SECTION 6

APPLICABLE WEST VIRGINIA STATUTES AND REGULATIONS

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WATER POLLUTION CONTROL ACT

CHAPTER 20, ARTICLE 5A

WEST VIRGINIA CODE
AS AMENDED 1979

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES
CHARLESTON, WEST VIRGINIA
25311

ARTICLE 5A

WATER POLLUTION CONTROL ACT.

W. Va. Law Review. — For note, "Acid Mine Drainage," see 76 W. Va. L. Rev. 508 (1974).

Hearing for third party. — This article makes no provision requiring the water resources division to grant a hearing to a private citizen either prior to or subsequent to the issuance of a water pollution control permit to another party. Op. Att'y Gen., April 15, 1974.

§ 20-5A-1. Declaration of policy.

It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the waters of the State consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development. (1964, c. 20; 1967, c. 143; 1978, c. 80; 1979, c. 81.)

Michie's Jurisprudence. — As to water pollution control, see 20 M.J., Waters and Watercourses, §§ 19, 20.

ALR references. — Tenant's remedy against stranger for wrongful pollution of waters, 12 ALR2d 1234.

Measure and elements of damages for pollution of well, cistern, or spring, 19 ALR2d 769.

Liability for pollution of stream by oil, water, or the like flowing from well, 19 ALR2d 1033.

Validity of prohibition or regulation of fishing, to protect public water supply, 56 ALR2d 790.

Liability for pollution of subterranean waters, 38 ALR2d 1265.

Measure and elements of damages for pollution of stream, 49 ALR2d 253.

§ 20-5A-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Director" shall mean the director of the department of natural resources;

(b) "Board" shall mean the state water resources board;

(c) "Chief" shall mean the chief of the division of water resources of the department of natural resources;

(d) "Person," "persons" or "applicant" shall mean 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; drainage 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;

(e) "Water resources," "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this State, or bordering this State and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands;

(f) "Pollution" shall mean the man-made or man-induced alteration of the

chemical, physical, biological and radiological integrity of the waters of the State;

(g) "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as hereinafter defined, shall also be considered "industrial wastes" within the meaning of this article;

(i) "Industrial user" shall mean those industries identified in the standard industrial classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category "division d — manufacturing" and other classes of significant waste producers identified under regulations issued by the board or the administrator of the United States environmental protection agency;

(j) "Other wastes" shall mean garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, heat, or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the State;

(k) "Establishment" shall mean an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well, and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;

(l) "Sewer system" shall mean pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

(m) "Treatment works" shall mean any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality and rate of flow thereof;

(n) "Publicly owned treatment works" shall mean any treatment works owned by the State or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants;

(o) "Disposal system" shall mean a system for treating or disposing of sewage, industrial wastes, or other wastes, or the effluent therefrom, either by

surface or underground methods, and shall be construed to include sewer systems, the use of subterranean spaces, treatment works, disposal wells and other systems;

(p) "Outlet" shall mean the terminus of a sewer system or the point of emergence of any water carried sewage, industrial wastes, or other wastes, or the effluent therefrom, into any of the waters of this State, and shall include a point source;

(q) "Point source" shall mean any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(r) "Activity" or "activities" shall mean any activity or activities for which a permit is required by the provisions of section five [§ 20-5A-5] of this article;

(s) "Disposal well" shall mean any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;

(t) "Effluent limitation" shall mean any restriction established on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters of this State;

(u) "Code" shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended;

(v) "Department" shall mean the department of natural resources;

(w) "Well" shall mean any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" shall not have included within its meaning any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(x) "Pollutant" shall mean industrial wastes, sewage or other wastes as defined in this section. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, inserted "including federal facilities" following "governmental agency" in subdivision (d), substituted "county commission" for "county court" in that subdivision, substituted "any legal entity" for "any other legal entity" near the end of that subdivision (d), added "and wetlands" at the end of subdivision (e), rewrote subdivision (f), deleted "identified" following "those industries" near the beginning of subdivision (i), substituted "chemicals, heat, or all" for "chemicals and all" near the middle of subdivision (j), deleted "or activity" following "or works" near the end of subdivision (k), inserted "sewage" near the end of that subdivision and added subdivision (x).

PART II. CHIEF OF DIVISION OF WATER RESOURCES AND WATER RESOURCES BOARD.

§ 20-5A-3. General powers and duties of chief and board with respect to pollution.

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;

(2) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this State, and to advise, consult and cooperate with all persons, all agencies of this State, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the State. The department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the State, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the State, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for pollution control and abatement;

(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the State;

(9) To develop programs for the control and reduction of the pollution of the waters of the State;

(10) To exercise general supervision over the administration and enforcement

of the provisions of this article, and all rules, regulations, permits and orders issued pursuant to the provisions of this article;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this State, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the chief may cooperate with any public or private agency and receive therefrom, on behalf of the State, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the chief according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the department;

(12) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article or the rules and regulations promulgated hereunder; and

(13) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the State or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes or the effluent therefrom, into or near any waters of the State or into any underground strata, to file with the division of water resources such information as the chief may require in a form or manner prescribed by him for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of any such discharge, deposit, escape, release or disposition.

(b) In addition to all other powers and duties of the water resources board, as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To cooperate with any interstate agencies for the purpose of formulating, for submission to the legislature, interstate compacts and agreements relating to the control and reduction of water pollution;

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of chapter twenty-nine-A [§ 29A-1-1 et seq.] of this Code, (A) implementing and making effective the declaration of policy contained in section one [§ 20-5A-1] of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; (C) establishing standards of quality for the waters of the State under such conditions as the board may prescribe for the prevention, control and abatement of pollution; and (D) to

facilitate the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, that no such rule and regulation adopted by the board shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(3) To make and enter a consent order which shall have the same effect as an order entered after a hearing as provided in section fifteen [§ 20-5A-15] of this article.

(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys-at-law admitted to practice before any circuit court of this State. All such hearing examiners shall be individuals authorized to take depositions under the laws of this State.

