FEBRUARY 8

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FEBRUARY 8, 1993 - 9:00 A.M. - 5:00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meetings January 11, 1993, 12:00 Noon - 2:00 p.m.; 6:00 p.m. - 8:00 p.m. and January 12, 4:00 - 6:00 p.m.

2. Review of Legislative Rules:

   a. Attorney General - Consumer Lease Disclosures in Rent To Own Transactions

   b. Division of Environment Protection-Office of Oil and Gas - Abandoned Wells

   c. Division of Environmental Protection - Surface Mining and Reclamation

   d. Solid Waste Management Board - Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities

   e. Human Rights Commission - Rules Regarding Discrimination in Housing

   f. Division of Personnel - Administrative Rules and Regulations of the West Virginia Division of Personnel

   g. Division of Environmental Protection - Confidential Information

   h. Division of Environmental Protection-Office of Air Quality - Serious and Minor Violations of Applicable Rules

   i. Division of Environmental Protection, Office of Air Quality - To prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations

   j. Division of Environmental Protection, Office of Air Quality - Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions

k. Division of Environmental Protection, Office of Air Quality - Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants

l. Department of Agriculture - General Groundwater Protection Rules for Fertilizers and Manures

m. Department of Agriculture - Primary and Secondary Containment of Fertilizers

n. Department of Agriculture - General Groundwater Protection Rules for Pesticides

o. Department of Agriculture - Bulk Pesticide Operational Rules

p. Department of Agriculture - Non-Bulk Pesticide Rules for Permanent Operational Areas

q. Air Pollution Control Commission - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of significant deterioration

r. Division of Environmental Protection - Oil and Gas Wells and Other Wells

s. Division of Environmental Protection - Underground Storage Tank Regulations

t. Division of Environmental Protection - Underground Storage Tank Assessment Fees

u. Division of Environmental Protection - Hazardous Waste Management Regulations

v. Water Resources Board - National Pollutant Discharge Elimination System (NPDES)

w. Water Resources Board - Underground Injection Control

x. Water Resources Board - Requirements Governing Groundwater Standards

y. Water Resources Board - Requirements Governing Water Quality Standards

z. Public Energy Authority - Rules and Procedures for Application for and Environmental Assessment of Projects Seeking Qualification for Public Energy Authority's Assistance

aa. Division of Natural Resources - Groundwater Protection Act Fee Schedule

bb. Dept. of Administration - Use of Domestic Aluminum, Glass or Steel Products in Public Works Projects

cc. Dept. of Administration - Collection of Claims Due the State

dd. Division of Health - Primary Care Center Uncompensated Care Grants

ee. Division of Health - Primary Care Center Seed Money Grants

ff. Board of Social Work Examiners - Qualifications for Licensure as a Social Worker

3. Other Business:

Workers' Compensation - Definition of Employer - Counsel's report.

SPECIAL MEETING

Monday, February 8, 1993

9:00 a.m. - 5:00 p.m. Legislative Rule-Making Review Committee (Code §29A-3-10)

Keith Burdette ex officio nonvoting member	Robert "Chuck" Chambers, ex officio nonvoting member
Senate	House
Manchin, Chairman	Gallagher, Chairman
Grubb	Douglas
Anderson	Compton
Macnaughtan	Huntwork
Minard	Burk
Boley	Faircloth

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

The minutes of the meetings January 11, 1993, 12:00 Noon - 2:00 p.m.; 6:00 p.m. - 8:00 p.m. and January 12, 4:00 - 6:00 p.m. were approved.

Mr. Gallagher told members of the Committee that a draft copy of the Procedures for Filing Emergency and Proposed Legislative Rules with the Legislative Rule-Making Review Committee had been distributed and asked if any member had any questions. There were no questions.

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

Debra Graham, Committee Counsel, stated that the rule proposed by the Attorney General, Consumer Lease Disclosures in Rent To Own Transactions, had been laid over from the previous meeting.

Mr. Manchin moved to amend the proposed rule by deleting all of Section 3.1.6.. The motion was rejected.

Mr. Grubb told members of the Committee that there is an Attorney General Opinion which states that it is improper for the Committee to request that an agency meet with interested parties after the public comment period has ended as was done on this proposed rule. He requested that staff provide copies of the Opinion at the Committee's next meeting.

Mr. Grubb moved to modify Section 3.1.6 of the proposed rule to require disclosure of a yearly rental rate instead of imputed interest.

Roger Sharp, President, Rental Dealers Association, and Donald Darling, Assistant Attorney General in the Consumer Protection Division, commented on the proposed modification and responded to questions from the Committee.

Mr. Grubb asked unanimous consent to make technical amendments to his proposed modification. There being no objection, the proposed modification was amended.

Mr. Grubb's motion, as amended, was rejected.

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

Alison Patient, Counsel to the House Committee on Finance, stated that the rule proposed by the Division of Environment Protection - Office of Oil and Gas, Abandoned Wells, had been laid over from the Committee's previous meeting. She said that the Division has agreed to technical modifications and she answered questions from the Committee. Ted Streit, of the Division of Environmental Protection, answered questions from the Committee.

Mr. Burk moved that the Committee approve the proposed modifications. The motion was adopted.

Mr. Macnaughtan moved that Section 6.12 of the proposed rule be modified to require that the Division publish the list of abandoned wells as often as practical, but at least once every five years. The motion was adopted.

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

Ms. Patient reviewed the rule proposed by the Division of Environmental Protection, Surface Mining and Reclamation, and stated that the Division has agreed to technical modifications. She also told the Committee that Subcommittee D of the Joint Standing Judiciary Committee is working on a site specific bonding rule which may conflict with the proposed rule so that both rules may need to be brought into conformity with each other at a later date. She responded to questions from the Committee. Roger Hall, Special Assistant to the Director of the Division, told the Committee that the Division was requesting that it be allowed to modify the proposed rule. He distributed copies of the proposed modifications. He responded to questions from the Committee.

Mr. Manchin moved that the Committee approve all of the proposed modifications to the proposed rule except for the proposed modification to Section 2.26. The motion was adopted.

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

Mr. Gallagher moved that since abstracts had been previously mailed to members, the Committee dispense with a full explanation of the remainder of the proposed rules, unless a member requests a full explanation. The motion was adopted.

Marjorie Martorella, Counsel to the House Committee on Government Organizations, told the Committee that the Solid Waste Management Board has proposed modifications to the rule proposed by the Board, Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities. Charlie Jordan, Acting Director of the Board, answered questions from the Committee.

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

Ms. Martorella explained that she had numerous problems with the rule proposed by the Human Rights Commission, Rules Regarding Discrimination in Housing, and that she had not been able to reach an agreement with the Commission on all of her proposed modifications.

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

Ms. Graham stated that she had suggested modifications on the rule proposed by the Division of Personnel, Administrative Rules and Regulations of the West Virginia Division of Personnel, and stated that the Division has agreed to the technical modifications. Teri McClintock Crouse, Assistant Director for Employee Communications, answered questions from the Committee.

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

Ms. Martorella stated that she had technical modifications to the rule proposed by the Division of Environmental Protection, Confidential Information, and stated that the Division has agreed to the technical modifications. Dale Farley, Secretary, West Virginia Air Pollution Control Commission, responded to questions from the Committee.

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

Ms. Martorella stated that she had technical modifications to the rule proposed by the Division of Environmental Protection, Hazardous Waste Management Regulations and that the Division has agreed to the modifications. Ann Spaner, Deputy Director, Division of Environmental Protection, Max Robertson, Chief of the Office of Waste Management and John Cummings, West Virginia Manufacturers Association, addressed the Committee regarding proposed modifications and responded to questions.

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

Ms. Patient stated that she did not have any modifications to suggest to the rule proposed by the Division of Environmental Protection-Office of Air Quality, Serious and Minor Violations of Applicable Rules.

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

Mike Mowery, Counsel to the House Judiciary Committee, told the Committee that he has technical modifications to suggest to the rule proposed by the Division of Environmental Protection, Office of Air Quality, To prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations, and stated that the Division has agreed to technical modifications. Mr. Farley, reiterated that the Division agreed to the proposed modifications.

Mr. Burk moved that the proposed rule be modified to conform with the Code. The motion was adopted.

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

Mr. Mowery stated that he does not have any proposed modifications to the rule proposed by the Division of Environmental Protection, Office of Air Quality, Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions. Mr. Cummings presented a proposed modification to the Committee.

Mr. Manchin moved that the Committee approve the proposed modification from the West Virginia Manufacturers Association. The motion was adopted.

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

Mr. Manchin moved that the Committee stand in recess until 1:00 p.m.. The motion was adopted.

The Committee reconvened at 1:00 p.m. with Mr. Manchin presiding.

Brenda Waugh, Counsel to the Senate Judiciary Committee, told the Committee that she has technical modifications to the rule proposed by the Department of Agriculture, General Groundwater Protection Rules for Fertilizers and Manures, and that the Department has agreed to the proposed modifications.

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

Ms. Waugh stated that she has technical modifications to the rule proposed by the Department of Agriculture, Primary and Secondary Containment of Fertilizers, and that the Department has agreed to the proposed modifications.

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

Ms. Waugh told the Committee that she has technical modifications to the rule proposed by the Department of Agriculture, General Groundwater Protection Rules for Pesticides, and that the Department has agreed to the proposed modifications. Robert Frame, Director of the Pesticide Division of the Department, responded to questions from the Committee.

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

Ms. Waugh stated that she has technical modifications to suggest to the rule proposed by the Department of Agriculture, Bulk Pesticide Operational Rules, and that the Department has agreed to the proposed modifications.

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

Ms. Waugh stated that she has technical modifications to suggest to the rule proposed by the Department of Agriculture, Non-Bulk Pesticide Rules for Permanent Operational Areas, and that the Department has agreed to the technical modifications.

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

Ms. Patient stated that she has technical modifications to suggest to the rule proposed by the Division of Environmental Protection, Oil and Gas Wells and Other Wells, and that the Division has agreed to the proposed modifications. Mr. Streit answered questions from the Committee.

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

Ms. Patient stated that she does not have any modifications to suggest to the rule proposed by the Division of Environmental Protection, Underground Storage Tank Regulations. Mr. Robertson and Ms. Gil Sattler, Program Manager for Underground Storage Tank Section, answered questions from the Committee.

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

Ms. Patient told the Committee that she has technical modifications to suggest to the rule proposed by the Division of Environmental Protection, Underground Storage Tank Assessment Fees, and that the Division has agreed to the proposed modifications.

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

Ms. Patient told the Committee that she has major problems with the rule proposed by the Public Energy Authority, Rules and Procedures for Application for and Environmental Assessment of Projects Seeking Qualification for Public Energy Authority's Assistance, and that the Authority has not contacted her regarding proposed modifications.

Mr. Minard moved that the proposed rule lie over until the Committee's next meeting to allow time for Counsel to meet with the Authority. The motion was adopted.

Mr. Manchin told the Committee that the rules proposed by the Department of Administration, Use of Domestic Aluminum, Glass or Steel Products in Public Works Projects and Collection of Claims Due the State were being removed from the agenda due to the unavailability of a representative of the Department.

Ms. Graham stated that she has technical modifications to suggest to the rule proposed by the Division of Health, Primary Care Center Uncompensated Care Grants, and that the Division has agreed to the proposed modifications.

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

Ms. Graham stated that she has technical modifications to suggest to the rule proposed by the Division of Health, Primary Care Center Seed Money Grants, and that the Division has agreed to the technical modifications. Kay Howard of the Division of Health, Regulatory Division, responded to questions from the Committee.

Mr. Macnaughtan moved that Section 3.10 of the proposed rule be modified by substituting a more appropriate term for the term "multi-disciplinary" and by adding registered nurses to the list of multi-disciplinary personnel. The motion was adopted.

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

Ms. Waugh told the Committee that she has numerous modifications to suggest to the rule proposed by the Board of Social Work Examiners, Qualifications for Licensure as a Social Worker, and that the Board has agreed to the proposed modifications.

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

Mr. Manchin stated that the following rules would be laid over until the next meeting to allow Mr. Mowery more time to abstract the proposed rules: Division of Environmental Protection, Office of Air Quality, Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants; Air Pollution Control Commission, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration; Water Resources Board, National Pollutant Discharge Elimination System (NPDES); Water Resources Board, Underground Injection Control; and Water Resources Board, Requirements Governing Groundwater Standards

Mr. Mowery stated that the Water Resources Board is requesting to be allowed to modify the rule proposed by the Board, Requirements Governing Groundwater Standards. David Yaussy, West Virginia Manufacturers Association, told the Committee that he had not seen the proposed modifications and he answered questions from the Committee.

Mr. Minard moved that the proposed rule lie over until the Committee's next meeting to allow the West Virginia Manufacturers Association to review the proposed modifications. The motion was adopted.

Mr. Mowery explained the modifications which the Division of Natural Resources is requesting to the rule proposed by the Division, Groundwater Protection Act Fee Schedule. Patrick Campbell, Office of Water Resources, responded to questions from the Committee.

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

Mr. Manchin told the Committee that the Human Rights Commission has withdrawn its proposed rule, Rules Regarding Discrimination in Housing.

Mr. Mowery explained the status of the issue regarding a current Workers' Compensation rule, 85 CSR 11, Subsection 2.8, which defines the term "employer". Andy Richardson, Workers' Compensation Commissioner, answered questions from the Committee.

Mr. Anderson moved that the Committee direct Workers' Compensation to amend the existing rule so that it would only have application to premium delinquencies arising after the effective date of the statutory amendment made in W. Va. Code, §23-2-5a in 1990. The motion was rejected.

Mr. Gallagher moved that Workers' Compensation Commissioner be directed to amend the legislative rule to conform to counsel's suggestion that personal liability be imposed for premiums without broadening the statutory definition of "employer". The motion was adopted

Mr. Mowery explained to the Committee that two sections, Sections 8.2.c and 8.22, of the rule proposed by the Water Resources Board, Requirements Governing Water Quality Standards, are in dispute.

Mr. Grubb moved to modify the proposed rule by deleting Section 8.2.c which would allow the critical stream flow for carcinogens to be the harmonic mean flow, and by amending Appendix E, Section 8.22, as it sets forth the specific water quality criteria for dioxin, by deleting the water quality standard for 2, 3, 7, 8, - TCCD (Dioxin), and inserting in lieu thereof the following: "Pg/l .014 .014 .014 .013 .014".

Libby Chatfield, Technical Advisor to the Board, answered questions from the Committee and stated that the Board would not object to modifying Section 8.22, but that it would not be willing to modify Section 8.2.c of the proposed rule. Mr. Yaussy, Norm Steenstra, West Virginia Environmental Council, and Patrick O'Malley representing Associated Construction Trades, commented on the proposed modification. Mr. Grubb asked that the question be divided.

