 1990 states that transportation plans, programs, and projects within air quality non-attainment areas must meet strict air quality "conformity" requirements promulgated by the Federal EPA.
- With regard to air quality and its regulation, Cabell-Wayne, Kanawha-Putnam, and Wood Counties are the areas of major concern to West Virginia's transportation program at this time. These counties were formerly designated non-attainment for ozone.
- A decline in emissions in the early Nineties (attached charts 1, 2, and 3) enabled the above non-attainment areas to be redesignated (by the Federal EPA) to maintenance status. This had the effect of easing conformity requirements somewhat. However, as shown in the attached charts, ozone levels are again approaching or exceeding allowable standards in these counties.
- Highways are among the first to receive Federal sanctions in the event of an area slipping into non-attainment. Such sanctions can amount to a virtual freeze on Federal-aid highway funds in the affected counties. Should any of the above counties slip back into non-attainment, capacity-improving projects there would be jeopardized.
- Sample projects of concern would be the proposed regional airport, if it were located in Putnam County, and its proposed access roads; capacity-improving projects in the I-64 corridor in Kanawha, Putnam, Cabell and Wayne Counties; the proposed I-73 corridor highway in Wayne County; improvements to 8th Avenue in Huntington; the Merrick Creek connector in Cabell County; upgrading of US 35 to four lanes in Putnam County; the completion of Appalachian Corridor "D" in Wood County; and several other projects intended to add roadway capacity in these counties.
- Autos only account for 24.3% of the total emissions, as shown in attached chart 4. Section 40 Point Sources account for 40.8% of the total.
- Emission reductions from a vehicular Inspection and Maintenance Program would account for only 1.6% of possible reductions (attached chart 5). Section 40 emitters could account for a 32.6% reduction.

- Waiting for violations to trigger redesignation to non-attainment, and the consequent activation of contingency measures, would mean that highways and motorists would be hit first. However, they represent the source least able to reduce emissions in the above counties.
- Under existing Federal law, EPA may require an Inspection and Maintenance Program if a maintenance area reverts to non-attainment.
- Should the Inspection and Maintenance Program(s) not prove effective, Transportation Control Measures may have to be proposed by West Virginia and approved by EPA. These Transportation Control Measures could directly affect the way West Virginia motorists in the affected counties could use their vehicles, as well as the costs for such use. Transportation Control Measures have proven very unpopular in other states.
- Although West Virginia motorists would almost certainly view Transportation Control Measures as extreme, experience in other states has shown these measures to be relatively ineffective in reducing overall emissions.
- Any area that fails to meet certain Clean Air Act Amendments requirements for two years can face a Federal Implementation Plan developed for that area by EPA.
- WVDOT supports the WVOAQ's proposed Section 40 legislation and believes that it should be enacted without modification to avoid transportation project delays and the possible imposition of an Inspection and Maintenance Program for motor vehicles.