(d) Whenever required to carry out the objectives of this article: (A) The chief shall require the owner or operator of any point source or establishment to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods, (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the chief shall prescribe, and (v) provide such other information as he may reasonably require; and (B) the chief or his authorized representative upon presentation of credentials (i) shall have a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained under (A) of this subsection are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under (A) of this subsection and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under (A) of this subsection.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the State, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-A [§ 16-13A-1 et seq.], chapter sixteen of this Code. In the event a county commission shall fail to act to establish a county-wide public service district or districts, the board shall act jointly with the state director of health, the director of the department of natural resources and the chief of the division of water resources to further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the public service commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county commission members must act to establish such a county-wide public service district or districts. (1964, c. 20; 1965, c. 113; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, substituted "Federal Water Pollution Control Act, as amended" for "Federal Water Pollution Control Act Amendments of 1972" in subdivision (a) (1), added clause (D) in subdivision (b) (2), inserted "adopted by the board" in the proviso in subdivision (b) (2), added subdivision (3) of that subsection (b), inserted "or establishment" near the beginning of clause (A) of subsection (d), substituted "county commission" for "county court" and "county commissions" for "county courts" throughout the section and made several minor changes in style.

If water quality monitors act of their own accord, and not at the direction of the chief, in taking water samples or performing a task other than taking such samples, they would not be considered the duly authorized representatives of the chief, as set forth in this section. Op. Att'y Gen., Sept. 17, 1973.

§ 20-5A-3a. Standards of water quality and effluent limitations.

(a) In order to carry out the purposes of this article, the board shall promulgate rules and regulations setting standards of water quality and effluent limitations to be applicable to the waters of this State, which standards of quality and effluent limitations shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such waters for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.

(b) In establishing, amending, revising or repealing rules and regulations relating to the water quality standards and effluent limitations, the board shall follow all procedures provided by article three [§ 29A-3-1 et seq.], chapter twenty-nine-A of the Code.

(c) All persons affected by rules and regulations establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, that where necessary and proper, the chief may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the chief shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this State which result in reduction of the quality of such waters below the standards and limitations established therefor by rules and regulations of the board. (1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, inserted "the" preceding "water quality standards" in subsection (b) and deleted "relevant" preceding "procedures" in that subsection.

§ 20-5A-4. Cooperation with other governments and agencies.

The division of water resources is hereby designated as the water pollution control agency for this State for all purposes of federal legislation and is hereby authorized to take all action necessary or appropriate to secure to this State the benefits of said legislation. In carrying out the purposes of this section, the chief is hereby authorized to cooperate with the United States environmental protection agency and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for controlling and reducing water pollution and improving the sanitary conditions of the waters of the State; to apply for and receive, on behalf of this State, funds made available under the

aforesaid federal legislation on condition that all moneys received from any federal agency as herein provided shall be paid into the state treasury and shall be expended, under the direction of the chief, solely for purposes for which the grants shall have been made; to approve projects for which applications for loans or grants under the federal legislation are made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this State and having jurisdiction over the disposal of sewage, industrial wastes or other wastes) or agency of this State or by any interstate agency; and to participate through his authorized representatives in proceedings under the federal legislation to recommend measures for the abatement of water pollution originating in this State. The governor is hereby authorized, in his discretion, to give consent on behalf of this State to requests by the administrator of the United States environmental protection agency to the attorney general of the United States for the bringing of actions for the abatement of such pollution. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the State in any matter relating to the water resources of the State, the director, subject to approval of the legislature, is hereby designated as the sole person to give the approval or recommendation required by the federal law, unless the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the State. (1953, c. 145; 1961, c. 133; 1964, c. 20; 1965, c. 113; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8.)

Part III. Permits.

§ 20-5A-5. Prohibitions; permits required.

(a) The chief may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this State upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article.

(b) It shall be unlawful for any person, unless he holds a permit therefor from the department, which is in full force and effect, to:

(1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this State;

(2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this State;

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this State, or any extension to or addition to such disposal system;

(4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the State;

(6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant: Provided, that the department's permit shall only be required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the State, except that a permit shall be required for any preparation plant: Provided, however, that unless waived in writing by the chief, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant shall contain a plan for abandonment of such facility or operation, which plan shall comply in all respects to the requirements of this article. Such plan of abandonment shall be subject to modification or amendment upon application by the permit holder to the chief and approval of such modification or amendment by the chief;

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this State in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1976, c. 92; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, substituted "point source" for "establishment" in subdivision (b) (1) and in subdivision (b) (5) and made several minor changes in style.

Prerequisites to construction of sewage disposal system by county board of education. — Every county board of education, before constructing any sewage disposal system, must submit an application therefor, accompanied by the permit fee of ten dollars, to the health department's division of sanitary engineering, where the same is to be processed in connection with the chief of the natural resources department's division of water resources. 52 Op Att'y Gen. 457 (1967).

§ 20-5A-6. Form of application for permit; information required; fees.

The chief shall prescribe a form of application for all permits for any activity specified in section 5 [§ 20-5A-5] of this article and, notwithstanding any other provision of law to the contrary, no other discharge permit or discharge authorization from any other state department, agency, commission, board or officer shall be required for such activity except that which is required from the department of mines by the provisions of chapter twenty-two [§ 22-1-1 et seq.] of this Code. All applications must be submitted on a form as prescribed above. An applicant shall furnish all information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Until all such required information is furnished, an application shall not be considered a

complete application. The chief and board shall protect any information (other than effluent data) contained in such permit application form, or other records, reports or plans as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a national pollutant discharge elimination form, the chief or board shall forward such information to the regional administrator of the United States environmental protection agency for his concurrence in any determination of confidentiality. A reasonable filing fee, as determined by rules and regulations of the board, shall accompany the application when filed with the division of water resources. The filing fee shall be deposited in the state treasury to the credit of the state general fund. The filing fee shall not be returned to the applicant. (1964, c. 20; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, inserted "reasonable" near the beginning of the seventh sentence and deleted "but in no case in excess of fifty dollars" following "of the board" in that sentence.

§ 20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.

(a) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the division of sanitary engineering of the state department of health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section five [§ 20-5A-5] of this article, the chief shall consult with the director of the state geological and economic survey and the deputy director of the oil and gas division of the department of mines, and all such persons shall cooperate with the chief and assist him in carrying out the duties and responsibilities imposed upon him under the provisions of this article and the rules and regulations of the board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules and regulations of the board.

(b) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this State or violate any effluent limitations or any rules and regulations of the board: Provided, that the chief may issue a permit whenever in his judgment the water quality standards of the State may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the State; and (2) in cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in section eight-b [§ 20-5A-8b] of this article.

(c) Each permit issued under this article shall have a fixed term not to exceed five years. Upon expiration of a permit, a new permit may be issued by the chief upon condition that the discharges or releases, escapes, deposits and disposition thereunder meet or will meet all applicable state and federal water quality standards, effluent limitations and all other requirements of this article.

(d) An application for a permit incident to remedial action in accordance with the provisions of section eleven [§ 20-5A-11] of this article shall be processed and decided as any other application for a permit required under the provisions of section five [§ 20-5A-5] of this article.