Mr. Grubb moved to modify the proposed rule by amending Appendix E, Section 8.22 , by deleting the water quality standard for 2, 3, 7, 8-TCCD (Dioxin), and inserting in lieu thereof the following: Pg/l.014 .014 .014, .013 .014". The motion was adopted.

Mr. Grubb moved to amend the proposed rule by deleting Section 8.2.c. The motion was adopted.

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

Mr. Grubb moved to reconsider the motion whereby the Committee approved the proposed rule as modified and amended. The motion was rejected.

The meeting was adjourned.

FEBRUARY 9

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FEBRUARY 9, 1993 - 5:00 P.M. - 7:00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meetings February 8, 1993

2. Review of Legislative Rules:

    a. Division of Environmental Protection, Office of Air Quality - Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants

    b. Air Pollution Control Commission - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of significant deterioration

    c. Division of Natural Resources - Groundwater Protection Act Fee Schedule

    d. Water Resources Board - National Pollutant Discharge Elimination System (NPDES)

    e. Water Resources Board - Underground Injection Control

    f. Water Resources Board - Requirements Governing Groundwater Standards

    g. Public Energy Authority - Rules and Procedures for Application for and Environmental Assessment of Projects Seeking Qualification for Public Energy Authority's Assistance

    h. Dept. of Administration - Use of Domestic Aluminum,
    Glass or Steel Products in Public Works Projects

    i. Dept. of Administration - Collection of Claims Due the State

j. Board of Miner Training, Education and Certification - Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines

k. Board of Registration of Professional Engineers - West Virginia Board of Registration for Professional Engineers

3. Other Business

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

Tuesday, February 9, 1993

5:00 - 7:00 p.m. Legislative Rule-Making Review Committee (Code §29A-3-10)

Keith Burdette ex officio nonvoting member	Robert "Chuck" Chambers, ex officio nonvoting member
Senate	House
Manchin, Chairman	Gallagher, Chairman
Grubb	Douglas
Anderson	Compton
Macnaughtan (absent)	Huntwork (absent)
Minard	Burk
Boley	Faircloth

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

Alison Patient, Counsel to the House Finance Committee, explained that the rule proposed by the Public Energy Authority, Rules and Procedures for Application for and Environmental Assessment of Projects Seeking Qualification for Public Energy Authority's Assistance, had been laid over at the Committee's previous meeting to allow her to meet with a representative of the Authority to discuss technical modifications. She stated that the Authority had agreed to her suggested modifications.

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

Debra Graham, Committee Counsel, briefly explained the rule proposed by the Board of Miner Training, Education and Certification, Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines, and stated that the Board has agreed to technical modifications.

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

Mike Mowery, Counsel to the House Judiciary Committee, reviewed the rule proposed by the Division of Environmental Protection, Office of Air Quality, Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants. Dale Farley, Chief, Office of Air Quality, answered questions from the Committee and stated that the Division would agree to modify the proposed rule by striking out all of Subsection 7.1.a. and inserting in lieu thereof a new Subsection 7.1.a. to read as follows:

7.1.a. For the existing source providing the emission offsets, the baseline for determining credit for emission offsets shall be determined in accordance with USEPA's "Emission Trading Policy Statement" as published in the Federal Register at 51FR43814.

John Cummings of the West Virginia Manufacturers Association briefly addressed the Committee.

Mr. Grubb moved that the Committee approve the proposed modification. The motion was adopted.

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

Mr. Mowery stated that he did not have any proposed modifications to the rule proposed by the Air Pollution Control Commission, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.

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

Ms. Graham reviewed her abstract on the rule proposed by the Board of Registration of Professional Engineers, West Virginia Board of Registration for Professional Engineers, and stated that the Board has agreed to modify the proposed rule to include a fee schedule and the number of required professional development hours, as well as technical modifications. Frank Gaddy, Board member, answered questions from the Committee.

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

Mr. Manchin told the Committee that the rule proposed by the Division of Natural Resources, Groundwater Protection Act Fee Schedule, had been laid over at the Committee's last meeting. Mr. Mowery reviewed modifications being proposed by the Division. Patrick Campbell, Office of Water Resources and Eli McCoy, Chief of the State Water Resources Board, addressed the Committee and answered questions. David Yaussy, West Virginia Manufacturers Association, stated that the Association was requesting that Sections 3.5.19 and 3.6.18 of the proposed rule be modified.

Mr. Grubb moved that the Committee approve the proposed modifications. The motion was adopted.

Mr. Gallagher moved to amend Section 3.6.5 of the proposed rule to increase the tipping fee for solid waste disposal (groundwater remediation fund) from one eighth of a cent to one quarter of a cent. The motion was rejected.

Mr. Faircloth moved to amend the proposed rule to delete Sections 3.5.3 and 3.6.3 of the proposed rule, regarding septic systems and fees for septic systems. The motion was adopted.

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

Mr. Mowery explained the rule proposed by the Water Resources Board, National Pollutant Discharge Elimination System (NPDES), and stated that the Board had a proposed modification to the proposed rule. Libby Chatfield, Technical Advisor to the Board, explained the proposed modification. Mr. Manchin moved the proposed rule to the bottom of the agenda to allow staff to distribute copies of the proposed modifications.

Mr. Mowery told the Committee that the Water Resources Board is proposing modifications to the rule proposed by the Board, Underground Injection Control. Ms. Chatfield explained the proposed modifications.

Mr. Minard moved that the proposed rule be approved as modified. Following further discussion, Mr. Minard asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Faircloth moved that the Committee request that the Board withdraw the proposed rule. The motion was adopted.

Mr. Mowery stated that the Water Resources Board would also like to modify the rule proposed by the Board, Requirements Governing Groundwater Standards, which had been laid over from the Committee's previous meeting to allow the West Virginia Manufacturers' Association to review the proposed modifications. Ms. Chatfield told the Committee that the Board had reworked the proposed modification to satisfy the Association.

Mr. Gallagher moved that the Committee approve the proposed modifications. The motion was adopted.

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

Mr. Manchin told the Committee that the staff had distributed the proposed modifications to the rule proposed by the Water Resources Board, National Pollutant Discharge Elimination System (NPDES). Dave Montaly, of the Division of Environmental Protection, commented on the proposed modifications.

Mr. Burk moved that the proposed rule be approved as modified. Following further discussion, Mr. Burk asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Faircloth moved that the Committee request that the Board withdraw the proposed rule. The motion was adopted.

Mr. Manchin stated that the staff had contacted the Department of Administration regarding having a representative of the Department at the meeting. He stated that because the staff had not received a response from the Department that the rules proposed by the Department, Use of Domestic Aluminum, Glass or Steel Products in Public Works Projects and Collection of Claims Due the State were being removed from the agenda.

Mr. Anderson moved that the Committee's Counsel be directed to draft a bill of authorization for each rule acted upon by the Committee and to cause the bills to be introduced in both the Senate and the House with the Chairmen as sponsors of the bills. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Feb 8, 1993

TIME: 9:00am - 5:00p.m.

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Brian Gallagher, Co-Chair	✓			
Burk, Robert W., Jr.	✓			
Faircloth, Larry V.	✓			
Douglas, Vickie	✓			
Compton, Mary P.	✓			
Huntwork, John	✓			
Burdette, Keith, President				
Joe Manchin, III Co-Chair	✓			
Anderson, Leonard	✓			
Grubb, David	✓			
Minard, Joseph	✓			
Macnaughtan, Don	✓			
Boley, Donna	✓			
TOTAL	12			

RE: _____

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Feb 8, 1993

TIME: 9:12 a.m.

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Brian Gallagher, Co-Chair				✓
Burk, Robert W., Jr.			✓	
Faircloth, Larry V.			✓	
Douglas, Vickie				✓
Compton, Mary P.				✓
Huntwork, John				✓
Burdette, Keith, President				
Joe Manchin, III Co-Chair			✓	
Anderson, Leonard			✓	
Grubb, David			✓	✓
Minard, Joseph			✓	
Macnaughtan, Don				✓
Boley, Donna				
TOTAL			6	6

RE: Amend RTO rule to delete 3.1.6.

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review DATE: Feb 8, 1993 9:00-5:00

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly	ROBINSON & MCELWEE. CHARLESTON, WV	WVONGA IOGA of WV.	✓ ABANDONMENT ACT RULES
JOHN JOHNSTON			
Ted Streit	Nitro, WV	DEP	
Donald L. Darling	Chas., WVA.	W.VA. Atty Gen. Off	✓ RTO
David McMahon	1033 Quarrier St #700	W.Va Legal Services Plan	RTO Voting Gar
Bruce Easter	1411 VA. ST. E	Bureau of Public Health	
RANDALL SUTER	1558 WASH ST. E	OFF. of Air Quality DEP	If necessary
G. Dale Farley	"	"	
John Benedict	"	"	
NORMAN LINDELL		WV Human Rights Com	✓
Mike Dorsey	WV DEP OWM 1356 Hansford St	WVDEP OWM	✓ If necessary
Robert E. Frame	WV DA - Guthrie Center	WV Dept Agriculture	If needed to answer ques.
Tori McClintock Crouse	Bldg 6 Rm 416	Div. of Personnel	If necessary to answer?
Mike Comer	DEP Own 1356 Hansford Charleston	DEP - OWM	if necessary
Martha Barber	DEP Waste Mgmt 1356 Hansford St. Ches.		if necessary
John Liggett	WVDA. - Guthrie Center	WV. Dept. of Agriculture	if needed to answer questions

LS-C-66-1a

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review DATE: Feb 8, 1993 9:00-5:00

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
John C. Cummings	500 Virginia St	WVMA	If necessary
Sam HICKMAN	1608 Va St E Chas WV 25311	Bd of Social Work EXAMINERS	if necessary
Charles F. Jordan	1615 Washington St. E Charleston, WV 25311	Solid Waste Management Board	if necessary
Rita Meneses	1615 VA. ST. E Chas. WV 25534	SWMB	No
John Casavant	1903 Washington Ave Apt 12 Charleston WV 25304	Herndon Fellow	No
Roger Sharp	P.O. Box 8131 Hgn WV 25705	WV Rental Dealers	X AG Consumer Lease
Mark Steenstra	"	WV-CAG	If necessary

LS-C-66-1a

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: _____ DATE: Feb 8, 1993

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
JUDITH WILLIAMS		WV Board of Social Work Exam	

LS-C-66-1a

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: _____ DATE: Feb 8, 1993

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
David Yaussy	P.O. Box 1791 Chas	WV Mfrs Assoc	

LS-C-66-1a

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review DATE: 2-9-93 5:00 - 7:00 pm.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Dale Farley	1558 Wash St E.	Office of Air Quality DEP	X
Tony Gorbec	1615 Washington St. E	Office of Miners Health, Safety & Training	
J. David Cecil	P.O. Box 179, 25321	Counsel / PEA	
John Cummings	500 Virginia St	WVMA	as necessary
Dave Montali	PO Box 451 Pinch	DEP	"
Elmer			
Libby Chatfield	Water Resources Bd	—	
Eugene Hunter			
Patrick Campbell	DEP Greenbrier St (120)	DIP OWR	

LS-C-66-1a

Approved 2-8-93

DRAFT DRAFT

February 1993

TITLE: PROCEDURES FOR FILING EMERGENCY AND PROPOSED LEGISLATIVE RULES WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Section 1. Definitions

1.1 "Committee" means the Legislative Rule-Making Review Committee, a joint committee of the Legislature created under the provisions of W.Va. Code, §29A-3-10.

1.2 "Agency" means any state board, commission, division, department, office or officer or any other governmental authority which affects the rights of private parties through either adjudication or rule-making, and which is required by law to file its rules with the Committee. "Agency" does not include courts or legislative bodies.

1.3 "Staff" means the staff of the Committee, and includes the counsel, associate counsel, and the administrative assistant of the Committee.

Section 2. Submission of Emergency Rules.

2.1 **General.** Upon filing an emergency rule in the state register, the agency shall forthwith file with the Committee's staff at the Committee's offices, one copy of the emergency rule as well as a statement of the facts and circumstances constituting the emergency.

2.2 **Information Required.** The following information must be filed with the Committee:

2.2.1 The full text of the emergency rule. If the proposed emergency rule replaces an existing rule, new language shall be underlined and language to be deleted from any existing rule shall be stricken through but clearly legible;

2.2.2 The agency must complete an emergency rule form which conforms to that approved by the Committee and submit it with all emergency rules. Copies of the approved form shall be available at the Committee offices. The completed form may serve as the statement of facts and circumstances required under Section 2.1;

2.2.3 A brief summary of the content of the rule;

2.2.4 A copy of any rule which the agency proposed to rewrite or repeal, accompanied by a brief summary of the content of the rule;

2.2.5 A fiscal note and a statement of the economic impact of the proposed emergency rule on the State or its residents on a form provided by the Committee. Copies of the approved form shall be available at the Committee offices.

Section 3. Review of Emergency Rules.

The Committee may review any emergency rule. Based upon all of the information available, the Committee shall determine (1) if the agency has exceeded the scope of its statutory authority in promulgating the emergency rule, (2) if there exists an emergency justifying the promulgation of the emergency rule, and (3) if the rule was promulgated in compliance with the requirements and prohibitions set forth in W.Va. Code, §29A-3-15. The Committee may recommend to the agency, the Legislature or the Secretary of State, any action it may consider proper, including, but not limited to filing the appropriate extraordinary writ with the West Virginia Supreme Court.

Section 4. Recommendations by the Committee.

After reviewing the emergency rule, the Committee may recommend to the agency, the Legislature or the Secretary of State any action it may consider proper.

Section 5. Submission of Proposed Legislative Rules.

5.1.1 **Informal Filing.** When an agency files a notice and text of its proposed legislative rule in the State Register it shall also informally submit three copies of the text of the proposed legislative rule with the Committee's staff at the Committee's offices for possible preliminary review by committee staff. The purpose of the preliminary review is to anticipate problems which might otherwise arise during the formal review process of the Committee. The Committee strongly recommends that an agency seek legal assistance prior to submitting the proposed legislative rule to the Secretary of State and the Committee. The Committee's staff will conduct a preliminary review when they determine that a preliminary review is necessary and when time permits. Any conclusions made by staff, based upon a preliminary study of the proposed legislative rule, shall be made available to the submitting agency. It should be understood that the preliminary study performed by staff will not ordinarily include input by Committee members and therefore does not reflect Committee positions on issues involved. Accordingly, neither the Committee nor the agency submitting the proposed legislative rule is bound by the staff's analysis, and the agency has the ultimate responsibility for determining the content of a proposed legislative rule submitted for formal filing with the Committee.

5.1.2 **Formal Filing.** Upon final agency approval, an agency shall submit **fifteen copies of the proposed legislative rule and all required information** to the Legislative Rule-Making Review Committee. The agency shall file the proposed legislative rule with the Committee's staff at the Committee's offices.