Charleston (Kanawha-Putnam), WV

Recorded Ozone Maximums: 1983-1995

Hourly Peak Ozone Levels:ppm

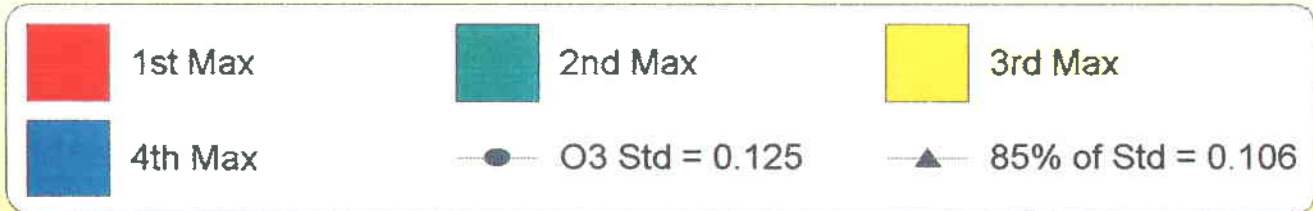
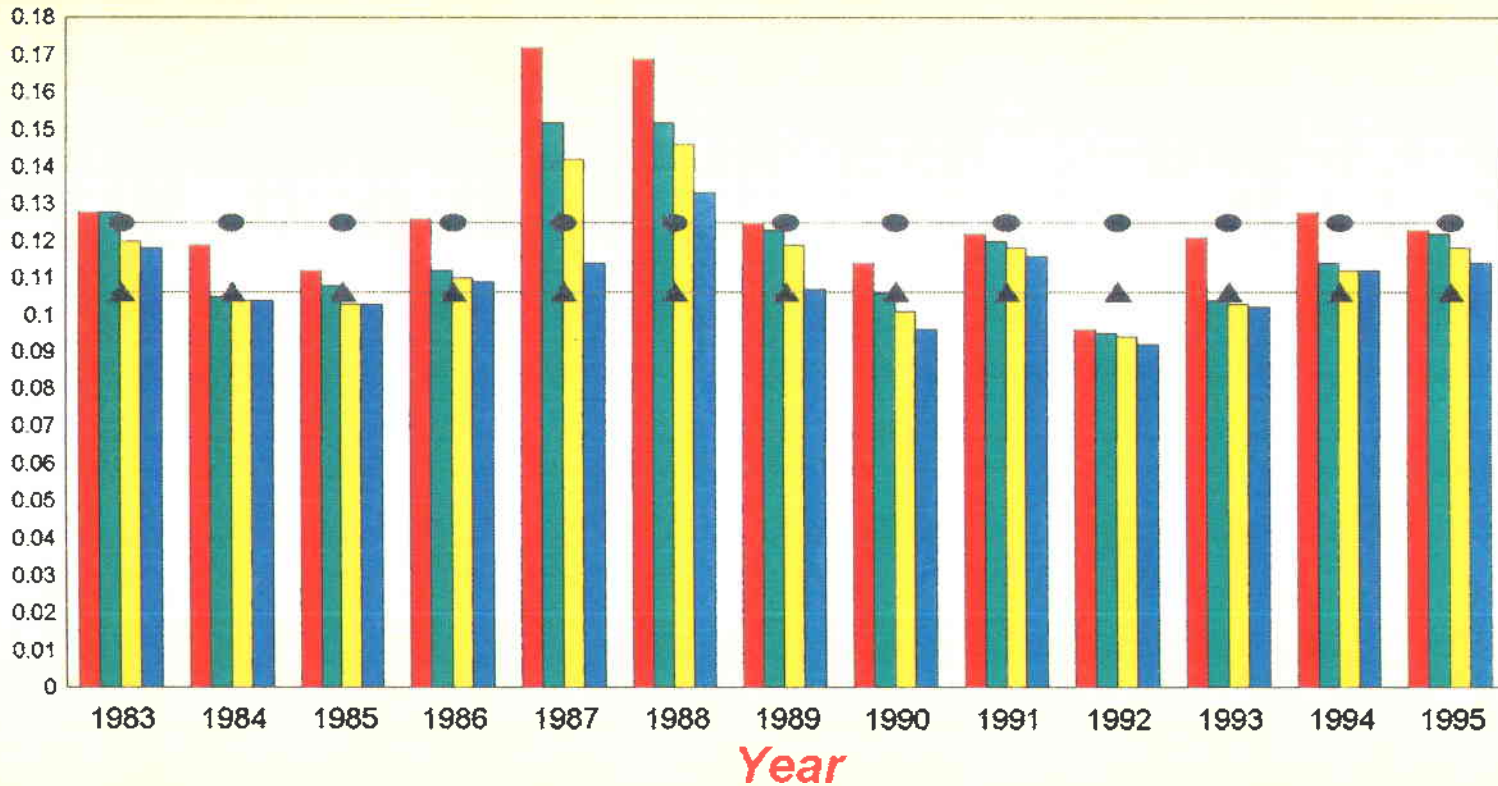


4 exceedances (above top line) in any 3 year period is considered a violation.

