

SEPTEMBER 13



Wednesday, September 13, 2006

1:00 p.m. to 3:00 p.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Minard, Chairman
Fanning, Vice Chair Absent
Prezioso -
Unger
Boley
Minear

Mahan, Chairman
Palumbo, Vice Chair Absent
Cann
Pino
Armstead
Overington

The meeting was called to order by Ms. Mahan, Co-Chairman.

The minutes of the July 24, 2006 meeting was approved.

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **Department of Agriculture, Animal Disease Control, 61CSR1**, and stated that the Department has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Department of Agriculture, West Virginia Agricultural Liming Materials Law Regulations, 61CSR6A**, and stated that the Department has agreed to technical modifications.

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

Ms. Graham explained her abstract on the rule proposed by the **Department of Agriculture, West Virginia Plant Pest Act Rule, 61CSR14**, and stated that the Department has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Department of Agriculture, Rules and Regulations Dealing with Noxious Weeds, 61CSR14A**, and stated that the Department has agreed to technical modifications.

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

Brian Skinner, Associate Counsel, explained his abstract on the rule proposed by the **Alcohol Beverage Control Commission, Private Club Licensing, 175CSR2**, and responded to questions from the Committee.

Keith Wagner, Deputy Commission, with the Alcohol Beverage Control Commission responded to questions from the Committee.

Lisa Dooly with the WV Municipal League responded to responded to questions from the Committee.

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

Mr. Skinner reviewed his abstract on the rule proposed by the **Alcohol Beverage Control Commission, Licensing of Retail Liquor Stores, 175CSR5**, and responded to questions from the Committee.

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

Mr. Skinner explained his abstract on the rule proposed by the **Alcohol Beverage Control Commission, Nonintoxicating Beer Licensing and Operations Procedures, 176CSR1**, and responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **WV Board of Architects, Registration of Architects, 2CSR1**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Loyd Miller, President, with the WV Board of Architects responded to questions from the Committee.

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

Ms. Graham explained her abstract on the rule proposed by the **WV State Auditor's Office, Transaction Fee and Rate Structure, 155CSR4**.

Glen Gainer, WV State Auditor, responded to questions from the Committee.

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

Joe Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the **Environmental Protection, Standards for Beneficial Use of Filtrate from Water Treatment Plants, 33CSR9**, stated that the Commission has agreed to technical modifications, and responded to questions from the Committee.

John Morgan with DEP's Office of Water and Waste Management responded to question from the Committee.

Don Garvan, Coordinator, with the WV Environmental Council addressed the Committee.

Sammy Gray, Governmental and Regulatory Affairs Manager, with West Virginia American Water addressed the Committee.

Mr. Minard moved that the proposed rule be approved as modified.

Further questions from the Committee.

Mr. Minard moved to withdraw his previous motion. The motion was adopted.

Mr. Minard moved that the proposed rule lie over until next months meeting. The motion was adopted.

The meeting was adjourned.

SEPTEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
September 11, 12 and 13, 2006

Wednesday, September 13, 2006

1:00 pm - 3:00 pm

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Minard, Chair
Fanning, Vice Chair
Prezioso
Unger
Boley
Minear

✓

✓

✓

✓

✓

House

Mahan, Chair
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

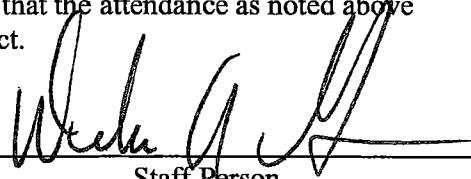
✓

✓

✓

✓

I certify that the attendance as noted above
is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, September 13, 2006
1:00 p.m. and 3:00 p.m.
Senate Finance Committee Room