5.2 **Information Required.** The following information must be filed with the Committee prior to consideration of the proposed legislative rule:

5.2.1 A completed copy of the Committee's questionnaire.

5.2.2 The **full text** of the proposed legislative rule, with new language underlined and with language to be deleted from any existing rule stricken-through, but clearly legible;

5.2.3 A brief summary of the content of the proposed legislative rule;

5.2.4 **A copy of any rule which the agency proposes to** repeal and replace, accompanied by a brief summary of the content of the rule;

5.2.5 A detailed statement of the circumstances which require the proposed legislative rule;

5.2.6 A fiscal note and a statement of the economic impact of the proposed legislative rule on the State or its residents, on a form approved by the Committee and available at the Committee offices;

5.2.7 A transcript of any public hearing conducted on the proposed legislative rule;

5.2.8 Copies of all written comments received by the agency on the proposed legislative rule;

5.2.9 A copy of all pertinent state and federal laws and regulations and relevant court cases necessitating the proposed amendments, as well as any rule of any other state agency which would require an amendment to conform to the amendments in the proposed legislative rule; and

5.2.10 Any other information which the Committee may request or which may be required by law.

Section 6. Review of Proposed Legislative Rules.

6.1 **Initial Review by Committee Staff.** After receipt of all of the information required by Section 5 of these procedures, the Committee's staff shall review the proposed legislative rule and accompanying information and prepare an abstract for use by the Committee in reviewing the proposed legislative rule. Ordinarily, the staff will confine its analysis to identifying legal questions, leaving matters of policy to be dealt with by the Committee. However, the staff may in its analysis attempt to point out the possible alternatives available to the Committee on policy questions, and shall endeavor to gather adequate factual information so as to aid the Committee in its consideration of the proposed legislative rule. The abstract shall contain an initial determination by the staff as to the following questions:

6.1.1 Has the agency exceeded the scope of its statutory authority in approving the proposed legislative rule?

6.1.2 Is the proposed legislative rule in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific?

6.1.3 Does the proposed legislative rule conflict with any other provision of the Code or with any other rule adopted by the same or a different agency?

6.1.4 Is the proposed legislative rule necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated?

6.1.5 Is the proposed legislative rule reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it?

6.1.6 Could the proposed legislative rule be made less complex or more readily understandable by the general public?

6.1.7 Was the proposed legislative rule promulgated in compliance with the requirements of Article 3, Chapter 29A, and with any requirements imposed by any other provision of the Code?

6.2 **Meeting with Agency Representative.** Upon the completion of the analysis of the proposed legislative rule, the staff shall mail a copy of the abstract to the agency submitting the proposed legislative rule. After receiving the abstract, a representative of the agency shall contact the Committee's staff and arrange a time at which the staff and the agency

representative can meet to discuss the proposed legislative rule in light of the problems identified in the abstract. A meeting need not be held if the Committee's staff, after consultation with the Co-Chairmen, determines that there are no issues to be resolved concerning the proposed legislative rule or if the agency agrees to modify the proposed rule in accordance with the modifications suggested by the staff.

6.3 **Evidentiary Hearing.** If the Committee's staff finds that there are a substantial number of problems or issues to be resolved with the proposed legislative rules, then with the approval of the Co-Chairmen, the staff shall schedule an evidentiary hearing for the purpose of receiving evidence upon which findings of fact and conclusions of law shall be made by staff. The staff shall notify a representative of the agency proposing the legislative rules and other identifiable interested parties of the hearing and an opportunity to participate in the hearing. The staff shall mail a copy of its recommended findings of fact and conclusions of law to the members of the Committee, the agency, and identifiable interested parties.

6.4 **Review by Committee.** The staff shall place the proposed legislative rule on the Committee's tentative agenda for review at a meeting of the Committee after the Committee has received from the staff a copy of the abstract and notification that the agency has met with the staff to attempt to resolve any problems. The Committee chairmen shall set the final agenda for each committee meeting. The Committee will review the proposed legislative rules after a good faith effort has been made by the agency and the Committee's staff to reach an agreement on any modifications suggested by the staff.

6.4.1 Because the Committee is a joint committee of the Legislature, all meetings and public hearings will be conducted in accordance with standard parliamentary procedure as contained in Jefferson's Manual.

6.4.2 The Committee may lay over a proposed legislative rule one time only, upon motion of a Committee member and upon a majority vote of the Committee members present.

6.4.3 The Committee Chairmen may allow any person interested in a particular proposed legislative rule to address the Committee one time only on any particular rule, unless leave of the Committee is given to address the Committee again or if the person is responding to a question from a Committee member. Only Committee members may question agency representatives or other interested persons regarding a proposed legislative rule.

6.4.4 Committee members who desire to propose a modification or an amendment to a proposed legislative rule must put the proposed modification or amendment in writing prior to making a motion to modify or amend.

6.5 **Public Hearing.** The Committee may, upon request of any interested person, or upon its own initiative, schedule a public hearing on the proposed legislative rule. All requests for a public hearing must be approved by the Committee Chairmen. The staff shall give notice of the public hearing in accordance with the open meetings law. All public hearings will be conducted according to rules established by the Committee's chairmen.

6.6 **Agency Attendance at Review Meetings.** A representative from the agency submitting the proposed legislative rule shall be present at the meeting at which the Committee has scheduled review of the proposed legislative rule. The representative shall be prepared to respond to questions from the Committee and may provide any additional information on the proposed legislative rule.

6.7 **Committee Determinations.** Based upon all of the information available, the Committee shall determine:

6.7.1 If the agency exceeded the scope of its statutory authority in approving the proposed legislative rule;

6.7.2 If the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

6.7.3 If the proposed legislative rule conflicts with any other provision of the Code or with any other rule adopted by the same or a different agency;

6.7.4 If the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

6.7.5 If the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

6.7.6 If the proposed legislative rule could be made less complex or more readily understandable by the general public; and

6.7.7 If the proposed legislative rule was promulgated in compliance with the requirements of Article 3. Chapter 29A and with any requirements imposed by any other provision of the Code.

Section 7. Recommendation and Action by the Committee.

7.1 **Recommendation to Legislature.** After reviewing the proposed legislative rule, the Committee shall recommend that the Legislature:

7.1.1 Authorize the agency to promulgate the proposed legislative rule as originally filed by the agency;

7.1.2 Authorize the agency to promulgate the proposed legislative rule as modified by the agency;

7.1.3 Authorize the agency to promulgate part of the proposed legislative rule;

7.1.4 Authorize the agency to promulgate the proposed legislative rule with certain amendments;

7.1.5 Authorize the agency to promulgate the proposed legislative rule as modified by the agency and with certain amendments; or

7.1.6 Recommend that the rule be withdrawn.

7.2 **Notice of Action.** The Committee shall immediately file notice of its action in the State Register and with the agency proposing the legislative rule. If the Committee recommends action other than the promulgation of the proposed legislative rule, the notice shall contain a statement of the reasons for the recommendation.

Dist 4/ 8/93

WEST VIRGINIA LEGISLATIVE RULEMAKING REVIEW COMMITTEE

INTERIM MEETING, FEBRUARY 8, 1993

Rule: Title 46, Series 1:

Adopted as amendment Senator Grubb moves to amend the rule as follows:

On page 19, by deleting section 8.2.C.,

and

On page 7 of Appendix E, section 8.22, by deleting the water quality standard for 2,3,7,8-TCDD (Dioxin), and inserting in lieu thereof the following:

Adopted as mod

"pg/l .014 .014 .014 .013 .014"

ADOPTED

REJECTED

Distld
2/8/93

SOLID WASTE MANAGEMENT BOARD
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
1615 Washington Street, East
Charleston, WV 25311-2126
Phone: (304) 558-0844 FAX; (304) 558-0899

Changes that need to be made: Solid Waste Management Board
Title 54, Series 5
Rules and Regulations for the
Disbursement of Grants to
Solid Waste Authorities

54-5-2 Definitions

2.7 Add: "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

54-5-4 Eligibility for Participation

4.5 Site needs to be changed to siting
4.6 Site needs to be changed to siting

4.8 "Contract" should read "grant award"

4.9 Add: "A copy of the audit report shall be forwarded to the Solid Waste Management Board."

4.12 Add: "Provided, however, that upon a finding that disbursement by this schedule will adversely affect continuity of the project, the Board may disburse funds on a schedule to facilitate this continuity ."

54-5-5 In-Kind Services

5.8 "Contract" should read "Grant Award".

Distd 2/8/93
BY DEP

LEGISLATIVE RULE MAKING REVIEW COMMITTEE

PROPOSED COMMITTEE MODIFICATIONS

CSR 38-2 SURFACE MINING AND RECLAMATION REGULATIONS

Section 2 - Definitions

2.26 - Collateral Bonds

Strike paragraphs (d) (letters of credit), (e) (real property), and (g) (whole life insurance policies). Recodify paragraph (f) (securities) as paragraph (d).

The Division of Environmental Protection has experienced significant difficulties in collecting these types of collateral bond instruments at the time of forfeiture. Real property collateral is often valueless because the company is usually in bankruptcy. Banks often do not honor letters of credit or allow them to expire without notification to the agency. Whole life policies often have their cash value reduced in order to pay delinquent premiums and the agency has no way of tracking these actions. Therefore, these types of bond instruments are no longer accepted by the agency. Existing instrument with good standing will continue to remain as bond until final permit release.

Section 3 - Permit Application Requirements

3.28 - Incidental Boundary Revisions

In the first sentence of paragraph (a), after the phrase "into non-coal areas", insert the words "or areas".

These words were inadvertently dropped from the draft text rendering the sentence incomplete.

In sub-paragraph (b) (4), strike the phrase "the existing permit area and".

On many large underground mining operations there are a number of small "patches" of land disturbance associated with the primary mine entry development area. These small disturbances are to facilitate development of air vents, fanways, etc. which are essential to maintain safe working conditions underground. These may be scattered over several square miles. Therefore, requiring a map to show all these disturbances is unduly burdensome, and serves no rational purpose.

3.33 - Improvidently Issued Permits

In paragraph (f), strike the phrase "paragraph (3)" which appears before the word "subsection", strike the notation "(d)" after the word "subsection", and insert in lieu thereof the notation "(e)".

This will correct an incorrect code citation.

Section 5 - Drainage and Sediment Control Systems

5.4 - Sediment Control

In sub-paragraph (b) (10) strike the first word "Provided", and insert in lieu thereof the word "Provide".

This will correct a typographical error.

Section 12 - Replacement, Release, and Forfeiture of Bonds

12.3 - Bond Adjustments

In the first sentence after the phrase " remain undisturbed", insert the phrase "or has been overbonded in accordance with paragraph (a) of Subsection 3.29 of these regulations", and after the phrase "number of undisturbed" , insert the words "or overbonded".

This change brings this provision into correspondence with the amendments in subsection 3.29 relating to incidental boundary revisions, and the use of such to delete overbonded acreage from a permit.

Section 14 - Performance Standards

14.15 - Disposal of Excess Spoil

In paragraph (g), sub-paragraph (8), after the word "fill", strike the phrase "shall not be allowed to flow onto the fill, and", and insert the phrase "around or through the fill" at the end of the sentence.

This amends the existing language to allow for diversion of surface waters into diversion ditches which pass thorough the fill area. Limiting the use of diversion channels around the fill only, results in significantly larger areas of disturbance and has been shown to result in instability of the fill is some instances.

Section 20 - Inspection and Enforcement

20,5 - Civil Penalty Determinations

In the second sentence of paragraph (b) , after the notation "subsection (b)", strike the notations "(e), (f), or (h)" and insert in lieu thereof the notations " (g), (h), and (j).

This will correct and incorrect cross reference.

Section 22 - Coal Refuse

22.4 - Permit Requirements

In paragraph (f), strike sub-paragraphs (1) and (2) and insert in lieu thereof the following sub-paragraphs:

(1). Class A impoundments shall be designed for a minimum of $P_{100} + 0.12(PMP - P_{100})$ inches of rainfall in six (6) hours.

(2). Class B impoundments shall be designed for a minimum of $P_{100} + 0.40(PMP - P_{100})$ inches of rainfall in six (6) hours.

The existing language contains criteria which results in gross overdesign of low and medium hazard classifications of coal refuse impoundments. The amendment establishes a design criteria which results in a factor of safety which is more appropriate for these lower hazard class structures.

A Hrny Gen - RTO

Distld by Senator Rubb 2/8/93

3.1.6 The yearly rental rate, disclosed as a percentage, which is the difference between the total amount the lessee must pay, excluding taxes, delivery charges, and bona fide maintenance or service fees, and the cash price, divided by the cash price, multiplied by one hundred to result in a dollar figure that is the ~~yearly~~ rental charge per one hundred dollars which is then applied to the tables published by the Federal Reserve Board regarding Regulation Z to determine the rate. Which may be rounded to the nearest multiple of five percent.

to obtain ownership

yearly

Rejected

MASTERCRAFT BUSINESS FORMS, INC 293-3934 · METRO 572-1945 Distributed 8-93 meeting

54944

Curtis Mathes

"THIS AGREEMENT IS SUBJECT TO BEING ASSIGNED TO ITT COMMERCIAL FINANCE CORP. AND THERE ARE NO DEFENSES AGAINST THE ASSIGNEE."

CONTRACT NO.
No. 1756
DATE

LEASE PURCHASE AGREEMENT AND DISCLOSURE STATEMENT

1.

INDEPENDENT OWNER/OPERATOR [LESSOR(S)]			LESSEE(S)		
CORPORATE NAME			NAME		
ADDRESS			ADDRESS		APT.
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
PHONE	STORE NO.		HOME PHONE	WORK PHONE	

2. DESCRIPTION OF LEASED PROPERTY:

A)

QTY	ITEM		
BRAND	MODEL	SERIAL NO.	

The condition of this property (In "A" above) is ☐ New ☐ Used. Cash Price $ _____

B)

QTY	ITEM		
BRAND	MODEL	SERIAL NO.	

The condition of this property (In "B" above) is ☐ New ☐ Used. Cash Price $ _____

3. AMOUNT AND TIMING OF EACH LEASE PAYMENT(S):
$ _____ ☐ Monthly $ _____ ☐ Weekly $ _____ ☐ Bi-Weekly
Each payment is due on the _____ of each ☐ Month ☐ Week ☐ Bi-Week. $ _____

4. TOTAL PAYMENT(S) DUE AT START OF LEASE:
_____ ☐ Monthly ☐ Weekly ☐ Bi-Weekly payment(s) of $ _____ plus sales/use tax of $ _____ for a total payment of $ _____. $ _____

5. LEASE RENEWALS:
In order to acquire ownership, you must renew this agreement for _____ monthly, _____ weekly, _____ bi-weekly terms for a total of $ _____ (the rates and amounts disclosed are subject to change if you are leasing two pieces of property and you return one of them). $ _____

6. TOTAL TO OWN:
The sum of Items 4 and 5 (does not include reinstatement fees, in-home collection fees, delivery or other charges, please see the terms of this contract for an explanation of other charges.) $ _____

7. TERMINATION: You may terminate this agreement at any time without further obligation or penalty, by returning the property to us in its present condition, normal wear and tear excepted, and by paying all lease payments you owe through the date of return. You have no obligation to acquire ownership of this property.