(e) A complete application for any permit shall be acted upon by the chief, and the department's permit delivered or mailed, or a copy of any order of the chief denying any such application delivered or mailed to the applicant by the chief, within a reasonable time period as prescribed by rules and regulations of the board.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen [§ 20-5A-15] of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) Upon the sale of property which includes an activity for which the department's permit was granted, the permit shall be transferable to the new owner, but the transfer shall not become effective until the provisions of section eight-b [§ 20-5A-8b] of this article are fully complied with, and until such transfer is made in the records of the division of water resources.

(h) All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the State issued by the water resources board prior to July one, one thousand nine hundred sixty-four, and all permits heretofore issued under the provisions of this article, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules and regulations promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a

copy of a notice of the right to appeal to the board as provided for in section eight [§ 20-5A-8] of this article, to be served upon the permit holder as specified in said section eight. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, substituted "A complete application" for "An application" at the beginning of subsection (e), substituted "a reasonable time period as prescribed" for "the specified time period prescribed" near the end of that subsection and deleted "which time period shall not exceed ninety days" at the end of that subsection.

Powers of authorized representative. — The duly authorized representative is, unless otherwise restricted by statute, vested with the same powers of investigation and inspection as the board or the chief. Op. Att'y Gen., Sept. 17, 1973.

If water quality monitors act of their own accord, and not at the direction of the chief, in taking water samples or performing a task other than taking such samples, they would not be considered the duly authorized representatives of the chief, as set forth in this section. Op. Att'y Gen., Sept. 17, 1973.

§ 20-5A-8. Inspections; orders to compel compliance with permits; service of orders.

After issuance of the department's permit for any activity the chief or his duly authorized representatives may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the department's permit for any activity, the chief is hereby authorized, after at least twenty days' notice, to make and enter an order revoking, suspending or modifying in whole or in part such permit for cause including, but not limited to, the following:

(1) Violation of any term or condition of the permit;

(2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or

(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, release, escape, deposit or disposition.

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon the person to whom any such permit was issued. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen [§ 20-5A-15] of this article, within thirty days after the date upon which such person received the copy of such order. (1964, c. 20; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, inserted "in whole or in part" near the end of the second paragraph.

§ 20-5A-8a. Voluntary water quality monitors; appointment; duties; compensation.

The chief is hereby authorized to appoint voluntary water quality monitors to serve at the will and pleasure of the chief. All such monitors appointed pursuant hereto shall be eighteen years of age or over and shall be bona fide residents of this State.

Such monitors are authorized to take water samples of the waters of this State at such times and at such places as the chief shall direct and to forward such water samples to the chief for analysis.

The chief is authorized to provide such monitors with such sampling materials and equipment as he deems necessary: Provided, that such equipment and materials shall at all times remain the property of the State and shall be immediately returned to the chief upon his direction.

Such monitors shall not be construed to be employees of this State for any purpose except that the chief is hereby authorized to pay such monitors a fee not to exceed fifty cents for each sample properly taken and forwarded to him as hereinabove provided.

The chief shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.

Upon a showing that any water sample as herein provided was taken and analyzed in conformity with standard and recognized procedures, such sample and analysis shall be admissible in any court of this State for the purpose of enforcing the provisions of this article. (1967, c. 144; 1972, c. 61; 1974, 2nd Ex. Sess., c. 8.)

Purpose of monitors. — Water quality monitors are engaged for the purpose of taking water samples and forwarding such samples to the chief in order to enable the water resources division to determine if required water quality standards are maintained. Op. Att'y Gen., Sept. 17, 1973.

Water quality monitors are the duly authorized representatives of the chief or the board, so long as, and only so long as, they are performing the tasks enumerated in this section. Op. Att'y Gen., Sept. 17, 1973.

And are empowered to enter private or public lands at reasonable times, so long as they are acting at the specific direction of the chief and only so long as their actions are limited to the taking of water samples. Op. Att'y Gen., Sept. 17, 1973.

§ 20-5A-8b. Responsible agent; duties; notification of change.

It shall be the duty of every operator of a well, from and after the effective date of this article [July 1, 1969], in cases wherein such well operator is the holder of a permit issued pursuant to the provisions of this article to designate an individual who is a resident of this State as a responsible agent for such well. The responsible agent shall be the attorney in fact for and in behalf of the operator, and upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. In cases wherein there is a responsible agent designated under the provisions of section one-k [§ 22-4-1k], article four, chapter twenty-two of this Code, such responsible agent shall be deemed to be the responsible agent required by this

section, and shall be so appointed by the operator. Every well operator so appointing an agent, shall within five days after the termination of such appointment, notify the department of such termination, and designate a new responsible agent. (1969, c. 96.)

PART IV. POLLUTION ABATEMENT AND CONTROL.

§ 20-5A-9. Information to be filed by certain persons with division of water resources; tests.

Any and all persons directly or indirectly discharging or depositing treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the State shall file with the division of water resources such information as the chief thereof may reasonably require on forms prescribed by him for such purpose, including but not limited to, data as to the kind, characteristics, amount and rate of flow of such discharge or deposit. If the chief has reasonable cause to believe that any establishment is, or may be, polluting the waters of the State, he may require any person owning, operating or maintaining such establishment to furnish such information as may reasonably be required to ascertain whether such establishment is, or may be causing such pollution, and he may conduct any test or tests that he may deem necessary or useful in making his investigation and determination. (1964, c. 20; 1969, c. 96.)

§ 20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.

If the chief, on the basis of investigations, inspections and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the State, or does on occasions cause pollution or is violating any rule or regulation or effluent limitation of the board, he shall, with the consent of the director, either make and enter an order directing such person to stop such pollution or the violation of the rule or regulation or effluent limitation of the board, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the chief based his determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections five, six and seven [§§ 20-5A-5, 20-5A-6 and 20-5A-7] of this article. The chief shall fix a time limit for the completion of such action. Whether the chief shall make and enter an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the chief's order shall be stopped thereby.

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon

such person. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen [§ 20-5A-15] of this article. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, deleted the former second paragraph, which authorized the chief to postpone issuing any order if he felt that the pollution could best be controlled or reduced by cooperative efforts.

§ 20-5A-11. Compliance with orders of chief.