1. **Approval of Minutes** - Meeting of July 24, 2006
2. **Review of Legislative Rules:**
 - a. **Agriculture, Department of**
Animal Disease Control, 61CSR1
 - Approve as Modified
 - b. **Agriculture, Department of**
West Virginia Agricultural Liming Materials Law Regulations, 61CSR6A
 - Approve as Modified
 - c. **Agriculture, Department of**
West Virginia Plant Pest Act Rule, 61CSR14
 - Approve as Modified
 - d. **Agriculture, Department of**
Rules and Regulations Dealing with Noxious Weeds, 61CSR14A
 - Approve as Modified
 - e. **Alcohol Beverage Control Commission**
Private Club Licensing, 175CSR2
 - Approve
 - f. **Alcohol Beverage Control Commission**
Licensing of Retail Liquor Stores, 175CSR5
 - Approve
 - g. **Alcohol Beverage Control Commission**
Nonintoxicating Beer Licensing and Operations Procedures, 176CSR1
 - Approve

- h. **Architects, WV Board of**
Registration of Architects, 2CSR1
 - Approve as Modified
- i. **Auditor's Office, WV State**
Transaction Fee and Rate Structure, 155CSR4
 - Approve
- j. **Environmental Protection, Department of**
Standards for Beneficial Use of Filtrate from Water Treatment Plants, 33CSR9
 - Approve as Modified
- k. **Environmental Protection, Department of**
Voluntary Remediation and Redevelopment Rule, 60CSR3
 - Approve as Modified
- l. **Highways, Division of**
Transportation of Hazardous Wastes Upon the Roads & Highways, 157CSR7
 - Approve
- m. **Highways, Division of**
Waste Tire Remediation/Environmental Clean-Up, 157CSR8
 - Approve
- n. **Osteopathy, WV Board of**
Osteopathic Physician Assistants, 24CSR2
 - Approve
- o. **Personnel, Division of**
Workers' Compensation Temporary Total Disability Rule, 143CSR3
 - Approve
- p. **Personnel, Division of**
Interdepartmental Transfer of Permanent State Employees, 143CSR7
 - Approve as Modified

- q. **Pharmacy, WV Board of**
Ephedrine and Pseudoephedrine Control, 15CSR11
 - Approve

- r. **Real Estate Commission**
Requirements in Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business, 174CSR1
 - Approve

- s. **Secretary of State**
Agencies Designated to Provide Voter Registration Services, 153CSR28
 - Approve

- t. **State Treasurer's Office**
Providing Services to Political Subdivisions, 112CSR13
 - Approve as Modified

- u. **Tax Department, State**
Abusive Tax Shelter, 110CSR10J
 - Approve as Modified

- v. **Veterinary Medicine, WV Board of**
Registration of Veterinary Technicians, 26CSR3
 - Approve as Modified

3. **Other Business**

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officio nonvoting member _____

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Senate

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Minard, Chair _____
Fanning, Vice Chair _____
Prezioso _____
Unger _____
Boley _____
Minear _____

Mahan, Chair _____
Palumbo, Vice Chair _____
Cann _____
Pino _____
Armstead _____
Overington _____

Minutes approved

DOA - Animal Disease

I explained

Approve as mod. Red

*Minard
adopted*

DOA - Lining

I explained

Approve as mod. Red

*Minard
adopted*

DOA - Plant Pest

I explained

Approve as mod. Red

*Minard
adopted*

DOA - Noxious Weeds

I explained

Approve as mod. Red

*Minard
adopted*

ABCC - Private Club

Brian explained

Ruth Wagner, Deputy Commissioners responded to questions

David, Municipal League responded to questions

Approve as mod

Mind adapted

ABCC - Retail liquor

Brian explained

Approve

Mind adapted

ABCC - Nonintoxicating Beer

Brian explained

Approve

Mind adapted

Architects

I explained & responded to questions

Lloyd Miller ^{concerns} responded to questions

Approve as modified

Mind adapted

Auditor

I explained & responded to questions

Garner

Approve

Mind adapted

Mind adapted

DWP - Beneficial Use of Filtrate

Joe explained & responded to questions

Comments rec'd from WV Environmental Council were distributed

John Morgan H₂O & Waste Mgt

Don Garvin Leg Coun WV Environmental Council

Sam Gray WV American Water Co.