8. LIABILITY FOR PROPERTY: You are fully responsible for any loss, theft, damage or destruction of the leased property. In case of total loss, you must pay us the fair market value of the property at that time. In case of partial damage, other than normal wear and tear, you must pay our reasonable cost of repair. You are not required to provide or pay for any insurance. We do not provide for any insurance, however insurance on the leased property may be available through us at five percent 5% of each lease payment, however, in no event shall the premium cost be less than $1.00 per lease payment.

9. MAINTENANCE: During the term of this agreement and any renewal thereof, we will maintain the leased property in good working order. We will perform all repairs on the leased property. *We will not be responsible for any damage caused by your abuse, negligence or carelessness nor will we pay for any repairs done by others without our prior written approval.*

10. TAXES AND OFFICIAL FEES: You agree to pay increases in sales tax imposed by local, county, or state governments and to pay any personal property taxes, use taxes or ad valorem taxes assessed and official fees required relating to the leased property.

11. WARRANTIES: If new, this leased property is subject to a warranty given by the manufacturer. If the leased property is used, it carries the unexpired portion of the warranty which is _____ months for 2(A) and _____ months for 2(B). After expiration of the manufacturer's warranty, the lessor will provide maintenance in accordance with Paragraph 9 for the duration of this Agreement.

12. IN-HOME COLLECTION: If we are requested or required to pick up a lease payment from you, you agree to pay $_____ per payment.

13. REINSTATEMENT: If you fa to make any renewal lease payment(s) this agreement terminates, however, you may reinstate this agreement by paying the past due lease payments and all other charges due within 2 business days of the due date, if you pay weekly or bi-weekly or within 5 business days if you pay monthly. If you return the property during this period, you will have an extra 21 days from the date of return to reinstate. In order to reinstate you must pay any lease payments that you have missed plus a delivery charge of $ _____ if we must re-deliver the property. You may receive substitute property of comparable quality and condition.

14. EARLY PURCHASE OPTION: *You do not own the property.* You will not own the property unless you renew this agreement for _____ weeks/bi-weeks/months in a row, unless you elect to exercise the Early Purchase Option. This option allows you to purchase the property at any time after the first lease payment and before the last lease payment has been paid is made for an amount equal to _____% of the difference between the Total to Own (Item 6) and the total amount of all lease payments you have paid.

15. LOCATION OF PROPERTY: You will keep and use the leased property only at your address shown above in Item 1. You agree that you will not move the property from your address without first getting our written permission. We may move it for you.

16. NO RIGHT TO SELL: You have no right to sell, transfer, assign, sublease or in any way encumber the leased property. However, we may sell, transfer, assign or encumber our interest in this lease agreement and the leased property.

I HAVE READ AND UNDERSTAND THIS AGREEMENT. I HAVE HAD THE OPPORTUNITY TO ASK QUESTIONS TO CLARIFY THIS AGREEMENT AND THESE QUESTIONS HAVE BEEN ANSWERED SATISFACTORILY.

YOUR
RENT-TO-OWN CENTER

APPALACHIAN RENTALS

MONTH DAY YEAR

RENTAL - PURCHASE AGREEMENT

RENTAL AGREEMENT NO

1. LESSOR:

STREET ADDRESS

CITY STATE ZIP

TELEPHONE #

LESSEE(S):

LAST FIRST MI

LAST FIRST MI

STREET ADDRESS APT. #

CITY STATE ZIP

TELEPHONE # DELIVERY DATE

As used in this Agreement "you" and "your" mean the person signing this Agreement as renter or Lessee. "We", "us" and "our" refer to the Rental Company or Lessor. "Agreement" means this Rental-Purchase Agreement.

OWNERSHIP OPTIONS DISCLOSURES

The following disclosures are being made in order to assist you in understanding the provisions of your Rental-Purchase Agreement:

2. DESCRIPTION OF RENTED PROPERTY:

☐ New ☐ Previously Rented This property has the following damage(s):

3. PAYMENT:

	FIRST PAYMENT	AFTER THE FIRST PAYMENT ( ) WEEKLY	( ) MONTHLY
One Rental Payment	$	$	$
Sales Tax (If Applicable)	$	$	$
Renters Insurance	$	$	$
Pro-Rated Daily Fee	$		
Processing Fee	$		
Delivery/Installation/Pick-Up Fee	$		
Total Fee	$	$	$

ADDITIONAL FEES

Reinstatement Fee (If Agreement Expires) ..... $

Delivery Fee (Per Item Delivered) ..... $

Late Fee (According to State Law) ..... %
Of Amount Past Due

In-Home Collection (Per Visit To Your Home) .... $

X _____
(Sign Here If You Want This Service)

Cash Price ..... $

4. TOTAL OF WEEKLY PAYMENTS: Weekly rental, multiplied by ____ weeks to obtain ownership. If you renew this Agreement for ____ weeks after the initial ____ week, you will have paid $_____, and you will obtain ownership of the property. You may obtain ownership other ways. See Item 7 below. Since renting by the month is cheaper than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is a Rental Agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options.

5. TERM OF THIS LEASE: This Rental Agreement is for ☐ ONE WEEK ☐ ONE MONTH and expires ____. If you decide to renew this Rental Agreement, your first renewal payment is due on _____. You are not obligated in any way to renew this Agreement after the initial rental period. You may renew this Agreement if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a "Grace Period" for late payments, and you must make payment in advance to continue using the property. You understand this Rental Agreement terminates automatically if you do not renew it.

6. REIMBURSEMENT OF COSTS: If you do not keep this Agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and permitted by state law.

7. EARLY PURCHASE OPTION: At any time after paying the initial rental payment, you may exercise an early purchase option by paying cash. This cash payment may be determined by subtracting _____ % of all rental payments previously paid from the cash price stated in this Agreement.

8. REINSTATEMENT: If you fail to make a timely renewal payment, you have the right to reinstate this Agreement by paying all past due rental payments, any applicable late charges, reinstatement fees, and re-delivery fees provided:

1. You have voluntarily returned the property to us, if requested, and
2. No more than the equivalent of three (3) rental terms or thirty (30) days, whichever is greater, have passed since you have paid a timely renewal payment.

9. FEES AND TAXES: You do not have to pay any fees or other taxes during this Rental Agreement other than those listed above, if any.

10. INSURANCE AND DAMAGE TO THE PROPERTY: We do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to or loss or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the full value of the property if you fail to return it to us when this Rental Agreement terminates.

11. RENTERS INSURANCE: Any insurance coverages written may be provided in existing policies, or independently obtained and paid for by the Lessee, and from persons chosen by the Lessee. Undersigned hereby voluntarily selects the following coverage(s):

Property Insurance at a rate of _____ % of monthly/weekly payment with $_____ minimum premium.

The premium rate for Property Insurance will be applied against the monthly/weekly payment.

Lessee, being informed as to the above, hereby applies for insurance set forth above to Voyager Guaranty Insurance Company, Jacksonville, Florida, for any Property Insurance which insurance is subject to terms and conditions set forth in a Master Policy retained by the Lessor, describing the insurance and which Master Policy has been read by or to the undersigned Lessee. Undersigned Lessee acknowledges receipt of copy of this application and certifies that it is both complete and accurate, and freely and voluntarily furnished. Lessee desires to purchase the above insurance.

Monthly/Weekly Payment $_____ ☐ Accept _____ ☐ Decline _____ Effective Date _____

12. INSURANCE: You are not required to purchase insurance for the property from us or any agent designated by us.

13. MAINTENANCE: During the period of this Rental Agreement, we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others. We shall not be required to repair or maintain the property if you default on any of the terms of this Agreement or after you obtain ownership. We are not responsible for the repair of any fabric due to the normal wear and tear anticipated during normal usage of upholstered products.

14. WARRANTIES: If you choose to exercise your Early Purchase Option as discussed in Item 7, we will give you the details of our limited warranty and any manufacturer's warranty which may still be in effect. You may read these warranties at our store any time you choose.

15. TERMINATION AND DEFAULT: You are not obligated in any way to renew this Agreement or to buy the property. You may terminate this Agreement by providing for the immediate return of the property to us or by not renewing this Agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this Agreement. We may terminate this Agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

16. EQUITY: You understand that we own the property until you buy it or get ownership as stated in this Agreement. During the Rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this Agreement is terminated.

17. LOCATION OF PROPERTY: You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this Agreement immediately.

18. RETURN OF PROPERTY ON TERMINATION: If this Agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

19. ASSIGNMENT: We may sell, transfer, or assign this Rental Agreement. However, you have no right to sell, transfer, assign, pawn or sub-lease this property.

20. DAMAGE TO PERSONS OR PROPERTY: You understand that we will not be responsible for any loss or damage to any person or property arising out of the use of the property.

21. MISCELLANEOUS PROVISIONS: You understand that no changes may be made in this Agreement except by us in writing. You understand that this property may be new or previously rented, as indicated in Item 2. You have examined the property, and you agree that you have received the property in satisfactory condition. You understand that time is of the essence in this Agreement and that we do NOT have a "Grace Period" for rental payments or other terms.

NOTICE: THIS RENTAL-PURCHASE AGREEMENT IS REGULATED BY STATE LAW AND MAY BE ENFORCED BY THE ATTORNEY GENERAL OR BY PRIVATE LEGAL ACTION.

I HAVE READ THIS AGREEMENT, I UNDERSTAND IT AND I HAVE RECEIVED A COPY OF IT.

Driver's License Number _____ Expiration Date

Lessee _____ Date _____

Lessee _____

Lessee _____

Lessor _____ Represented By _____

ORIGINAL COPY

RAC Rent·A·Center®SM

Over 1,000 Stores Coast To Coast

Item _____ Weeks to Own _____

Features _____ Months to Own _____

_____ Cash Price $ _____

_____ ☐ New ☐ Previously Rented

RAC Rent·A·Center	VS.	RETAIL STORES
What's In It For You?		
	Rent•A•Center	Retail Stores
Free Delivery	YES	NO
Free Installation	YES	NO
Free Repair	YES	NO
Low Weekly Payments	YES	NO
Top Brand Names	YES	MAYBE
Long-Term Obligation	NO	YES
Credit Required	NO	YES
Down Payment/Deposit	NO	YES

$ _____ PER WEEK

$ _____ PER MONTH

Dist'd 2-8-93

12/11/91

SUMMARY OF ANTICIPATED REVENUES AND AGENCY NEEDS AS FEE SCHEDULE IS CURRENTLY WRITTEN

	(A) Estimate of Total $'s Collected	(B) % of Total $'s Collected (A/$958,150)	(C) Funding allocated for Agency Implementation	(D) % allocated of total implementation $'s (C/$958,150)	(E) Excess available for general program implementation (A - C)	(F) % of Total $'s given to general program implementation (E/$523,993)**
1) Health (septic) 7500 @ $30	$225,000	23.5 %	$112,500	11.7 %	$112,500	21.5 %
2) Health mon. well drlr's 250 @ $200	$ 50,000	5.2 %	$120,000	12.5 %	N/A	
3) DEP (M & M) 2600 fac @ $100	$260,000	27.1 %	$100,000	10.4 %	$160,000	30.5 %
4) DEP (O & G) 33,000 wells @ $3	$ 99,000	10.3 %	$ 40,000 *	4.2 %	$ 59,000	11.3 %
5) DEP (UIC) 645 @ $75	$ 48,375	5.1 %	$ 10,000 *	1.0 %	$ 38,375	7.3 %
6) WV Department of Agriculture (6000 products at $15.00 each)	$ 90,000	9.4 %	$ 75,000	7.8 %	$ 15,000	2.9 %
7) WV Division of Natural Resources:						
Water Resources Section (General program costs per 20-5M-6) (explained on subsequent page)			$403,993	42.2 %	N/A	N/A
(NPDES Program)			$ 50,000	5.2 %	$ 30,975	5.9 %
289 facilities @ $50.00 (ind-minor)	$ 14,450	1.5 %				
60 facilities @ $500.00 (ind-major)	$ 30,000	3.1 %				
50 facilities @ $300.00 (ind-ldfill)	$ 15,000	1.6 %				
39 facilities @ $100.00 (mun-major)	$ 3,900	0.4 %				
1200 facilities @ $10.00 (non-potw)	$ 12,000	1.3 %				
225 facilities @ $25.00 (mun-minor)	$ 5,625	0.6 %				
	$ 80,975	8.5 %				
UIC Class V (no permits issued to date)						
8) Waste Management Section			$ 50,000	5.2 %	$ 54,800	10.5 %
14,000 UST's @ $5.00 per tank	$ 70,000	7.3 %				
Sol. wste 1 cent/ton x 2 mil. tons/yr	$ 20,000	2.1 %				
RCRA wst. 37 cent/ton x 40,000 to/yr	$ 14,800	1.5 %				
	$104,800	10.9 %				
9) Water Resources Board	$ 000	0.0 %	$ 50,000	5.2 %	N/A	
Total	$ 958,150	100.0 %	$1,011,493	105.4 %	$470,650	89.9 % (10.1 % underfunded)

* - UIC and Oil & Gas Separations are a Water Resources Estimate

** - $523,993 is needed by WRS, Water Rec's Board, & Monitoring well driller certification program for general program implementation.

Needed?

Dist'd 2-8-93

TITLE 47
LEGISLATIVE RULES

DIVISION OF ~~NATURAL RESOURCES~~ ENVIRONMENTAL PROTECTION
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

SERIES 55
GROUNDWATER PROTECTION ACT FEE SCHEDULE

§ 47-55-1. General.

1.1. Scope and Purpose. -- This is a new rule which establishes a schedule of fees for the groundwater protection fund and the groundwater remediation fund. This rule is applicable to any person who owns or operates facilities or conducts activities subject to the provisions of West Virginia Code §20-5M-1 et seq.

1.2. Authority. -- West Virginia Code §20-5M-9 subsections (a) and (b).

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

1.5. In order to allow for a review of the effectiveness of the schedule of fees set forth in this regulation, the fee schedule may through rulemaking be revised at any time prior to the regulations expiration. This regulation expires July 1, 1994.

1.6. Incorporation by Reference. -- Whenever federal or state statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on the filing date listed in Section 1.3 of this regulation.

§ 47-55-2. Definitions.

2.1. "Agency" means any branch, section, division, department or unit of the state, county or local government however designated or constituted which ~~is authorized~~ has authority under West Virginia Code § 20-5M-1 et seq. to regulate facilities, or activities ~~or products~~ which have the potential for impacting groundwater.

2.2. "Chief" means the chief of the office of water resources ~~section~~ of the division of ~~natural resources~~ environmental protection.

2.3. "Class (A through F) landfill" means any landfill Class A through F as defined in Solid Waste Management regulations 47CSR38-2.