Any person upon whom any order of the chief or any order of the board in accordance with the provisions of sections ten [§ 20-5A-10] and fifteen [§ 20-5A-15] of this article, has been served shall fully comply therewith.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution, or when such ceasing does not stop the pollution, he shall forthwith apply for a permit under and in accordance with the provisions of sections five, six and seven [§§ 20-5A-5, 20-5A-6 and 20-5A-7] of this article. No such remedial action shall be taken until a permit therefor has been issued; however, receipt of a permit shall not in and of itself constitute remedial action. (1964, c. 20; 1969, c. 96.)

§ 20-5A-11a. Power of eminent domain; procedures; legislative finding.

(a) When any person who is owner of an establishment is ordered by the chief to stop or prevent pollution or the violation of the rules and regulations of the board or to take corrective or remedial action, compliance with which order will require the acquisition, construction or installation of a new treatment works or the extension or modification of or an addition to an existing treatment works, (which acquisition, construction, installation, extension, modification or addition of or to a treatment works pursuant to such order is referred to in this section as "such compliance") such person may exercise the power of eminent domain in the manner provided in chapter fifty-four [§ 54-1-1 et seq.] of this Code, to acquire such real property or interests in real property as may be determined by the chief to be reasonably necessary for such compliance.

(b) Upon application by such person and after twenty days' written notice to all persons whose property may be affected, the chief shall make and enter an order determining the specific real property or interests in real property, if any, which are reasonably necessary for such compliance. In any proceeding under this section, the person seeking to exercise the right of eminent domain herein conferred shall establish the need for the amount of land sought to be condemned and that such land is reasonably necessary for the most practical method for such compliance.

(c) The right of eminent domain herein conferred shall not apply to the taking of any dwelling house or for the taking of any land within five hundred feet of any such dwelling house.

(d) The legislature hereby declares and finds that the taking and use of real property and interests in real property determined to be reasonably necessary for such compliance promotes the health, safety and general welfare of the citizens of this State by reducing and abating pollution in the waters of this State in which the public at large has an interest and otherwise; that such taking and use are necessary to provide and protect a safe, pure and adequate water supply to the municipalities and citizens of the State; that because of topography, patterns of land development and ownership and other factors it is impossible in many cases to effect such compliance without the exercise of the power of eminent domain and that the use of real property or interests in real property to effect such compliance is a public use for which private property may be taken or destroyed. (1969, c. 96.)

§ 20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution or when ceasing does not stop the pollution, such person shall immediately upon issuance of the permit required under section eleven [§ 20-5A-11] of this article take or begin appropriate steps or proceedings to carry out such remedial action. In any such case it shall be the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. The chief may require progress reports, at such time intervals as he deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligentiy prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, shall constitute failure to take or begin appropriate steps or proceedings to comply with such order. If such person be a municipal corporation, the cost of all such remedial action as may be necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated, and if there be not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds, any direct general obligation bond issue to be subject to the approval of the state sinking fund commission and the attorney general of the State of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the Constitution of this State, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in chapter twenty-five, acts of the legislature, first extraordinary session, one thousand nine hundred thirty-three [§§ 16-13-1 to 16-13-24], and any amendment thereof: Provided, that the provisions of section six [§ 16-13-6] of the above mentioned act, allowing objections to be filed with the governing body, and providing that a written protest of thirty percent or more of the owners of real estate shall require a four-fifths vote of the governing body for the issuance of said revenue bonds, shall not apply to bond issues proposed by any municipal corporation to comply with an order made and entered under the authority of this article, and such objections and submission of written protest shall not be authorized, nor shall the same, if made or had, operate to justify or excuse failure to comply with such order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the chief. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same shall be financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of said chapter twenty-five, acts of the legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendments thereof. (1937, c. 130, 1961, c. 133; 1964, c. 20; 1967, c. 143; 1969, c. 96; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, inserted "upon issuance of the permit required under section eleven of this article" in the first sentence of the first paragraph.

Stated in City of Morgantown v. Town of Star City, 195 S.E.2d 166 (W. Va. 1973).

§ 20-5A-12a. Emergency orders.

Whenever the chief finds that any discharge, release, escape, deposit or disposition of treated or untreated sewage, industrial wastes or other wastes into any waters within this State, when considered alone or in conjunction with other discharges, releases, escapes, deposits or dispositions, constitutes a clear, present and immediate danger to the health of the public, or to the fitness of a private or public water supply for drinking purposes, the chief may, with the concurrence in writing of the director of the department of natural resources and the director of the department of health, without notice or hearing, issue an order or orders requiring the immediate cessation or abatement of any such discharge, release, escape, deposit or disposition, and the cessation of any drilling, redrilling, deepening, casing, fracturing, pressuring, operating, plugging, abandoning, converting or combining of any well, or requiring such other action to be taken as the chief, with the concurrences aforesaid, deems necessary to abate such danger.

Notwithstanding the provisions of any other section of this article, any order issued under the provisions of this section shall be effective immediately and may be served in the same manner as a notice may be served under the provisions of section two [§ 29A-7-2], article seven, chapter twenty-nine-A of the Code. Any person to whom such order is directed shall comply therewith immediately, but on notice of appeal to the board shall be afforded a hearing as promptly as possible, and not later than ten days after the board receives such notice of appeal. On the basis of such hearing, and within five days thereafter, the board shall make and enter an order continuing the order of the chief in effect, revoking it, or modifying it. For the purpose of such appeal and judicial review of the order entered following an appeal hearing, all pertinent provisions of sections fifteen [§ 20-5A-15] and sixteen [§ 20-5A-16] of this article shall govern. (1969, c. 96.)

§ 20-5A-13.

Repealed by Acts 1978, c. 80, effective March 12, 1978.

§ 20-5A-14. Control by State as to pollution; continuing jurisdiction.

No right to violate the rules and regulations of the board or to continue existing pollution of any of the waters of the State shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future pollution by any person. The right and control of the State in and over the quality of all waters of the State are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and reduction of the pollution of the waters of the State, irrespective of the fact that such persons may have previously complied with all orders of the chief or board. It is also recognized that there should be continuity and stability respecting pollution control measures taken in

cooperation with, and with the approval of, the chief, or pursuant to orders of the chief or board. When a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section seven [§ 20-5A-7] of this article or when a person has completed remedial action pursuant to an order of the chief or board, additional efforts may be required wherever and whenever the rules and regulations of the board or effluent limitations are violated or the waters of the State are polluted by such person. (1964, c. 20; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8.)

Part V. Appeal and Review Procedures.

§ 20-5A-15. Appeal to water resources board.