Minard

Approve as md.

withdrawn

Minard

Lay it and other DEP rule over

Adjourn

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2. **Review of Legislative Rules:**

*Approved
as mod.*

a. **Agriculture, Department of**
Animal Disease Control, 61CSR1

- Approve as Modified

*Approved ✓
as mod.*

b. **Agriculture, Department of**
*West Virginia Agricultural Liming Materials Law Regulations,
61CSR6A*

- Approve as Modified

*Approved ✓
as mod.*

c. **Agriculture, Department of**
West Virginia Plant Pest Act Rule, 61CSR14

- Approve as Modified

*Approved ✓
as mod.*

d. **Agriculture, Department of**
Rules and Regulations Dealing with Noxious Weeds, 61CSR14A

- Approve as Modified

*Approved ✓
as mod.*

e. **Alcohol Beverage Control Commission**
Private Club Licensing, 175CSR2

- Approve *as mod.*

Approved ✓

f. **Alcohol Beverage Control Commission**
Licensing of Retail Liquor Stores, 175CSR5

- Approve

Approved ✓

g. **Alcohol Beverage Control Commission**
*Nonintoxicating Beer Licensing and Operations Procedures,
176CSR1*

- Approve

Approved ✓
mod

Architects, WV Board of
Registration of Architects, 2CSR1

- Approve as Modified

Approved ✓

Auditor's Office, WV State
Transaction Fee and Rate Structure, 155CSR4

- Approve

j. **Environmental Protection, Department of**
Standards for Beneficial Use of Filtrate from Water Treatment Plants, 33CSR9

- Approve as Modified

k. **Environmental Protection, Department of**
Voluntary Remediation and Redevelopment Rule, 60CSR3

- Approve as Modified

l. **Highways, Division of**
Transportation of Hazardous Wastes Upon the Roads & Highways, 157CSR7

- Approve

m. **Highways, Division of**
Waste Tire Remediation/Environmental Clean-Up, 157CSR8

- Approve

n. **Osteopathy, WV Board of**
Osteopathic Physician Assistants, 24CSR2

- Approve

o. **Personnel, Division of**
Workers' Compensation Temporary Total Disability Rule, 143CSR3

- Approve

p. **Personnel, Division of**
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- q. **Pharmacy, WV Board of**
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- Approve
- r. **Real Estate Commission**
Requirements in Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business, 174CSR1
- Approve
- s. **Secretary of State**
Agencies Designated to Provide Voter Registration Services, 153CSR28
- Approve
- t. **State Treasurer's Office**
Providing Services to Political Subdivisions, 112CSR13
- Approve as Modified
- u. **Tax Department, State**
Abusive Tax Shelter, 110CSR10J
- Approve as Modified
- v. **Veterinary Medicine, WV Board of**
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3. **Other Business**

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Senate

House

Minard, Chair ✓
 Fanning, Vice Chair _____
 Prezioso ✓✓
 Unger ✓
 Boley ✓
 Minear ✓

Mahan, Chair ✓
 Palumbo, Vice Chair _____
 Cann ✓✓
 Pino ✓
 Armstead ✓
 Overington ✓

Mahan called to Order
 Meeting Minutes Approved from July 24

Agriculture 61 CSR1
 - Debra Explained
 Minard moved
 Approve as modified

- Agriculture 61 CSR 6A
 Debra Explained
 Minard moved
 Approve as Modified

- Agriculture 61 CSR 14
 Debra explained
 Minard
 Approved as Modified

- Agriculture 61 CSR 14A
Debra explained
Minard moved
Approved as Modified

- ABCC 175 CSR 2
~~XXXXXXXXXX~~ Brian Explained ? responded to ?'s
Keith Wagner - Deputy Commissioner - responded to ?'s
Lisa Dooley - ~~XXXXXXXXXX~~ responded to ?'s
Minard moved ^{with} Municipal League
Approved ~~XXXXXXXXXX~~ Ungr: NO

- ABCC 175 CSR 5
Brian Explained ? Responded to ?'s
Minard moved
Approved Ungr: NO

- ABCC 176 CSR 1
Brian explained ? responded to ?'s
Minard moved
Approved Ungr: NO

- Architects 2 CSR 1
Debra explained ? responded to ?'s
Lloyd Miller President w/ Bd. Responded to ?'s
Minard moved
Approved as Modified

- Auditor 155CSR4

Debra explained & responded to ?'s

Glen Gainer State Auditor - responded to ?'s

Minaud moved

Approved

- DEP 33CSR9

Joe Explained & responded to ?'s

John Morgan - DEP - Water & Waste Management respond to ?'s

Don Green Coordinator w/ WV Environmental Council ~~responded to ?'s~~ addressed the Comm.