~~2.4. "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person and other persons on a cost-sharing or nonprofit basis.~~

2.4.~~2.5.~~ "Director" means the director of the division of ~~natural resources~~ environmental protection of the department of commerce, labor and environmental resources, unless otherwise specified in these regulations.

2.5.~~2.6.~~ "Generator" means any generator as defined in West Virginia Code §20-5G-1 et seq.

2.6.~~2.7.~~ "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

2.7.~~2.8.~~ "Groundwater Certification" means an assurance issued by the director of the division of ~~natural resources~~ environmental protection that a permit or other approval issued by a state, county, or local government body regarding an activity that affects or is reasonably anticipated to affect groundwater complies with all requirements of West Virginia Code §20-5M-1 et seq., and the legislative rules promulgated pursuant to that chapter in accordance with West Virginia Code §29A-1-1 et seq. and any other requirements of state law, regulations or agreements regarding groundwater.

2.8.~~2.9.~~ "Groundwater protection fund" is the fund established by West Virginia Code §20-5M-9(c)(1).

2.9.~~2.10.~~ "Groundwater remediation fund" is the fund established by West Virginia Code §20-5M-9(c)(2).

2.10.~~2.11.~~ "Hazardous waste" means any hazardous waste as defined in section 3.1.3 of the division of ~~natural resources'~~ environmental protection's hazardous waste management regulations, 47CSR35.

2.11.~~2.12.~~ "Injection well (Class I through V)" means any injection well, Class I through V, as defined in Regulations for the West Virginia Underground Injection Control Program, 46CSR9.

2.12.~~2.13.~~ "Major facility" means any facility as defined in section 2.22 of the State-National Pollutant Discharge Elimination System Regulations, 46CSR2.

2.13.~~2.14.~~ "Monitoring well driller" means the individual operating the drilling rig when drilling, altering or abandoning (i.e., properly closing) a monitoring well(s).

2.14.~~2.15.~~ "Permit" means any license, certification, registration, permit, or any other approval granted by an agency authorized to regulate facilities, or activities, ~~or products~~ which may have an impact on groundwater.

2.15.~~2.16.~~ "Person" means any industrial user, public or private corporation, institution, association , firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

2.16.~~2.17.~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any undesirable insects, rodents, nematodes, fungi, weeds, or other organisms which the commissioner of agriculture may declare to be a pest, and any substances intended for use as a plant regulator, defoliant, desiccant or herbicide, except viruses on or in living man or other living animals.

~~2.18. "Product" means any pesticide, fertilizer, or septic tank.~~

2.17.~~2.19.~~ "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by Section 502(4) of the Clean Water Act. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~2.20. "Regulatory action" means any enforcement, compliance, or procedural activity initiated under the authority of West Virginia Code §20-5M-1 et seq.~~

2.18.~~2.21.~~ "Solid waste" means any solid waste as defined in West Virginia Code §20-5F-2(k).

§ 47-55-3. Groundwater Protection Fund and Groundwater Remediation Fund Fees.

3.1. Groundwater remediation fund fees and ~~Annual~~ annual goundwater protection fund fees ~~and groundwater remediation fund fees~~ required -- Any person whose activities may affect

groundwater quality or is required to obtain a permit from any agency shall pay the appropriate groundwater protection fund and groundwater remediation fund fees in accordance with the provisions of subsections 3.5 and 3.6 of these regulations.

3.2. Method of fee collection, fee limits, and transfer of fees to funds.

3.2.1. All groundwater protection fund and groundwater remediation fund fees assessed under these regulations shall be added together and paid to the appropriate agency by check, money order or electronic transfer.

3.2.2. Groundwater remediation fund fees will be collected for a period not to exceed two years (from the effective date of this regulation). Furthermore, the director shall also discontinue collection of groundwater remediation fund fees if $250,000.00 is collected before the two year period expires.

3.2.3. Agencies receiving the aforementioned funds shall transfer to the director of the division of ~~natural resources~~ environmental protection or his duly authorized representative, at such frequency as the director may deem appropriate, all groundwater protection fund and groundwater remediation fund fees collected.

3.3. Conditions of certification relative to fees and effect on permits.

3.3.1. Each agency's permit ~~or other regulatory action~~ shall require that all groundwater protection fund and groundwater remediation fund fees be paid in accordance with subsections 3.5 and 3.6 of these regulations. The permit ~~or other regulatory action~~ shall also contain language stating that failure to remit groundwater protection fund and/or groundwater remediation fund fees shall result in withdrawal or denial of groundwater certification, and subject the person to the penalties outlined in West Virginia Code §20-5M-10.

3.3.1.a. Agencies may require operating facilities/activities, which do not hold a valid permit and which are identified in either section 3.5 or 3.6 of this regulation, to pay the fees provided for in section 3.5 and 3.6.

3.3.1.b. Prior to issuing a permit, each agency shall require that all groundwater protection fund fees and groundwater remediation fund fees be paid following the provisions set forth in section 3.4.1 of this regulation.

3.3.2. No permit, subject to the requirements of

West Virginia Code §20-5M-1 et seq. shall be issued, modified, or renewed without groundwater certification, unless the director declares otherwise pursuant to West Virginia Code §20-5M-8 (c).

3.4. Schedule of groundwater protection fund fees. -- (Fees are assessed on facility/activity~~/product~~ type based on the projected cost of administering the Groundwater Protection Act ~~and the potential for that facility/activity/product to impact groundwater quality~~.)

3.4.1. Persons subject to the fees outlined in subsections 3.5 and 3.6 of these regulations will be notified by the director, or his delegate, of the appropriate rate or actual amount of the fee, and the date fees are due.

3.4.2. The director shall coordinate the fee collection activities to assure that the statutory limits on fees provided for in West Virginia Code §20-5M-9 subsections (a) and (b) are not exceeded.

3.5. Schedule of groundwater protection fund fees -- The annual groundwater protection fund fee for the following facilities/activities ~~facilities, activities or product types~~ except 3.5.3 which is a one time ~~product~~ registration fee due prior to installation, and except 3.5.6 which is a tipping fee, shall be:

3.5.1. Registering a pesticide ~~product~~ -- $15.00.

3.5.2. Fertilizers - reserved.

3.5.3. Septic tank registration seals - $30.00 each. These seals are to be purchased from the division of ~~natural resources~~ environmental protection, office of water resources ~~section~~.

3.5.4. Underground storage tank certification/ registration - $5.00 per tank.

3.5.5. Generators of hazardous waste - $100.00.

3.5.6. Disposal of solid waste in a class A, B, or C landfill - a tipping fee of one cent per ton ($0.01/ton). These fees will be collected following the procedures outlined in West Virginia Code §20-5F-5a.

3.5.7. A Class F solid waste facility - $300.00.

3.5.8. A facility which may impact groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under West Virginia Code §22A-3-1 et seq., or West Virginia Code

§20-5A-5 (b)(6) ~~(subject to the jurisdiction of the division of environmental protection),~~ or West Virginia Code §22A-4-1 et seq. - $100.00.

3.5.9. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is designated a major facility (industrial) - $500.00.

3.5.10. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is not designated as a major facility (industrial) or is not described in 3.5.11, 3.5.12 or 3.5.13 below - $50.00.

3.5.11. A POTW with design flow greater than one million gallons per day (gpd) - $100.00.

3.5.12. A POTW with design flow less than one million gallons per day (gpd) - $25.00.

3.5.13. A non POTW operating a sewage treatment plant - $10.00 per plant.

3.5.14. An oil well - $3.00 per well.

3.5.15. A gas well - $3.00 per well.

3.5.16. A class II or class III UIC underground injection well: ~~- $75.00 per well.~~

3.5.16.a. Class II-D or class III underground injection well - $75.00 per well.

3.5.16.b. Class II-R underground injection well - $50.00 per well.

3.5.17. Class V underground injection wells - $15.00 per permit.

3.5.18. Class I underground injection wells - $200.00 per well.

3.5.19. A monitoring well drilling operation shall utilize a certified monitoring well driller for the drilling of groundwater monitoring wells. The certification fee for each monitoring well driller shall be - $200.00. ~~Certification of each monitoring well driller, who drills groundwater monitoring wells in the state of West Virginia - $200.00.~~

3.5.20. Facilities/activities/persons which are

reasonably suspected to have the potential to adversely impact groundwater quality, as determined by the chief, and which are not subject to fees outlined in 3.5.1 through 3.5.19 above - reserved.

3.6. Schedule of groundwater remediation fund fees -- The ~~annual~~ groundwater remediation fund fees for the following facilities/activities ~~facilities, activities or product types~~ except 3.6.3 which is a one time ~~product~~ registration fee due prior to installation, and except 3.6.5 which is a tipping fee, shall be:

3.6.1. Registering a pesticide ~~product~~ - $2.00.

3.6.2. Fertilizers - reserved.

3.6.3. Septic tank registration seals - $3.75. These seals are to be purchased from the division of ~~natural resources~~ environmental protection, office of water resources ~~section~~.

3.6.4. Generators of hazardous waste - $12.50.

3.6.5. Disposal of solid waste in a Class A, B, or C landfill - a tipping fee of $0.00125/ton. These fees will be collected following the procedures outlined in West Virginia Code §20-5F-5a.

3.6.6. For Class F solid waste facilities - $37.50.

3.6.7. A facility which may impact groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under West Virginia Code §22A-3-1 et seq., or West Virginia Code §20-5A-5 (b)(6) ~~(subject to the jurisdiction of the division of environmental protection),~~ or West Virginia Code §22A-4-1 et seq. -$12.50.

3.6.8. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is designated a major facility (industrial) - $62.50.

3.6.9. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is not designated as a major facility (industrial) or is not described in 3.6.10, 3.6.11 or 3.6.12 below - $6.25.

3.6.10. A POTW with design flow greater than one million gallons per day - $12.50.

3.6.11. A POTW with design flow less than one million gallons per day - $3.13.

3.6.12. A non POTW operating a sewage treatment plant -$1.25 per plant.

3.6.13. An oil well - $0.38 per well.

3.6.14. A gas well - $0.38 per well.

3.6.15. A class II or class III UIC underground injection well: ~~- $9.38 per well.~~

3.6.15.a. Class II-D or class III underground injection well - $9.38 per well.

3.6.15.b. Class II-R underground injection well - $6.25 per well.

3.6.16. Class V underground injection wells -$1.88 per permit.

3.6.17. Class I underground injection wells -$25.00 per well.

3.6.18. A monitoring well drilling operation shall utilize a certified monitoring well driller for the drilling of groundwater monitoring wells. The certification fee for each monitoring well driller shall be - $25.00. ~~Certification of each monitoring well driller, who drills groundwater monitoring wells in the state of West Virginia - $25.00.~~

3.6.19. Facilities/activities/persons reasonably suspected to have the potential to adversely impact groundwater quality, as determined by the chief, and that are not subject to fees outlined in 3.6.1 through 3.6.18 above - reserved.

§ 47-55-4. Severability.

If any provisions of this regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the regulation, and to this end the provisions of the regulation are declared severable.

Dist'd 2-8-93

D I V I S I O N O F N A T U R A L R E S O U R C E S

WEST VIRGINIA GROUNDWATER PROTECTION ACT FEES

RESPONSIVENESS SUMMARY
April 1992

In accordance with Chapter 29A-3 of the West Virginia Code, the Division of Natural Resources (DNR) issued on January 16 a public notice announcing two public hearings on proposed Groundwater Protection Act fees.

The public notice stated that the DNR would hold the hearings in Charleston, on February 19, and in Morgantown on February 20, to discuss proposed rules that would impose fees on facilities and activities that may affect ground water quality.

The notice further stated that the public comment period would extend until March 2, 1992 (46 days after publication of the public notice) and indicated when and where the proposed regulations could be reviewed by the public.

The public notice was published in eight newspapers across the state, including the Charleston Gazette. Copies of the public notice were also sent to state agencies affected by the proposed rules, the U.S. Environmental Protection Agency, and the West Virginia Chamber of Commerce. To further publicize the hearings the agency issued a press release on February 11.

A total of 30 people attended the hearings which were held at 7:00 p.m. at the Capitol Complex Conference Center in Charleston and at the Mountainlair in Morgantown. One witness testified at the February 19 hearing; eight witnesses testified at the February 20 hearing. Major segments of the public that were represented at the hearings included state agencies, economic interest groups and private citizens.

In addition to nine oral comments, the DNR received 6 written statements by March 2, the date on which the official record was closed.

All comments were reviewed and considered in developing the final draft regulations.

RESPONSE TO PUBLIC COMMENTS

In the following section, the agency responds to recommendations and concerns raised in oral and written comments.

A Bureau of Public Health official commented that the term monitoring well driller, as used in the proposed regulations, could be misconstrued to mean a company or organization. The commenter clarified that the intent of the monitoring well driller certification program is to maintain a minimum standard of skill only for individuals that install monitoring wells; it is not intended to certify companies or organizations.

DNR agrees the term needs clarification, and has added the definition of "monitoring well driller" to the regulations and inserted clarifying language in appropriate sections.

One commenter, representing the West Virginia Gasoline Dealers and Automotive Repair Association, asked whether small quantity generators would be required to pay the generator of hazardous waste fee.

Small quantity generators are not required to pay this fee. This fee applies to hazardous waste generators that produce more than 12,000 kilograms of hazardous waste per year. The regulations define "generator of hazardous waste" by reference in Section 2.6.

The same commenter objected to the $5.00 certification fee imposed on owners and operators of underground storage tanks. The commenter stated that USTs are already regulated by the Underground Storage Tank Act. Therefore, they are already subject to registration, remediation, and capitalization fees.

The Ground Water Protection Act clearly states that fees could be imposed in addition to any existing fees. Fees authorized by the Groundwater Protection Act are intended to fund a coordinated approach to the comprehensive ground water protection program and will not duplicate existing regulatory efforts.

The commenter also asked whether the fee imposed on owners or operators of Class V injection wells would apply to service station drains connected to sanitary sewers or drains connected to leach fields and dry wells.

The DNR wishes to clarify that automobile fuel and service station floor drains connected to sanitary sewers are not Class V wells.

Facilities that discharge service bay waste fluids into leach fields or dry wells are operating Class IV wells. Class IV wells are prohibited by state law and must be closed.

One commenter expressed concern that the regulations did not include a severability clause. As a result, if a section of the regulations was found to be invalid, the entire rule would be rendered ineffective.

The DNR finds this concern valid and has included a severability

clause in the proposed rules.

Many commenters indicated their belief that the proposed $30 fee on septic systems was excessive and that it would pose undue hardship to citizens in these difficult economic times.

DNR does not believe this concern is justified. The proposed $30 fee is a one time fee that would be applied to the purchase of a new tank or replacement tank. New, concrete septic systems are capable of properly functioning for approximately 50 years. In this case, the fee translates to a cost of 60 cents per year to the owner. The DNR does not consider this amount unreasonable.

Several commenters predicted that the new fee would cause proliferation of black market tanks, construction of homemade tanks and installation of illegal tanks.