(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the specified time as provided in subsection (e) of section seven [§ 20-5A-7] of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee. If the chief denies a permit because of any disapproval of a permit application by one or more of the public officers required to review such applications under the provisions of subsection (a), section seven of this article, such public officers shall be joined as a coappellee or coappellees with the chief in such appeal.

(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from. If it appears to the director or the board that an unjust hardship to the appellant will result from the execution of the chief's order pending determination of the appeal, the director or the board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the chief within three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the chief's file relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any persons affected by any such activity or by such alleged pollution may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee, and, with the consent of the board, by any intervenors.

(d) All of the pertinent provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-A of this Code shall apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County, West Virginia, and

(2) In accordance with the provisions of section one [§ 29A-5-1], article five of said chapter twenty-nine-A, all of the testimony at any such hearing shall be recorded by stenographic notes and characters or by mechanical means. Such reported testimony shall in every appeal hearing under this article be transcribed.

(e) Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner employed by the board. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-A of this Code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-A, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistants, or the chief, with the written approval of the attorney general, may employ counsel to represent him. At any such hearing the appellant and any intervenor may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this State.

(g) After such hearing and consideration of all the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued. In determining its course of action, the board shall take into consideration not only the factors which the chief was authorized to consider in making his order and in fixing the terms and conditions of any permit, but also the economic feasibility of treating and/or controlling the sewage, industrial wastes or other wastes involved.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three [§ 29A-5-3], article five, chapter twenty-nine-A of this Code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section sixteen [§ 20-5A-16] of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article. (1964, c. 20; 1967, c. 143; 1969, c 96; 1971, c. 111; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, substituted "secretary" for "chairman" in the second sentence of subsection (e) and inserted "or the chief, with the written approval of the attorney general, may employ counsel to represent him" at the end of the third sentence of subsection (f).

Water resources board is without authority to accept an appeal to it based upon the certification by the State under requirements of the Federal Water Pollution Control Act Amendments of 1972. Op. Att'y Gen., Nov. 24, 1975.

In order for a private citizen to be entitled to an appeal under the provisions of this section, he must demonstrate that he is a person aggrieved by the terms and conditions of the permit issued by the agency. Op. Att'y Gen., April 15, 1974.

Cited in Consolidation Coal Co. v. Environmental Protection Agency, 537 F.2d 1236 (4th Cir. 1976).

§ 20-5A-16. Judicial review.

(a) Any person or the chief adversely affected by an order made and entered by the board after such appeal hearing, held in accordance with the provisions of section fifteen [§ 20-5A-15] of this article, is entitled to judicial review thereof. All of the provisions of section four [§ 29A-5-4], article five, chapter twenty-nine-A of this Code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of Kanawha county;

(2) As to cases involving an order revoking or suspending a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of Kanawha county; and

(3) As to cases involving an order directing that any and all discharges or deposits of sewage, industrial wastes or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed, within the time specified in said section four, in the circuit court of the county in which the establishment is located or in which the pollution occurs.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one [§ 29A-6-1], article six, chapter twenty-nine-A of this Code, except that notwithstanding the provisions of said section one the petition

seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the chief in all appeal proceedings in the circuit court and in the supreme court of appeals of this State shall be provided by the attorney general or his assistants and in appeal proceedings in the circuit court by the prosecuting attorney of the county in which the appeal is taken, all without additional compensation, or the chief, with the written approval of the attorney general, may employ counsel to represent him. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, deleted "pertinent" preceding "provisions" near the beginning of the second sentence in subsection (a) and added "or the chief, with the written approval of the attorney general, may employ counsel to represent him" at the end of subsection (c).

Stated in Mason County Bd. of Educ. v. State Superintendent of Schools, W. Va. , 234 S.E.2d 321 (1977).

Cited in Consolidation Coal Co. v. Environmental Protection Agency, 537 F.2d 1236 (4th Cir. 1976).

PART VI. ACTIONS.

§ 20-5A-17. Civil penalties and injunctive relief.

Any person who violates any provision of any permit issued under or subject to the provisions of this article shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation, and any person who violates any provision of this article or of any rule and regulation or who violates any standard or order promulgated or made and entered under the provisions of this article shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the chief in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

Upon application by the chief, the circuit courts of this State or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules and regulations of the board, effluent limitations, the terms and conditions of any permit granted under the provisions of this article, or any order of the chief or board, and the venue of any such action shall be the county in which the violation or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunctive application filed. Any other section of this Code to the contrary notwithstanding, the State shall not be required to furnish bond as a prerequisite to obtaining injunctive relief under this article. An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding

that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review in any injunctive proceeding must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

Legal counsel and services for the chief or the board in all civil penalty and injunction proceedings in the circuit court and in the supreme court of appeals of this State shall be provided by the attorney general or his assistants and by the prosecuting attorneys of the several counties as well, all without additional compensation, or the chief or the board, with the written approval of the attorney general, may employ counsel to represent him or it in a particular proceeding. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, deleted "after written notice of such violation from the chief and a reasonable period of time as fixed by the chief to achieve compliance" following "provisions of this article shall" near the end of the first sentence of the first paragraph and substituted "ten thousand dollars" for "one thousand dollars" near the end of that sentence.

§ 20-5A-18. Priority of actions.

All applications under section seventeen [§ 20-5A-17] of this article and all proceedings for judicial review under section sixteen [§ 20-5A-16] of this article shall take priority on the docket of the circuit court in which pending, and shall take precedence over all other civil cases. Where such applications and proceedings for judicial review are pending in the same court at the same time, such applications shall take priority on the docket and shall take precedence over proceedings for judicial review. (1964, c. 20.)

PART VII. VIOLATIONS AND PENALTIES.

§ 20-5A-19. Violations; criminal penalties.

Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him by this article or by any rule or regulation of the board, promulgated pursuant to the provisions and intent of this article, or by an order of the chief or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of such permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

Any person who shall intentionally misrepresent any material fact in an application, record, report, plan or other document filed or required to be

maintained under the provisions of this article or any rules and regulations promulgated by the board thereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment.

Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any provision of this article or any rule or regulation of the board or any effluent limitation or any order of the chief or board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.

Any such person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided for in this article have been pursued or invoked against said person and notwithstanding that a civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.

Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of such permit, he shall not be subject to criminal prosecution for pollution recognized and authorized by such permit. (1964, c. 20; 1967, c. 143; 1969, c. 96; 1974, 2nd Ex. Sess., c. 8; 1978, c. 80.)