Parkersburg (Wood), WV

Recorded Ozone Maximums: 1983-1995

Hourly Peak Ozone Levels:ppm

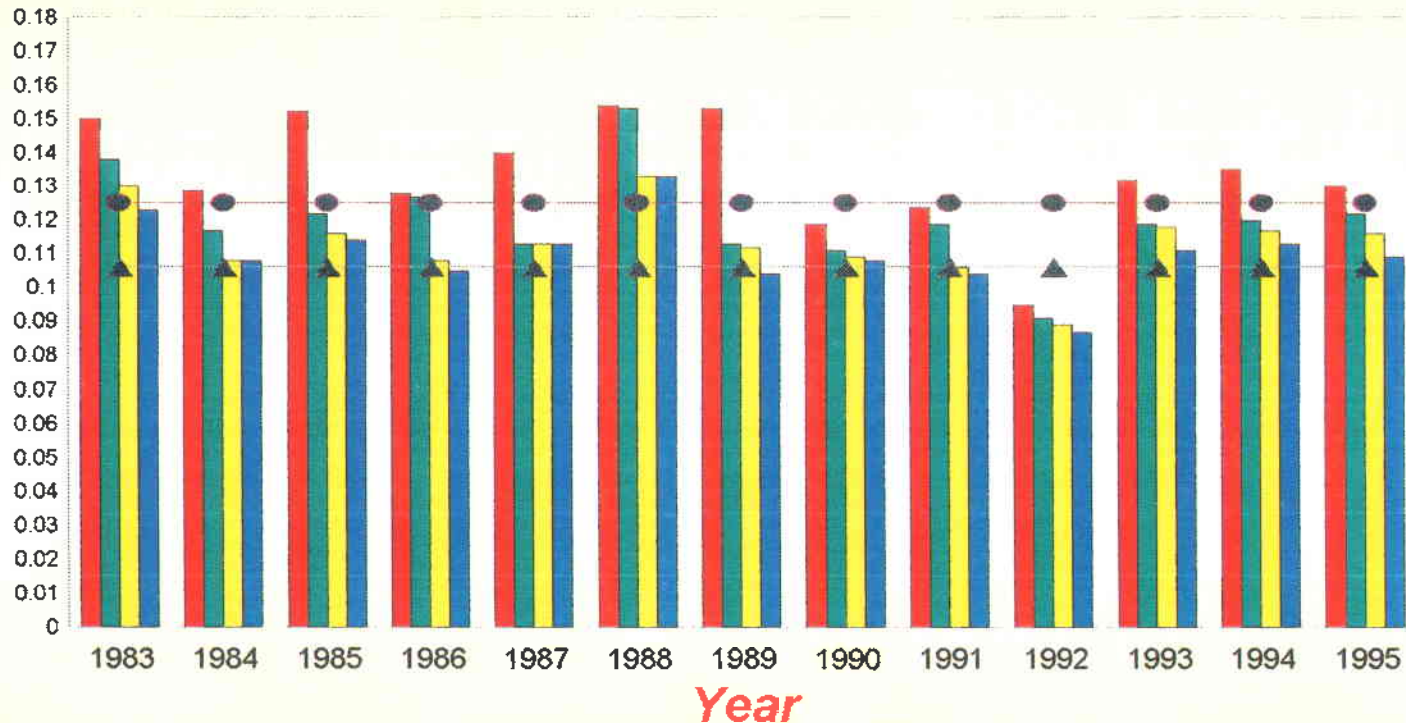


4 exceedances (above top line) in any 3 year period is considered a violation.