Homemade tanks, as well as tanks purchased out-of-state are not exempt from the law. They are required to have the $30 seal before being installed.

The installation of any septic system without purchasing the seal and without approval from the Bureau of Public Health would be illegal and subject the offender to penalties and fines established by law.

Another commenter stated that the fee placed on Class V injection wells would pose tremendous hardship on citizens who have purchased their septic systems years ago and who are now on limited income.

First, the DNR wishes to clarify that septic systems that serve fewer than 20 persons per day and receive solely sanitary waste are not Class V injection wells. Secondly, the $30 fee would be assessed on the purchase of a seal that must be affixed to newly installed septic tanks, or replacement tanks. Existing septic systems, which are not Class V wells, will not be assessed any fee.

The same commenter challenged "the statement that Class V wells pollute ground water" and requested scientific proof.

Proof of ground water contamination due to the various categories of Class V injection wells abounds in scientific studies referenced in bibliographies that can be found on the shelves of most college libraries such as West Virginia University. The DNR does not have the resources to provide the public with technical bibliographic information pertaining to the various aspects of surface and ground water pollution.

The commenter was specifically interested in septic systems. Scientific studies have proven that in many instances poor design, improper construction and maintenance, and bad system locations have led to ground water pollution. In addition, the use of

synthetic organic chemical degreasers and tank cleaners has resulted in organic contamination of ground water sources.

As mentioned during the question and answer session, the National Small Flows Clearinghouse, located at the West Virginia University Campus, has excellent technical information pertaining to on site small community wastewater systems.

One commenter wanted to know who would be responsible for the sale of seals.

Administrative procedures that would outline the mechanisms for implementing the collection of all ground water protection fees have not yet been developed. The DNR will develop these procedures in cooperation with the Bureau of Public Health and other agencies. Concerns expressed during the question and answer session which followed the public hearing held in Morgantown will be taken into consideration at that time.

In relation to Class II wells (which are divided into Class II-D and II-R), another commenter wrote that the proposed $75 per year per well was not justifiable. The commenter explained that according to UIC regulations, these wells must comply with rigid construction and operational standards. In addition, operators must follow stringent reporting and monitoring requirements. Considering the level of protection to groundwater already provided by UIC regulations, the commenter stated it was an injustice to burden these wells with an additional expense.

The commenter further proposed to combine Class II-R wells (utilized for the enhanced oil recovery projects) with oil and gas producing wells.

In assessing the proposed $75 per year fee, the DNR has taken into consideration the existing rules and regulations that govern Class II wells as well as other injection well categories. Well categories were analyzed and fees were based on the perceived threat to ground water aquifers.

The Division agrees that there are similarities between oil and gas well and Class II-R wells. However, oil and gas wells are not injection wells. Because Class II-R wells inject fluids/compounds under pressure, the threat of fluid migration into non-targeted formations exists.

Upon closer scrutiny, the Division finds that, due to the nature of the injected fluids, differences between Class II-R and Class II-D wells exist. Therefore, the Division has reduced the Groundwater Protection Fund fee for Class II-R wells to $50 per year. Furthermore, the Groundwater Remediation fund fee has been reduced to $6.25 per well.

One commenter indicated his belief that the proposed $62.50 fee and $500 fee on major industrial facilites with NPDES permits had no sound foundation because the "classification system" was not based on the nature and volume of the waste stream but on volume alone.

The commenter added that not all large industrial facilities should have the same fee and facilities with little likelihood of causing contamination should have a fee no higher than minor facilities.

The proposed regulations make no reference to a classification system. Perhaps the commenter refers to the criteria established by EPA to classify facilities in the Major or Minor Discharger category.

Large industrial facilities are not necessarily classified as major dichargers. Before a facility can be considered a major or a minor industrial discharger, both the Water Resources Section Chief and the EPA Regional Adminitrator evaluate various aspects of a facility's operations including, toxic pollutant potential, waste water and stream flows, public health impacts and water quality factors. The nature of the stream flow is an important parameter which must be taken into consideration.

Facilities with "little likelihood" of causing contamination would normally fall in the minor discharger category and be charged accordingly.

The West Virginia Manufacturers Association (WVMA) commented on the proposed ground water protection fees by suggesting modifications and deletions. The following response addresses the WVMA's comments in the order in which they were submitted:

Comment 1. The WVMA stated that the Fiscal note did not indicate how the DNR had calculated the amount to fund the ground water program. As an example, the Association pointed out that monitoring well drillers would be charged a relatively large fee, with no explanation of why such a high fee was necessary.

In addition, the WVMA pointed out that the estimated total cost of the program exceeded the statutory limit for fee assessment. Consequently, the WVMA requested a detailed breakdown of the costs required to fund the ground water protection program.

Response: The proposed fees are the result of several meetings among representatives of a special group created by the Governor in an attempt to gather input from all interested parties affected by the rule. In these meetings, ground water regulatory agencies outlined their needs and the funds necessary to cover program costs.

For instance, the Bureau of Public Health estimated the cost necessary to provide continuing education and training of

monitoring well drillers to ensure that wells are properly constructed.

In filing the proposed rules, the DNR has submitted to the Secretary of State all documentation required by the Administrative Procedures Act (APA). A breakdown of program implementation costs is not required by the APA. In addition, explanation of how the fees were assessed is not required in the Fiscal Note. The Fiscal Note is only an estimate of the projected program cost. The DNR is required by Section 3.4.2 of the regulations to ensure that the statutory limit for fee assessment is not exceeded.

The document "Summary of Anticipated Needs to Implement the Ground Water Protection Program" describes the development of criteria to recover the necessary costs of implenting the program. The document is part of DNR's records and may be requested by the public under the state Freedom of Information Act.

Comment 2. The WVMA stated that Section 2.1 defined the term "agency" in a manner that failed to conform with the Groundwater Protection Act. The Association suggested deletion of the term "product" from the definition because the Act only allows regulation of activities or facilities, not "products." In addition, the WVMA pointed out that Section 5(b) of the Groundwater Protection Act refers to facilities or activities that may "adversely" affect ground water and suggested that clarification should be added to the rules.

Response: The DNR concurs that the Act only allows the regulation of activities or facilities. As a result, the term "product" has been deleted. In addition, the definition of "agency" has been modified as follows:

2.1 "Agency" means any branch, section, division, department or unit of the state, county or local government, however designated or constituted, which has authority under WV Code §20-5M-1 et seq. to regulate facilities or activities which have the potential for impacting ground water.

The term "adversely" impacting ground water is only used in Section 5(b) of the Groundwater Protection Act and specifically refers to unregulated facilities. Section 2(b) of the Act states that groundwater must be maintained at existing quality. Furthermore, Section 9(a) states that fees are applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article.

Therefore, the DNR will not insert the term "adversely" in sections of the regulations which apply to regulated facilities.

Comment 3. The WVMA suggested that the definition of "commercial solid waste facility" be drafted so as to conform to

the definition given the same term under the Solid Waste Management Act.

Response: The definition "commercial solid waste facility" has been deleted as the term is not used in the proposed version of these regulations.

Comment 4. The WVMA noted that Section 2.14 defined the term "permit" in an overly broad and vague fashion. The Association suggested replacing the proposed definition with the following language: 2.14. "Permit" means any license, certification, registration, permit, or any other approval granted by an agency.

Response: The definition of the term "permit" was derived from Chapter 20-5M-8(b). The DNR has determined that the definition is not broad or vague for the scope of these regulations. As a result, with the exception of the deletion of the word "product" for reasons explained in our response to comment #2, DNR will not change the definition.

Comment 5. The WVMA suggested adding "soil conservation districts" and "watershed improvement districts" to the definition of "person" (Section 2.15) in order to maintain consistency with the terminology of the Groundwater Protection Act.

Response: The DNR agrees with the WVMA and has included the terms "soil conservation districts" and "watershed improvement districts" to the definition of "person".

Comment 6. The WVMA stated that the definition for "product" (Section 2.17) was unnecessary since only activities and facilities are regulated under the Act. The WVMA submitted that the inclusion of the term "septic tank" within this definition was illogical and urged its deletion.

Response: The DNR concurs with the WVMA and has deleted the definition of "product" from the regulations.

DNR further notes that Septic tanks will be regulated as an activity under Sections 3.5 and 3.6.

Comment 7. The WVMA suggested that the term "publicly owned treatment work" (Section 2.18) should be defined in a manner consistent with the definition given this term under the state National Pollutant Discharge Elimination Program. The Association maintained that, as drafted, the term would apply to a septic tank at a municipal or state office.

Response: The definition of POTW is consistent with Title 47 Series 26 of the West Virginia Legislative Rules which establishes a water pollution control permit fee schedule, as authorized by Chapter 20-5A.

Furthermore, Septic systems which serve more than 20 persons, such as systems serving municipal or state offices, would be subject to regulation under 46 CSR Series 9.

As a result, DNR has determined that the existing definition is adequate.

Comment 8. The WVMA pointed out that, as drafted, Section 3.1 of the proposed rules requires annual payment of the Groundwater Protection Fund fees and Groundwater Remediation Fund fees. Under the Act, only Groundwater Protection Fund fees may be assessed on an annual basis.

Furthermore, the WVMA commented that Section 3.1 allowed fees to be assessed against anyone whose activities affect ground water, while the Act requires that fees be assessed only against those facilities and activities whose permits are subject to certification by the DNR.

Response: DNR agrees that the reference to payment of ground water remediation fund fees is misleading and has changed the wording to clarify that ground water remediation fund fees are not annual fees.

DNR believes that Section 3.1 is not overly broad because the Act allows for the regulation of any facility or activity which may impact ground water quality and authorizes DNR to became the regulatory agency for unregulated facilities. As a result, DNR will not modify this provision of Section 3.1.

Comment 9. The WVMA requested that DNR define the term "other regulatory action" (Section 3.3). The Association also stated that the provision included in Section 3.3 was overly broad and oppressive in that it would trigger the payment of a fee whenever "other regulatory action" takes place.

Response: The DNR concurs that the term "regulatory action" is broad and has deleted Section 2.19 from the regulations. Reference to "regulatory action" has also been deleted in Section 3.3.1. The intent of the term regulatory action was to allow fees to be charged to facilities/activities that were operating without a permit. These facilities will be required to pay fees under the new Sections 3.3.1(a) and (b) which read as follows:

3.3.1.a Agencies may require operating facilities/ activities, which do not hold a valid permit and which are identified in either Section 3.5 or 3.6 of this regulation, to pay the fees provided for in Section 3.5 and 3.6.

3.3.1(b) Prior to issuing a permit, each agency shall require that all groundwater protection fund fees and groundwater remediation fund fees be paid following the provisions set forth in

Section 3.4.1 of this regulation.

Comment 10. The Association urged the deletion of Section 3.2, as certification is not within the scope of the fee rules.

Response: Section 20-5M-9(a) of the Act allows certification to be dependent upon timely payment of fees. Thus, the DNR maintains that it is appropriate to outline conditions of certification as they relate to payment of ground water remediation fees and annual ground water protection fees in the regulations. As a result, DNR will not delete this provision.

Comment 11. The WVMA urged the DNR to delete the word "product" for Section 3.4. Moreover, the Association noted that nowhere does the Groundwater Protection Act authorize fee assessment based on the potential for a facility or activity to affect ground water.

Response: The DNR concurs with the WVMA and has adopted the language suggested by the Association. Consequently, Section 3.4 has been modified to read as follows:

3.4 Schedule of Groundwater Protection Fund Fees. -- Fees are assessed on facility/activity type, based on the projected cost of administering the Groundwater Protection Act.

Comment 12. The WVMA approved the requirement that the DNR would advise those who were assessed fees of how much and when the fees are due and recommended the addition of the following language to Section 3.4.1 : "Fees are not effective and due until notice is received, as required by this subsection."

Response: The DNR maintains that Section 3.4.1 does not require clarification and believes the proposed language to be unnecessary.

Comment 13. As already stated in comments 2, 6, and 11, the WVMA urged the DNR to delete the word "product" which appears in the second line of Section 3.5.

Response: The DNR has deleted the word "product" from Section 3.5.

Comment 14. The WVMA stated that registration of a pesticide (Section 3.5.1) is not a "use or application" and should not be subject to a fee under the program. The Association maintained that fees should be assessed only upon those who use or apply the pesticide.

Response: The DNR agrees that registration of a pesticide is not a use or application. However, the Act recognizes that pesticides may impact ground water quality. Therefore, pesticides are subject to fees authorized by the Act.

Attaching a fee to pesticide users is difficult and not cost effective. The definition of "pesticide," as defined in the proposed regulations includes substances such as bleach, rat poison and insect sprays. Practically every citizen in the state is a potential pesticide applicator/user. The DNR maintains that collection of fees through the existing registration process is the only feasible and cost effect effective mechanism available.

Comment 15. The WVMA recommended revising Sections 3.5.8, Sections 3.5.9 and Sections 3.3.10 to add the word "adversely" in between may and impact which appear in the first line of each of these sections.

Response: The DNR has concluded not to add the word "adversely" as explained in the response to comment # 2.

Comment 16. The WVMA suggested that the DNR should not assess a $10 per plant fee for non-POTW's operating sewage treatment plants, provided a non-POTW is covered under Sections 3.5.9 or 3.5.10 of the regulations.

Response: DNR concurs with the WVMA. The DNR will not assess a $10 fee if a facility is covered by Sections 3.5.9 or 3.5.10.

However, the fees in 3.5.13 and either 3.5.9 or 3.5.10 will apply to facilities that are required to have both a municipal and an industrial NPDES permit.

Comment 17. The WVMA questioned the need to establish a fee for certification of monitoring well drillers, stating that it was unclear from the proposed regulations why the fee would be necessary to implement the requirements of the Act. The WVMA expressed the opinion that a $200 fee for certification of each monitoring well driller would only seem reasonable if it were a one-time fee.

Response: Monitoring wells, both ambient and facility/activity specific, are the heart of the ground water protection program. Regulatory agencies, as well as regulated facilities, will base important decisions on the water quality data derived from these wells. Therefore, it is essential that monitoring wells be properly constructed in order to obtain accurate, reliable data.

As previously discussed, the proposed fees reflect the projected cost to develop and implement a monitoring well driller certification program. DNR believes that the provision allowing for a review of the fees by July 1, 1994 will be an effective mechanism to verify the accuracy of the projected costs and to make modifications as necessary. As a result, DNR will not change the fee.

Comment 18. The WVMA objected to the language in Section 3.5.20 which allows the Chief to assess fees based on his suspicion that an activity or facility may adversely affect ground water. The WVMA maintained that fees should be tied to permitted facilities or activities and requested that this provision be deleted.

Response: Section 3.5.20 has been reserved to provide for facilities/activities/person, that are not currently regulated. These facilities would be assessed fees after a regulatory program has been established for those facilities. This section would also require that the current fee schedule be adjusted to stay within the limits established by the law under 20-5M-9(a).