Sammy Gray w/ WV American Water Addressed the Committee

~~Minaud moved~~ Minaud ~~to~~ ^{moved} to approve as modified

Motion by Minaud requests to withdraw motion

Motion to lie over

Meeting adjourned

Further discussed

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: LRMRC

Date 9.13.06

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
② Sammy Gray	1600 Pennsylvania Ave Chas. WV	WV American Water	X
Richard Strader	300 Capitol Street Charleston	Real Estate Comm	
Keith Wagner	Charleston	ADCA	
JOHN MONTGOMERY	CHARLESTON	TAX	X
① DON GARVIN	Buckhannon WV	WVSC	33CSR9
Glen Garner		State Auditor	
Allan Tanner	P.O. Box 273 Chas WV	Wetzel Area Water Bd	
Tavi Cronse	1900 Kan Blvd E	WV Div of Personnel	143CSR3 143CSR7
DIANA STOUT	CAPITOL	TREASURER'S OFFICE	IF REQUESTED

33-9 rule

if requested



West Virginia Environmental Council

1324 Virginia Street East ~ Charleston, WV 25301
(304) 346-5905 www.wvecouncil.org

September 12, 2006

Legislative Rule-Making Review Committee Comments on 33CSR9 Standards for Beneficial Use of Filtrate from Water Treatment Plants

We respectfully offer the following comments regarding DEP's proposed rule 33CSR9:

§33-9-2. Definitions – Section 2.4 defines “Beneficial Use” as “the use of a **non-hazardous material** for a specific beneficial purpose where it is done in a manner that protects groundwater and surface water quality, soil quality, air quality, human health, and the environment.” We are concerned that DEP has not adequately demonstrated that this filtrate is non-hazardous, and we are providing a recent article from the Washington Post regarding “inter-sex” fish in the Potomac River drainage which illustrates that there are unanswered questions concerning unmonitored pollutants in sludge from both water and waste treatment facilities.

§33-9-2. Definitions – Section 2.4 defines beneficial uses as including “use as a fertilizer substitute, soil amendment, cover material, **fill material**, mulch or horticultural product, or other purpose approved by the Secretary.” However, Section 33-9-3, in sub-Section 3.2.b.1 requires that “**The use proposed is a reuse, and not a disposal.**” We suggest that the use of this filtrate as fill material is actually simply a disposal and not a “reuse.” We believe this material should not be used as fill material. This would also require a change to Section 33-9-5, sub-Section 5.2.

33-9-3. Procedures for Obtaining a Beneficial Use Certification – sub-Section 3.1.a states, “No person may land apply or otherwise beneficially use filtrate subject to this rule without first obtaining either a permit or a **written certification** of such use from the Secretary.” We believe that all uses of this filtrate material should require a permit. In addition sub-Section 3.1.a.1 states “The Secretary **may** require a permit for the long-term application of filtrate at a soil improvement site as set forth in section 4 of this rule.” We likewise believe that there should be no discretion in this regard and that it would be in the public interest for DEP to require permits for any use of this material.

Finally, **§33-9-5. Standards for Beneficial Use of Filtrate** – sub-Section 5.3 states, “The Secretary **may** approve the use of filtrate as fill material **within fifty (50) feet of surface water** upon submission of information sufficient to show that the fill material will have no significant impact on the quality of runoff reaching the surface water.” Even the U.S. Forest Service has adopted stronger stream buffers for sediment runoff. DEP should develop stronger stream buffers for this rule, and there should be no discretion.

Thank you for considering our concerns.

Donald S. Garvin, Jr
WVEC Legislative Coordinator

Representing West Virginia “Special Interests”:
People Who Want to Breathe Clean Air and Drink Clean Water