Huntington (Cabell-Wayne), WV

Recorded Ozone Maximums: 1983-1995

Hourly Peak Ozone Levels:ppm

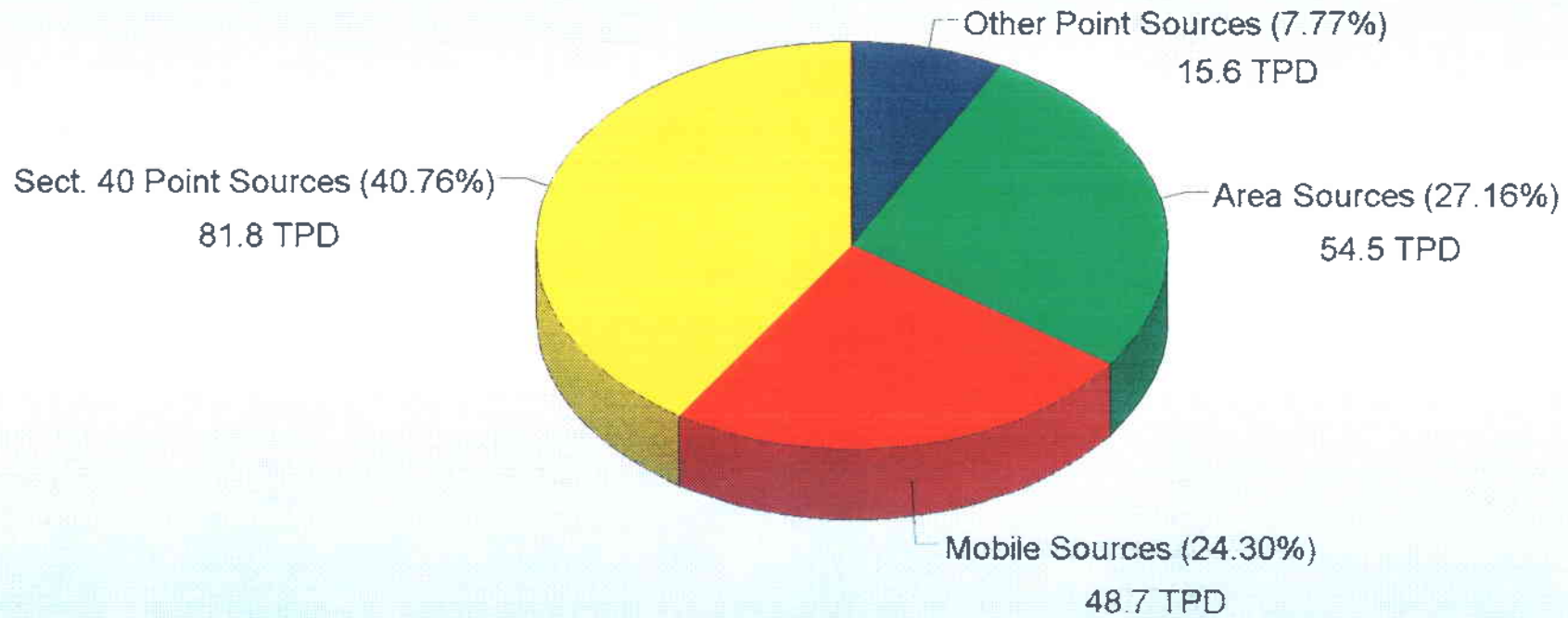


■ 1st Max	■ 2nd Max	■ 3rd Max
■ 4th Max	● O3 Std = 0.125	▲ 85% of Std = 0.106

4 exceedances (above top line) in any 3 year period is considered a violation.

WV Ozone Maintenance Areas

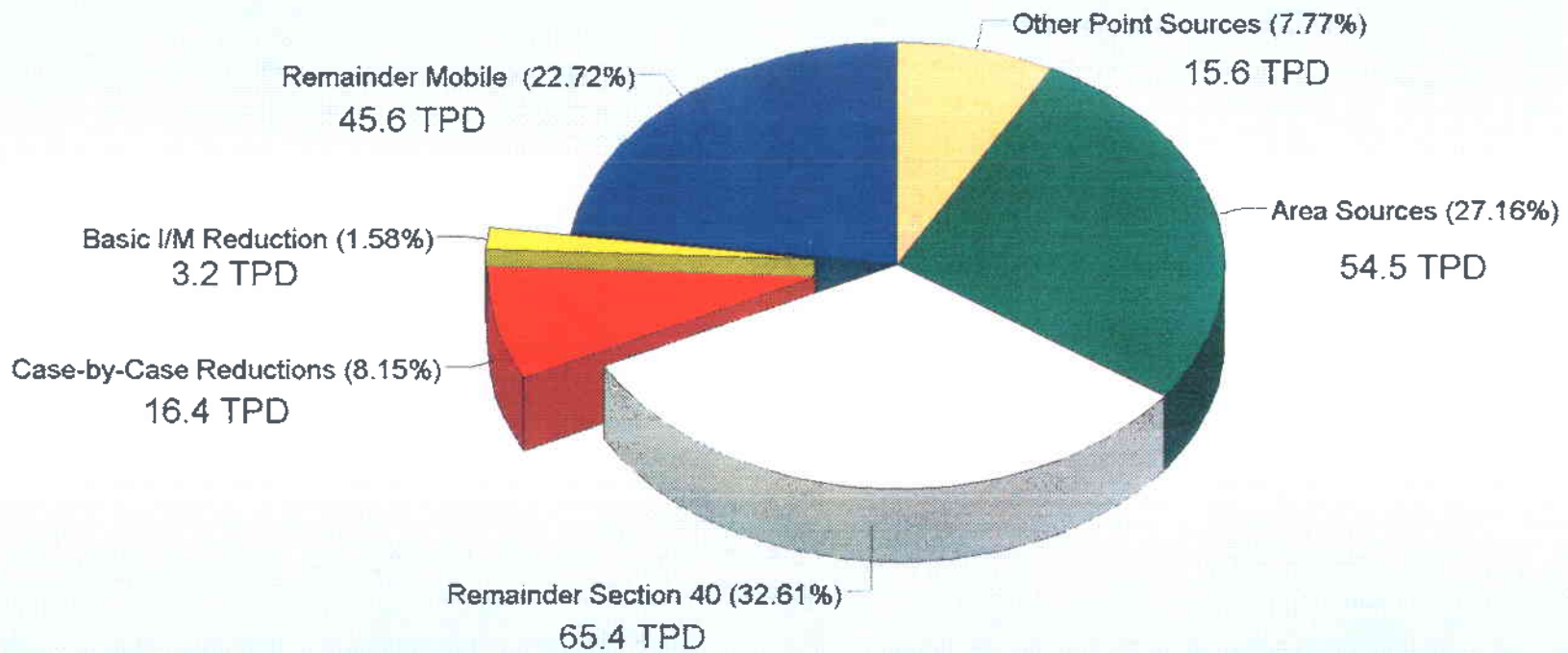
1990 VOC Emissions, Aggregate [Tons Per Day (TPD)]



Percentages (%) are fractions of 1990 man-made VOC emissions, aggregate for all maintenance areas.

Ozone Maintenance Areas

Comparison of Potential Reduction Programs' Effectiveness



**Based on 1990 Emission Levels [Tons per Day (TPD)]
Case-by-Case Reductions Assume 20% VOC Decrease**

Percentages (%) are fractions of 1990 man-made VOC emissions, aggregate for all maintenance areas.