Comment 19. The WVMA again noted that the Groundwater Remediation fund fee is not an annual fee and urged the DNR to delete the word "annual" from Section 3.6.

Response: The DNR concurs with the Association and has deleted the word "annual" from Section 3.6.

Comment 20. The WVMA urged the insertion of the word "adversely" in between the words may and impact appearing in Sections 3.6.7, 3.6.8 and 3.6.9. Moreover, the Association urged that a notation be added to each of these provisions to recognize the appeal and review provisions established at Section 11 of the Act.

Response: The DNR concludes that it not necessary to add the word "adversely" in the sections of the regulations mentioned above. As indicated in the response to comment #2, the term "adversely" is only used in Section 20-5M-5(b) of the Act and specifically refers to unregulated facilities.

The agency believes that to repeat the appeal and review provisions established by Setion 11 of the Act is unecesssary. Section 11 of the Act applies regardless of whether or not the provision is repeated in these regulations .

Comment 21. The WVMA recommended that non-POTWs operating sewage treatment plants be exempt from the $1.25 per plant fee if they are covered under Sections 3.6.8 or 3.6.9 of the regulations.

Response: See response provided in comment 16.

Comment 22. In submitting its final comment the WVMA noted that Sections 3.5.6 and 3.6.5 require the payment of fees based on the volume of waste disposed at Class A, B, or C landfills. The WVMA pointed out that, in most cases, the resources required to measure and keep volumetric records of waste disposal would exceed the cost of the fee imposed. The WVMA recommended the imposition of a reasonable annual fee for disposal of industrial waste in

excess of 50 tons.

Response: The DNR believes that the WVMA may be misunderstanding the process of how fees will be applied to the different classes of landfills.

Operators of Class A, B, or C landfills are currently responsible for tracking the volume of waste they accept and for charging the appropriate tipping fees. For example, industrial waste sent to a Class A, B or C landfill will be charged the rate set by each landfill operator. Landfill operators will also be responsible for paying the DNR the fees established by the regulations.

Industrial wastes disposed of at a Class F landfill are not subject to tipping fees. These facilities will pay an annual fee regardless of the amount of material they accept.

In closing the hearing, David Watkins reminded the attendees that the DNR is mandated to evaluate this rule by July 1, 1994.

The DNR wishes to thank you for attending the public hearings and submitting your comments and concerns. A copy of this Responsiveness Summary will be forwarded to interested parties upon request.

Please note that the section numbers of the final version of the draft regulations which will be filed with the Secretary of State, do not correspond to the section numbers of the regualtions that were available for public review. This is due to the changes made in response to public comments.

Dist'd 2-8-93

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MEMORANDUM

To: Members of the Legislative
Rule-Making Review Committee

From: Paul R. Sheridan PRS
Senior Assistant Attorney General
Civil Rights Division

Date: February 5, 1993

Re: Title 77, Series 7: Legislative Rules of the West Virginia Human Rights Commission Rules Regarding Discrimination in Housing

Before the Committee are the proposed legislative rules to implement the West Virginia Fair Housing Act (WVFHA) which the Legislature passed in 1992. These rules are based upon the federal rules which restate the Federal Fair Housing Act. The West Virginia Human Rights Commission (Commission) has submitted these rules to the United States Department of Housing and Urban Development (HUD) as part of that agency's substantial equivalency review of the Commission. It is important that these rules be approved by this Committee in order for the Commission to continue to receive the federal funding which is available to state agencies whose housing laws comply with the Federal Act.

I would like to remind this Committee that the West Virginia Fair Housing Act was passed last year as the result of a combined effort of the Human Rights Commission and the West Virginia Realtors Association. The West Virginia Act mirrors the federal legislation, and it was always anticipated that the Commission's regulations would likewise mirror the federal regulations. This not only ensures that our regulations meet the substantial equivalency requirement, but creates one standard rather than two for the regulated public.

I am unable to attend the Committee hearing scheduled for February 8, 1993, due to a long-scheduled evidentiary hearing. I have enclosed the materials I prepared and submitted earlier. Also, Norman Lindell, Assistant Director of the Commission, will be available to address any questions which the Committee might have. If you have any questions, please feel free to call me or Deputy Attorney General Mary Kay Buchmelter at 558-0546.

The Commission urges this Committee to pass these regulations in order for the Commission to maintain its substantial equivalency with federal law and continue to be a recipient of the federal funds.

Thank you for your consideration in this matter.

PRS:jm
Enclosure
cc: Quewanncoii C. Stephens
Executive Director
West Virginia Human Rights Commission

TITLE 77
LEGISLATIVE RULES
WEST VIRGINIA HUMAN RIGHTS COMMISSION

SERIES 7
RULES REGARDING DISCRIMINATION IN HOUSING

§ 77-7-1. General

1.1. Scope -- The following legislative regulations of the West Virginia Fair Housing Act (WVFHA), W. Va. Code § 5-11A-1 et seq., set forth guidelines for interpreting the Act. These regulations provide the West Virginia Human Rights Commission's interpretation of the coverage of the West Virginia Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

1.2. Authority -- These regulations are issued under authority of W. Va. Code §§ 5-11-8(h), 5-11A-8, 5-11A-9, 5-11A-13, 5-11A-20, and § 29A-3-1 et seq.

1.3. Filing date -- These regulations are promulgated on the _____ day of _____, 1992, and filed on the _____ day of _____, 1992, in the Office of the Secretary of State.

1.4. Effective date -- These regulations become effective on the _____ day of _____, 1992.

§ 77-7-2. Definitions

As used in this part:

2.1. "Aggrieved person" includes any person who

2.1.1. Claims to have been injured by a discriminatory housing practice; or

2.1.2. Believes that such person will be injured by a discriminatory housing practice that is about to occur.

2.2. "Broker" or "Agent" includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers. solicitations or contracts or any residential real estate-related transactions.

2.3. "Commission" means the West Virginia Human Rights Commission.

2.4. "Discriminatory housing practice" means an act that is unlawful under section the West Virginia Fair Housing Act, W. Va. Code §§ 5-11A-5, 5-11A-6, 5-11A-7, and 5-11A-16.

2.5. "Dwelling" means any building structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

2.6. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with:

2.6.1. A parent or another person having legal custody of such individual or individuals: or

2.6.2. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

2.7. "Handicap" is defined in § 77-7-5.1.

2.8. "Person in the business of selling or renting dwellings" means any person who:

2.8.1. Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

2.8.2. Within the preceding twelve months. has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein: or

2.8.3. The owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

§ 77-7-3. Discriminatory Housing Practices

3.1. Real estate practices prohibited

It shall be unlawful to:

3.1.1. Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion,

sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

3.1.2. Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.

3.1.3. Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

3.1.4. Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

3.1.5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

3.1.6. Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

3.1.7. Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

3.2. Unlawful refusal to sell or rent or to negotiate for the sale or rental

3.2.1. It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer. because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

3.2.2. Prohibited actions under this section include, but are not limited to:

3.2.2.a. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.

3.2.2.b. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

3.2.2.c. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

3.2.2.d. Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color,religion, sex, handicap, familial status, or national origin.

3.2.2.e. Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

3.3. Discrimination in terms, conditions and privileges and in services and facilities

3.3.1. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

3.3.2. Prohibited actions under this section include, but are not limited to:

3.3.2.a. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

3.3.2.b. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

3.3.2.c. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

3.3.2.d. Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

3.3.2.e. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

3.4. Other prohibited sale and rental conduct

3.4.1. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

3.4.2. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

3.4.3. Prohibited actions under this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

3.4.3.a. Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

3.4.3.b. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

3.4.3.c. Communicating to any prospective purchaser that he or she wold not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

3.4.3.d. Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

3.4.4. Prohibited activities relating to dwellings under this section include, but are not limited to:

3.4.4.a. Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

3.4.4.b. Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex. handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

3.4.4.c. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

3.4.4.d. Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

3.5. Discriminatory advertisements, statements and notices

3.5.1. Except as provided below, ~~It~~ it shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

3.5.1.a. This section shall not be construed to prohibit advertisements, statements, and notices which accurately reflect that housing is handicap accessible.

3.5.1.b. Nothing in this section shall be construed to prohibit advertisements, statements, and notices which accurately reflect that housing meets the definition of "housing for older persons" under § 6.2.

3.5.2. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

3.5.3. Discriminatory notices, statements and advertisements include, but are not limited to:

3.5.3.a. Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.

3.5.3.b. Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons.

3.5.3.c. Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

3.5.3.d. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising <u>in a manner which discriminates</u> because of race, color, religion, sex, handicap, familial status, or national origin.

3.6. Discriminatory representations on the availability of dwellings

3.6.1. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

3.6.2. Prohibited actions under this section include, but are not limited to:

3.6.2.a. Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

3.6.2.b. Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale of rental of a dwelling to a person.

3.6.3.c. Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

3.6.3.d. Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

3.6.3.e. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.

3.7. Blockbusting

3.7.1. It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

3.7.2. In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

3.7.3. Prohibited actions under this section include, but are not limited to:

3.7.3.a. Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

3.7.3.b. Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of

property values, an increase in criminal or antisocial behavior. or a decline in the quality of schools or other services or facilities.

3.8. Discrimination in the provision of brokerage services

3.8.1. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

3.8.2. Prohibited actions under this section include, but are not limited to:

3.8.2.a. Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin.

3.8.2.b. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

3.8.2.c. Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap. familial status, or national origin.

3.8.2.d. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

§ 77-7-4. Discrimination in Residential Real Estate-Related Transactions

4.1. Discriminatory practices in residential real estate-related transactions

4.1.1. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

4.1.2. The term residential "real estate-related transactions" means:

4.1.2.a. The making or purchasing of loans or providing other financial assistance--

4.1.2.a.1. For purchasing, constructing, improving, repairing or maintaining a dwelling or

4.1.2.a.2. Secured by residential real estate; or

4.1.3. The selling, brokering or appraising of residential real property.

4.2. Discrimination in the making of loans and in the provision of other financial assistance

4.2.1. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

4.2.2. Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

4.3. Discrimination in the purchasing of loans

4.3.1. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

4.3.2. Unlawful conduct under this section includes, but is not limited to:

4.3.2.a. Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.

4.3.2.b. Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

4.3.2.c. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

4.3.3. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.

4.4. Discrimination in the terms and conditions for making available loans or other financial assistance

4.4.1. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

4.4.2. Unlawful conduct under this section includes, but is not limited to:

4.4.2.a. Using different policies, practices or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

4.4.2.b. Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for

a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

4.5. Unlawful practices in the selling, brokering, or appraising of residential real property

4.5.1. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

4.5.2. For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

4.5.3. Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

4.5.4. Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

§ 77-7-5. Prohibition Against Discrimination Because of Handicap

5.1. Definitions

As used in this subpart:

5.1.1. "Accessible," when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate

requirements of ANSI A117.1 or a comparable standard is "accessible" within the meaning of this paragraph.

5.1.2. "Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 or a comparable standard is an "accessible route."

5.1.3. "ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. Copies are available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

5.1.4. "Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

5.1.5. "Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirement of this paragraph.

5.1.6. "Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

5.1.7. "Controlled substance" means any drug or other substance, or immediate precursor included in the definition in § 102 of the Controlled Substances Act (21 U.S.C. § 802).

5.1.8. "Covered multifamily dwellings means buildings consisting of four (4) or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in all buildings consisting of four or more dwelling units.

5.1.9. "Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit

within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

5.1.10. "Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

5.1.11. "Exterior" means all areas of the premises outside of an individual dwelling unit.

5.1.12. "First occupancy" means a building that has never before been used for any purpose.

5.1.13. "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

5.1.14. "Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

5.1.15. "Physical or mental impairment" includes:

5.1.15.a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

5.1.15.b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

5.1.16. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

5.1.17. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

5.1.18. "Is regarded as having an impairment" means:

5.1.18.a. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

5.1.18.b. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

5.1.18.c. Has none of the impairments defined in paragraph 5.1.15. of this definition but is treated by another person as having such an impairment.

5.1.19. "Interior" means the spaces, parts, components or elements of an individual dwelling unit.

5.1.20. "Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

5.1.21. "Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

5.1.22. "Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

5.1.23. "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

5.2. General prohibitions against discrimination because of handicap

5.2.1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

5.1.2.a. That buyer or renter;

5.1.2.b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

5.1.2.c. Any person associated with that person.

5.2.2. It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

5.2.2.a. That buyer or renter;

5.2.2.b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

5.2.2.c. Any person associated with that person.

5.2.3. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

5.2.3.a. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

5.2.3.b. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

5.2.3.c. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

5.2.3.d. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

5.2.3.e. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

5.2.4. Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would

constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

5.3. Reasonable modification of existing premises

5.3.1. It shall be unlawful for any person to refuse to make reasonable modifications necessary for making housing accommodations or real property accessible to and usable by handicapped persons who rent, lease or sublease any such housing accommodations or real property. In determining whether a modification is reasonable, the following things shall be considered:

5.3.1.a. The nature of the housing accommodation or real property and the number of living units, if any, which comprise it.

5.3.1.b. The nature and cost of the housing modification needed (taking into account alternate sources of funding, such as the Division of Vocational Rehabilitation).

5.3.1.c. Whether or not the housing accommodation or real property was purchased or improved with public funds.

5.3.1.d. The requirements of the West Virginia Law on Handicapped Persons and Public Buildings and Facilities, W. Va. Code § 18-10F-1 et seq. Any changes or alterations required due to the failure of the owner or managing agent of the owner (or his lessee or predecessor in title) to conform to the requirements of said statute will be considered per se reasonable.

~~5.3.1.~~ 5.3.2. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. For the purposes of this subsection, the cost of making such a modification shall not be a consideration for determining whether it is a reasonable modification. However, ~~In~~ in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow

account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

~~5.3.2.~~ 5.3.3. With regard to modifications made pursuant to § 5.3.2., ~~A~~ a landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

~~5.3.3. The application of paragraph 5.3.1. of this section may be illustrated by the following examples:~~

~~Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the wall with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expenses from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.~~

~~Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.~~

5.3.4. It shall be unlawful for any person to refuse to make reasonable modifications to existing facilities and structures constituting public or common use areas, when such modifications may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

5.4. Reasonable accommodations

5.4.1. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

5.4.2. The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a no pets" policy. It is a violation of this section for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of this section for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefor is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

5.5. Design and construction requirements

5.5.1. Covered multifamily dwellings for first occupancy after September 5, 1994 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before September 5, 1994 if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a state, county or local government on or before March 5, 1993. The burden of establishing impracticality because of terrain or unusual site

characteristics is on the person or persons who designed or constructed the housing facility.