Effect of amendment of 1978. — The amendment, effective March 12, 1978, substituted "an order" for "any order" near the middle of the first paragraph, inserted "less than one thousand dollars nor" near the end of the second paragraph, inserted "or negligently" near the beginning of the third paragraph, substituted "two thousand five hundred dollars" for "one thousand dollars" near the end of that paragraph and substituted "one year" for "six months" near the end of that third paragraph.

§ 20-5A-19a. Civil liability; natural resources game-fish and aquatic life fund; use of funds.

If any loss of game-fish or aquatic life results from a person's or persons' failure or refusal to discharge any duty imposed upon him by this article, the West Virginia department of natural resources shall have a cause of action on behalf of the State of West Virginia to recover from such person or persons causing such loss a sum equal to the cost of replacing such game-fish or aquatic life. Any moneys so collected by the director shall be deposited in a special revenue fund entitled "natural resources game-fish and aquatic life fund" and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this State with game-fish and aquatic life. Where feasible, the director shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in said fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this State, with game-fish and aquatic life. (1964, c. 20; 1965, c. 113.)

§ 20-5A-20. Exceptions as to criminal liabilities.

The criminal liabilities imposed by section nineteen [§ 20-5A-19] of this article shall not be construed to include any violation resulting from accident or caused by an act of God, war, strike, riot or other catastrophe as to which negligence or wilful misconduct on the part of such person was not the proximate cause. (1964, c. 20.)

Part VIII. Short Title; Construction and Severability.

§ 20-5A-21. Short title.

This article may be known and cited as the "Water Pollution Control Act." (1964, c. 20.)

§ 20-5A-22. Existing rights and remedies preserved; article for benefit of State only.

It is the purpose of this article to provide additional and cumulative remedies to abate the pollution of the waters of the State and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the State, municipalities, public health officers, or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

The provisions of this article inure solely to and are for the benefit of the people generally of the State of West Virginia, and this article is not intended to in any way create new, or enlarge existing rights of riparian owners or others. An order of the chief or of the board, the effect of which is to find that pollution exists, or that any person is causing pollution, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the State of West Virginia. (1964, c. 20; 1969, c. 96.)

§ 20-5A-23. Conflicting provisions.

In the event of any inconsistency or conflict between any provision of this article and any provision of this chapter, the provisions of this article shall control. (1964, c. 20; 1974, 2nd Ex. Sess., c. 8.)

§ 20-5A-24. Severability of provisions.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable. (1964, c. 20; 1974, 2nd Ex. Sess., c. 8.)

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE WATER RESOURCES BOARD

CHAPTER 20 - 5A

.1983

(Series IX)

REGULATIONS FOR THE WEST VIRGINIA UNDERGROUND INJECTION CONTROL PROGRAM

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

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Chapter 20 - 5A
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I N D E X

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

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*Legislative Rule

Section 1.00 General Provisions

1.01 Applicability and Scope.

(a) These regulations set forth criteria and standards for the requirements which apply to the State Underground Injection Control Program.

(b) The UIC permit program regulates underground injections by five (5) classes of wells. The five (5) classes of wells are set forth in Section 4.00 of these regulations. All owners or operators of these injection wells must be authorized either by permit or rule by the Chief.

(1) Specific inclusions. The following wells are included among those types of injection activities which are covered by the UIC regulations (this list is not intended to be exclusive but is for clarification only):

(i) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(ii) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(iii) Any septic tank, cesspool, or other well used by multiple dwelling, community, or regional system for the injection of waste.

(2) Specific exclusions. The following are not covered by these regulations:

(i) Individual or single family residential waste disposal systems such as domestic cesspools or septic systems.

(ii) Any dug hole which is not used for emplacement of fluids underground.

(iii) Nonresidential cesspools, septic systems or similar waste disposal systems if such systems are used solely for the disposal of sanitary wastes and have the capacity to serve fewer than 20 persons a day.

(iv) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.

(3) The specification of exclusions under paragraph (b)(2) of this section shall not relieve any person of any requirement imposed under the State Act and regulations, other than this Series, including State permit requirements.

1.02 Law Authorizing These Regulations

These regulations are promulgated under authority of Chapter 20, Article 5A, Section 3(b)(2) of the West Virginia Code.

1.03 Effective Date.

These regulations become effective upon assumption of the Underground Injection Control Program by the State.

1.04 Filing Date.

These regulations were filed in the Office of the Secretary of State on January 6, 1983.

1.05 Certification.

These regulations are certified authentic by the Chairman of the State Water Resources Board.

Section 2. Definitions

The definitions set forth in Chapter 20, Article 5A, Section 2 of the Code of West Virginia shall apply to these regulations along with the following definitions unless the context clearly indicates otherwise:

"Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

"Acidizing" means the injection of acid through the borehole or "well" into a "formation" to increase permeability and porosity by dissolving the acid-soluble portion of the rock constituents.

"Administrator" means the Administrator of the Oil and Gas Division of the Department of Mines.

"Application" means the State standard forms for applying for a permit or permit modification, including any additions, revisions or modifications to the forms.

"Aquifer" means a geological "formation", group of formations, or part of a formation that is capable of yielding a usable amount of water to a well or spring.

"Area of review" means the area surrounding an injection well described according to the criteria set forth in Section 5.02, or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in Section 5.03.

"Authorized representatives of the Chief" means Water Resources Division personnel, the "Commissioner" and the "Administrator".

"Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

"Catastrophic collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

"Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

"Chief" means the Chief of the Water Resources Division of the West Virginia Department of Natural Resources.

"Commissioner" means the Commissioner of the West Virginia Oil and Gas Conservation Commission.

"Confining bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

"Confining zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

"Contaminant" means any man induced physical, chemical, biological, or radiological substance or matter in water.

"Conventional mine" means an open pit or underground excavation for the production of minerals.

"Draft permit" means a document indicating the Chief's tentative decision to issue, modify, suspend, revoke, revoke and reissue, or reissue a "permit". A notice of intent to revoke a permit is a type "draft permit". A denial of a request for modification, suspension, revocation, or revocation and reissuance, is not a "draft permit".

"Drilling mud" means a heavy suspension used in drilling an "injection well", introduced down the drill pipe and through the drill bit.

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Exempted aquifer" means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in Section 3.01.

"Existing injection well" means an "injection well" other than a "new injection well".

"Experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

"Facility or activity" means any "injection well" that is subject to regulation under the UIC program.

"Fault" means a surface or zone of rock fracture along which there has been displacement.

"Flow rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

"Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

"Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

"Formation fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud".

"Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in Section 3.00, Series XV, West Virginia Administrative Regulations (Chapter 20-5E), or whose act first causes a hazardous waste to become subject to these regulations.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means a hazardous waste as defined in Section 3.01.02, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

"Hazardous Waste Management facility" (HWM facility) means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of "hazardous waste". A facility may consist of several "treatment", "storage", or "disposal" operational units.

"Injection well" means a "well" into which "fluids" are being injected.

"Injection zone" means a geological "formation", group of formations or part of a formation receiving fluids through a "well".

"Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

"Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of the hazardous waste during its transportation off-site from the point of generation to the point of disposal, treatment or storage.

"New injection well" means a "well" which began injection after the effective date of these regulations.

"Owner or operator" means the owner or operator of a facility or activity subject to regulation under the UIC program.

"Packer" means a device lowered into a "well" to produce a fluid-tight seal.

"Permit" means an authorization, license, or equivalent control document issued by the State to implement the requirements of the UIC Program. "Permit" includes an area permit and a UIC Emergency Permit. "Permit" does not include UIC authorization by rule or any permit which has not yet been the subject of final agency action, such as a "draft permit".

"Plugging means the act or process of stopping the flow of water, oil, or gas into or out of a "formation" through a borehole or well penetrating that formation.

"Pressure" means the total load or force per unit area acting on a surface.

"Project" means a group of "wells" in a single operation.

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes (a) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"Radioactive waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 USC 6901 et seq.)

"Regional Administrator" means the Regional Administrator of Region III of the U. S. Environmental Protection Agency or the authorized representative of the Regional Administrator.

"Safe Drinking Water Act" (SDWA) means the Safe Water Drinking Act (Pub. L. 95-523 as amended by Pub. L. 95-1900; 42 USC Section 3000 et seq.)

"Schedule of compliance" means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the SDWA and State Act and regulations.

"Site" means the land or water where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"State" means the State of West Virginia.

"State Act" means the State Water Pollution Control Act, Chapter 20-5A-1 et seq. of the West Virginia Code, 1931 as amended.

"Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

"Subsidence" means the lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

"Surface casing" means the first string of well casing to be installed in the well.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an approved State program.

"Undergound injection" means a "well injection".

"Underground source of drinking water" (USDW) means an "aquifer" or its portion:

(a)(1) which supplies any public water system; or

(2) which contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

"Well" for purpose of the State UIC Program, means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

"Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

"Well stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

"Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

"Wetlands' means those areas that are inundated and saturated by surface groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas such as sloughs, wet meadows, mudflats, sandflats and natural ponds.

Section 3.00 Criteria for Exempted Aquifer Status

3.01 An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" in Section 2.00 may be determined to be an exempted aquifer if it meets the following criteria:

(a) It does not currently serve as a source of drinking water; and

(b) It cannot now and will not in the future serve as a source of drinking water because:

(1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;

(2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(3) It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption; or

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The Total Dissolved Solids content of the groundwater is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

Section 4.00 Classes of Wells

Injection wells are classified as follows:

4.01 Class I.

(a) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within 1/4 mile of the well bore, an underground source of drinking water.

(b) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within 1/4 mile of the well bore, an underground source of drinking water.

4.02 Class II. Wells injecting fluids:

(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; and

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

4.03 Class III. Wells which inject for extraction of minerals including:

(a) Mining of sulfur by the Frasch process;

(b) In situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V;

(c) Solution mining of salts or potash;

(d) In situ combustion of fossil fuel.

(e) Recovery of geothermal energy to produce electric power.

4.04 Class IV.

(a) Wells used by generators of hazardous wastes or radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within 1/4 mile of the well, contains an underground source of drinking water.

(b) Wells used by generators of hazardous wastes or radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within 1/4 mile of the well, contains an underground source of drinking water.

(c) Wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 4.01(a) and Section 4.04(a) and (b) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to Section 3.00.)

4.05 Class V. Injection wells not included in Classes I, II, III, or IV Class V wells include, but are not limited to:

(a) Cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive wastes, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to nonresidential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.

(b) Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether what is injected is a radioactive waste or not.

(c) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to nonresidential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day.

(d) Injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power.

(e) Radioactive waste disposal wells other than Class IV.

(f) Wells used for solution mining of conventional mines such as stopes leaching.

(g) Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

(h) Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts.

(i) Injection wells used in experimental technologies.

(j) Wells for waste disposal into solution cavities in carbonate formations.

(k) Sinkholes used for the disposal of sewage or any other waste.

(ℓ) Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump.

(m) Cooling water return flow wells used to inject water previously used for cooling.

(n) Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation.

(o) Dry wells used for the injection of wastes into a subsurface formation.

(p) Recharge wells used to replenish the water in an aquifer.

(q) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.

(r) Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water.

Section 5.00 Area of Review

5.01 The Chief shall select the methods by which the area of review shall be established for each injection well or each field, project, or area of the State.

5.02 The area of review may be defined as either:

(a) The zone of endangering influence as determined in accordance with Section 5.03(a); or

(b) An area within a fixed radius around each injection well as determined in accordance with Section 5.03(c).

5.03 Zone of endangering influence.

The zone of endangering influence shall be:

(a) In case of application(s) for well permit(s) under Section 13.03, that area the radius of which is the horizontal distance from the injection well in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water; or

(b) In the case of an application for an area permit under Section 13.04,

the area of the project plus a circumscribing area, the width of which is the horizontal distance from the perimeter of the project, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water. Computation of the zone of endangering influence should be based upon but not limited to, the parameters listed below and should be calculated for an injection time period equal to the expected life of the facility. The Theis equation is an example of one possible objective method:

(see next page)

$$r = \left(\frac{2.25\ K\ H\ t}{S\ 10^{X}} \right)^{1/2}$$

where:

$$X = \frac{4\ \pi\ KH \left(h_w - h_{b_o} \times SpG_b \right)}{2.3\ Q}$$

r = Radius of endangering influence from injection well (length)

K = Hydraulic conductivity of the injection zone (length/time)

H = Thickness of the injection zone (length)

t = Time of injection (time)

S = Storage coefficient (dimensionless)

Q = Injection rate (volume/time)

h_{b_o} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowest underground source of drinking water

h_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water

SpG_b = Specific gravity of fluid in the injection zone (dimensionless)

π = 3.142 (dimensionless).

The above equation is based on the following assumptions:

(i) The injection zone is homogenous and isotrophic;

(ii) The injection zone has infinite area extent;

(iii) The injection well penetrates the entire thickness of the injection

zone;

(iv) The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

(v) The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

(c) Fixed radius:

(1) In the case of application(s) for well permit(s), a fixed radius around the well may be used but not less than 1/4 mile.