5.5.2. The application of paragraph 5.5.1. of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of two units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible, because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

5.5.3. All covered multifamily dwellings for first occupancy after September 5, 1994 with a building entrance on an accessible route shall be designed and constructed in such a manner that--

5.5.3.a. The public and common use areas are readily accessible to and usable by handicapped persons;

5.5.3.b. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

5.5.3.c. All premises within covered multifamily dwelling units contain the following features of adaptable design:

5.5.3.c.1. An accessible route into and through the covered dwelling unit;

5.5.3.c.2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

5.5.3.c.3. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

5.5.3.c.4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

5.5.4. The application of paragraph 5.5.1. of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. The building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multifamily units. The "ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of this section and must have access to at least one of each type of public or common use area available for residents in the building.

5.5.5. Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of this section.

5.5.6. Compliance with a duly enacted law of a state or unit of general local government that includes the requirements of paragraphs 5.5.1. and 5.5.3. of this section satisfies the requirements of paragraphs 5.5.1. and 5.5.3. of this section.

§ 77-7-6. Exceptions

6.1. General exemptions

This part does not:

6.1.1. Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin.

6.1.2. Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

6.1.3. Limit the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

6.1.4. Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802).

6.1.5. Nothing in these rules regarding discrimination based on familial status applies with respect to housing for older persons as defined in § 77-7-6.2.

6.1.6. Nothing in these rules <u>regarding discrimination based on familial status</u>, other than the prohibitions against discriminatory advertising, applies to:

6.1.6.a. The sale or rental of any single family house by an owner, provided the following conditions are met:

6.1.6.a.1. The owner does not own or have any interest in more than three single family houses at any one time.

6.1.6.a.2. The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent

resident of the house prior to such sale, the exemption in this herein applies to only one such sale in any twenty-four (24) month period.

6.1.6.a.3. Rooms or units in dwellings containing living quarter occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

6.2. Exceptions applicable to housing for older persons

6.2.1. The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 6.3., 6.4. and 6.5.

6.2.2. Nothing herein limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling

6.3. State and federal elderly housing programs

The provisions regarding familial status in this part shall not apply to housing provided under any federal or state program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

6.4. Sixty-two (62) or older housing

6.4.1. The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons sixty-two (62) years of age or older. Housing may satisfy the requirements of this section even though:

6.4.1.a. There are persons residing in such housing on March 5, 1992 who are under sixty-two (62) years of age, provided that all new occupants are persons sixty-two (62) years of age or older.

6.4.2.b. There are unoccupied units, provided that such units are reserved for occupancy by persons sixty-two (62) years of age or older.

6.4.2.c. There are units occupied by employees of the housing (and family members residing in the same unit) who are under sixty-two (62) years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

6.5. Fifty-five (55) or older housing

6.5.1. The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit, provided that the housing satisfies the requirements of § 6.2.3. (b)(1) or (b)(2) and the requirements of § 6.2.3.

6.5.2. The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

6.5.3. It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph of this section the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this section:

6.5.3.a. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

6.5.3.b. The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

6.5.3.c. The income range of the residents of the housing facility.

6.5.3.d. The demand for housing for older persons in the relevant geographic area.

6.5.3.e. The range of housing choices for older persons within the relevant geographic area.

6.5.3.f. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities, and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of this section.

6.5.3.g. The vacancy rate of the housing facility.

6.5.4. At least eighty percent (80%) of the units in the housing facility are occupied by at least one person fifty-five (55) years of age or older per unit except that a newly constructed housing facility for first occupancy after September 5, 1991 need not comply with this paragraph of this section until twenty-five (25%) of the units in the facility are occupied; and

6.5.5. The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph of this section:

6.5.5.a. The manner in which the housing facility is described to prospective residents;

6.5.5.b. The nature of any advertising designed to attract prospective residents;

6.5.5.c. Age verification procedures;

6.5.5.d. Lease provisions;

6.5.5.e. Written rules and regulations;

6.5.5.f. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

6.5.6. Housing satisfies the requirements of this section even though:

6.5.6.1. On March 5, 1992 under eighty percent (80%) of the occupied units in the housing facility are occupied

by at least one person fifty-five (55) years of age or older per unit, provided that at least eighty percent (80%) of the units that are occupied by new occupants after March 5, 1992 are occupied by at least one person fifty-five (55) years of age or older.

6.5.6.2. There are unoccupied units, provided that at least eighty percent (80%) of such units are reserved for occupancy by at least one person fifty-five (55) years of age or older.

6.5.6.3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under fifty-five (55) years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§ 77-7-7. Prohibited Interference, Coercion or Intimidation

7.1. It is unlawful to coerce, intimidate, threaten. or interfere with any person in the exercise or enjoyment of or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this part.

7.2. Conduct made unlawful under this section includes, but is not limited to, the following:

7.2.1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

7.2.2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

7.2.3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

7.2.4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by the West Virginia Fair Housing Act or these regulations.

7.2.5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the West Virginia Fair Housing Act.

§ 77-7-8. Remedies

8.1. Upon a finding that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the commission may order such relief as may be appropriate. The relief may include, but is not limited to, the following:

8.1.1. An order directing the respondent to pay damages to the aggrieved person for all damages proven to have resulted from the unlawful discriminatory practice. These may include damages caused by humiliation and embarrassment. Pursuant to the holding in Bishop Coal Co. v. Salyers, 380 S.E.2d 238 (W. Va. 1989), damages for humiliation and embarrassment may not exceed three thousand dollars ($3,000) for each unlawful discriminatory practice committed by each respondent against each aggrieved person. This cap is not a limit on the total amount of damages for humiliation and embarrassment which may be awarded in the action. The commission shall periodically adjust this limit based upon the consumer price index.

8.1.2. Injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge.

8.1.3. Civil penalties against the respondent, in an amount not to exceed:

8.1.3.a. Ten thousand dollars ($10,000), if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act, or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state or local governmental agency.

8.1.3.b. Twenty-five thousand dollars ($25,000), if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act,

or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state or local governmental agency, and the adjudication was made during the five (5) year period preceding the date of filing of the charge.

8.1.3.c. Fifty thousand dollars ($50,000), if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act, or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state or local governmental agency, and the adjudications were made during the seven (7) year period preceding the date of the filing of the charge.

8.2. If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs 8.1.3.b. and 8.1.3.c. do not apply.

8.3. In a proceeding involving two or more respondents, civil penalties as provided above may be assessed against each respondent who has been engaged in or is about to engage in a discriminatory housing practice.

8.4. The reasonable attorney fees and costs of a prevailing complainant, aggrieved person, or intervenor.

8.4.1. The respondent may be held liable for the reasonable attorney fees of an aggrieved person for the services of such persons's counsel in the preparation or presentation of the case.

8.4.2. The respondent may be held liable for the reasonable attorney fees of the attorney general incurred in the preparation and presentation of the case.

8.4.3. To the extent that an intervenor is a prevailing party, the respondent may be held liable for reasonable attorney fees in vindication of the rights of such intervenor.

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MEMORANDUM

To: Members of the Legislative
Rule-Making Review Committee

From: PRS Paul R. Sheridan
Senior Assistant Attorney General
Civil Rights Division

Date: February 8, 1993

Re: Title 77, Series 7: Legislative Rules of the West Virginia Human Rights Commission
Rules Regarding Discrimination in Housing

Attached are copies of the supplements to the Commission's Rules Regarding Discrimination in Housing which I inadvertently neglected to include with my February 5 Memorandum.

PRS/jm
Attachments

WEST VIRGINIA HUMAN RIGHTS COMMISSION'S
PROPOSED MODIFICATIONS TO FAIR HOUSING ACT REGULATIONS

1. In response to paragraph two of the abstract, in order to delete "specific factual examples" from the proposed regulations, the Human Rights Commission would accept a modification as follows:

Delete § 5.4.2. (page 19 of proposed regulations)
Delete § 5.5.2. (page 20 of proposed regulations)
Delete § 5.5.4. (page 21 of proposed regulations)

2. In response to paragraph three of the abstract, the Human Rights Commission would accept the following modifications:

Modify §§ 3.4.3.b. and 3.4.3.c. to read as follows:

> 3.4.3.b. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin; by exaggerating drawbacks; failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development; or by communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin.

The following paragraph should then be renumbered to be § 3.4.3.c. instead of § 3.4.3.d.

3. In response to paragraph four of the abstract, which objects to the citation of a West Virginia Supreme Court case in the regulations, the Human Rights Commission would accept a modification which deleted from § 8.1.1. the language, "Pursuant to the holding in Bishop Coal Co. v. Salyers, 380 S.E.2d 238 (W. Va. 1989)," the modified sentence would begin with the word "damages" which would then be capitalized.

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MEMORANDUM

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To: Members of the Legislative Rule Making Review Committee

From: Paul R. Sheridan
Senior Assistant Attorney General
Civil Rights Division

Date: January 11, 1993

re: West Virginia Human Rights Commission's Proposed Rules

WEST VIRGINIA HUMAN RIGHTS COMMISSION'S RESPONSE TO THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE ABSTRACT OF THE COMMISSION'S RULES REGARDING DISCRIMINATION IN HOUSING

On January 8, 1993, the West Virginia Human Rights Commission received a copy of the abstract and analysis of the Commission's proposed legislative rules regarding discrimination in housing, which was prepared by counsel for the Legislative Rule Making Review Committee. The analysis expresses a number of concerns.

The Human Rights Commission respectfully asserts that some of these concerns are without validity or are over stated. The Commission further believes that the valid concerns can be addressed by minor, technical modifications.

The Human Rights Commission is concerned that failure to enact this rule may not only cause doubt and confusion regarding the application of the Fair Housing Act, but that it may jeopardize the Commission's HUD assistance under the agency's cooperative agreement.

Each of the concerns raised in the abstract are addressed by corresponding numbered paragraph below.

1. Counsel notes that the proposed rule is largely duplicative of the Fair Housing Act, with some differences.

REPLY: These regulations were drafted with two goals in mind: (1) to elaborate and expand upon those portions of the statutory requirement where such development is appropriate and helpful, while staying within the scope of the statute; and (2) to qualify for HUD reimbursement as a substantially equivalent agency.

First, rather than drafting these regulatory expansions as discrete and unconnected rules, it seemed to be most helpful to draft the regulations in a way which place them in context of the overall regulatory framework. Accordingly, many statutory provisions are, in fact, included in the regulations, and these regulations can be used as a complete and handy reference to all the requirements for compliance. While the regulations duplicate many provisions of the Code, they do not exceed the scope of the statute.

Second, like the statute itself, the Commission's fair housing regulations are part of the regulatory package reviewed by HUD in determining whether or not to grant the Human Rights Commission equivalency status. As noted in the abstract, this equivalency status is a prerequisite to receiving federal aid for the enforcement of fair housing. The proposed regulations were drafted to track the federal HUD regulations.

2. The abstract notes that the proposed rules contain "specific factual examples," which the Committee counsel finds inappropriate. These can be found on pages 19, 20, and 21 of the proposed rules.

REPLY: While these examples come directly out of the federal regulations, and were included with the thought that they might be helpful to the reader, the Commission would have no objection to a modified rule which deleted these examples.

3. The abstract notes that civil penalties are imposed for "various types of speech and utterances," and suggests that this may create a constitutional problem.

REPLY: The rules with regard to civil penalties and the violations for which they can be imposed (proposed rule, p. 27) reflect the statute. The proposed regulations not only stay within the scope of the statute, but they are in all important respects identical to the federal regulations on these points.

The Commission additionally asserts that neither the statute nor the regulations violate the First Amendment. Written or spoken words which amount to acts denying access to housing are not protected by the First Amendment. For example, it is not protected speech for a landlord to put up a sign over an apartment complex that says "Whites Only." Likewise, other verbal acts which restrict access are not protected speech.

4. The abstract objects to the citation to the West Virginia Supreme Court case, Bishop Coal Co. v. Salyers, within the text of the regulations. The abstract also implies that the Commission has misinterpreted and/or misapplied Bishop Coal.

REPLY: The Bishop Coal case imposes a monetary cap upon Commission damage awards. The Commission acknowledges that the cap was applied in an employment discrimination case, however, believes that the Bishop Coal decision would apply to housing discrimination cases as well. While the case was $2,500 at time of the filing of the Bishop Coal decision, it specifically provided that the cap could be increased in accordance with the Consumer Price Index. Approximately a year ago, the Commission raised the cap to $2,950, and, therefore, a cap of $3,000 at the present time is not in excess of the authority granted the Commission in the Bishop Coal decision.

The Commission believes that it is helpful to the general public to be cited to the Bishop Coal decision in understanding the Commission's authority with regard to the awarding of damages; however, the Commission would have no strenuous objection to a technical amendment which would delete the actual citation to the case.

5. The abstract notes with concern that the proposed rule contains a citation to West Virginia Code Chapter 18, Article 10F (proposed rule, p. 17).

REPLY: This portion of the rule is in all respects identical to the current rule regarding handicap discrimination, in effect as a legislative rule since March 1991. The proposed rule, like the current rule, seeks to ensure that owners of buildings who comply with Chapter 18, Article 10F will be taken into consideration by the human Rights Commission, and that even those not covered under Chapter 18, Article 10F may use voluntary compliance with those provisions as an argument that they have already made "reasonable accommodations." The regulation does not extend the requirements of Chapter 18, Article 10F to anyone not otherwise covered.

6. Committee counsel has suggested that the Commission's regulations expand some definitions, explicitly citing only the definition of handicap (See page 14).

REPLY: The Commission respectfully disagrees with this assertion. The statutory definition of handicap has three (3) parts. It is defined as "a mental or physical impairment" which (1) "substantially limits one or more of such person's major life activities"; or "a record of such impairment"; or being "regarded as having such an impairment." This statutory language is duplicated verbatim in the proposed rule.

The rule does go on to set forth an explanation of the term "physical or mental impairment" which is not in the statute, but this does not expand the definition. This portion of the rule is virtually identical to the current regulation adopted by the Legislature in 1991 and accomplishes the same purpose. What it does is to make clear that the term "physical or mental impairment" must be thought of expansively, which indeed it must under the statutory definition. The statute, after all, contains no language which would tend to limit the breadth of the category "physical or mental impairment."

This is not to say that there are no limits on the scope of the definition. However, the limitation is to be found in the next phrase of the definition. The limitation is imposed by the language "which substantially limits one or more of such person's major life activities . . ."

Virtually any physical or mental impairment can fit within the definition of handicapped, if it is severe enough to "substantially limit one or more major life activity." Of course, if any handicapped person abused others or damaged property or was at significant risk for doing either, that person could be excluded from the property, handicapped or not, under the statutory language W. Va. Code § 5-11A-5(f)(9) and proposed rule § 5.2.4.

7. Finally, Committee counsel notes that the Commission "has not elected to include data management processes or procedures" in its rule, despite specific statutory authorization to do so.

REPLY: The Commission first notes that the statute contains no requirement in this regard. The Commission further notes that given its statutorily mandated responsibilities regarding the investigation and hearing of discrimination cases, and given its serious budgetary restrictions, the Commission is currently unable to establish an extensive system for this type of collection and maintenance of data. Accordingly, it would not be important to promulgate regulations for that purpose at this time.

Prepared on behalf of the West Virginia
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