(2) In the case of an application for an area permit, a fixed width may be used but not less than 1/4 mile for the circumscribing area.

(3) In determining the fixed radius, the following factors shall be taken into consideration: the chemistry of the injected and formation fluids; geology; hydrogeology; population and groundwater use and dependence; and historical practices in the area.

Section 6.00 Corrective Action and Mechanical Integrity

6.01 Corrective Action.

In determining the adequacy of corrective action proposed by the applicant and in determining the additional steps needed to prevent fluid migration into underground sources of drinking water, the Chief shall consider the following criteria and factors:

(a) Nature and volume of injected fluid;

(b) Nature of native fluids or by-products of injection;

(c) Geology;

(d) Hydrology;

(e) History of the injection operation;

(f) Completion and plugging reports;

(g) Abandonment procedures in effect at the time the well was abandoned;

(h) Hydraulic connections with underground sources of drinking water; and

(i) Potentially affected population.

6.02 Mechanical Integrity.

(a) An injection well has mechanical integrity if:

(1) There is no significant leak in the casing, tubing or packer; and

(2) There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(b) One of the following methods must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section:

(1) Monitoring of annulus pressure; or

(2) Pressure test with liquid or gas.

(c) The absence of significant fluid movement under paragraph 6.02(a)(2) of this section may be demonstrated by:

(1) For Class II wells, any requirements determined necessary under Section 9.01(a);

(2) For Class III wells where the nature of the casing precludes the use of logging techniques prescribed at (c)(3) of this section, cementing records demonstrating the presence of adequate cement to prevent such migration;

(3) The results of a temperature or noise log;

(4) For Class III wells where the Chief elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by Section 10.04 shall be designed to verify the absence of significant fluid movement; or

(d) The Chief may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraphs (b) and (c) of this section with the written approval of the Administrator of the U. S. Environmental Protection Agency.

(e) In conducting and evaluating the tests enumerated in this section or others to be allowed by the Chief, the owner or operator and the Chief shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Chief, he shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Chief shall review monitoring and other test data submitted since the previous evaluation.

Section 7.00 Requirements for Wells Injecting Hazardous Waste

7.01 Location Standards.

Owners and operators of all new hazardous waste injection wells shall comply with the following location standards:

(a) Seismic Risk Zones

Wells shall not be located in Seismic Risk Zone 2 (Expected Moderate Damage). The following counties are located in Seismic Risk Zone 2: Jefferson, Berkeley, Morgan (east of Cacapon Sistrict), Hampshire (Bloomery, Capon Districts), Hardy (Capon, Lost River Districts), Pendleton (Bethel, Sugar Grove Districts), Pocahontas (south of Green Bank District), Greenbrier, Monroe, Summers, Mercer, Raleigh (Slab Fork, Shady Spring, and Richmond Districts), McDowell and Wyoming (south of Ocean District).

(b) Subsurface Mining Areas

The borehole of any hazardous waste injection well shall not pass through a cavity created by subsurface mining.

(c) Carbonate Formations

The borehole of any hazardous waste injection well shall not pass through any cavity created by solution of carbonate rock above the injection zone.

(d) Inundation Danger Zone

Hazardous waste injection wells shall not be located where inundation from dam failure or a 100 year flood could occur.

(e) Wetlands

Hazardous waste injection wells shall not be located in wetlands.

7.02 Applicability. The regulations in Sections 7.03 and 7.04 and Section 8.00 apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any Class I well to inject hazardous waste accompanied by a manifest.

7.03 Authorization. The owner or operator of any Class I well that is used to inject hazardous wastes accompanied by a manifest or delivery document shall apply for authorization to inject within six (6) months of the effective date of these regulations.

7.04 Requirements. In addition to requiring compliance with the applicable requirements of Section 8.00, the Chief shall, for each facility meeting the requirements of Section 7.03 require that the owner or operator comply with the following:

(a) Notification. The owner or operator shall comply with the notification requirements in Section 4.00, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(b) Identification number. The owner or operator shall comply with the requirements in Section 8.02.02, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(c) Manifest system. The owner or operator shall comply with the applicable record keeping and reporting requirements for manifested wastes in Section 8.05.02, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(d) Manifest discrepancies. The owner or operator shall comply with Section 8.05.03, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(e) Operating record. The owner or operator shall comply with Section 8.05.04(a), (b)(1) and (b)(2), Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(f) Annual report. The owner or operator shall comply with Section 8.05.06, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(g) Unmanifested waste report. The owner or operator shall comply with Section 8.05.07, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(h) Personnel training. The owner or operator shall comply with the applicable personnel training requirements in Section 8.02.07, Series XV, West Virginia Administrative Regulations (Chapter 20-5E).

(i) Certification of closure. When abandonment is completed, the owner or operator must submit to the Chief certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in Section 13.07(f) of these regulations.

Section 8.00 Criteria and Standards Applicable to Class I Wells

8.01 General.

This section sets forth requirements for underground injection control programs to regulate Class I wells.

8.02 Construction Requirements.

The Chief shall prescribe requirements for the construction of Class I injection wells. Existing wells shall achieve compliance with such requirements according to a specific compliance schedule established by the Chief as a condition of the permit. New wells shall be in compliance with construction requirements before injection operations begin. The owner or operator of a proposed injection well shall submit plans to the Chief for testing, drilling and construction and obtain the approval of the Chief of the initial plans as a condition of the permit. The Chief's approval of any modifications of the plans shall be obtained before incorporating them into the construction of the injection well. At a minimum, such requirements shall prescribe that:

(a) Each Class I well shall be sited in such a fashion that it injects into a formation which is below the lowermost formation containing within 1/4 mile of the well bore, an underground source of drinking water, and which has an overlying confining bed that is free of known faults or fractures within the area of review.

(b) Each Class I well shall be cased, and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the Chief shall consider the following factors:

(1) Depth to the injection zone;

(2) Injection pressure (external pressure, internal pressure, axial loading, etc.);

(3) Hole size;

(4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, construction material, etc.);

(5) Corrosiveness of injected fluid, formation fluids, and temperatures;

(6) Lithology of possible injection and confining intervals; and

(7) Type or grade of cement.

(c) All Class I injection wells, except for those municipal wells injecting only non-corrosive wastes, shall inject fluids through tubing and packer set immediately above the injection zone. The tubing and packer shall be designed for the expected service.

(1) The use of other alternatives to a packer may be allowed with the written approval of the Chief. To obtain approval, the operator shall submit a written request to the Chief, which shall set forth the proposed alternative and all technical data supporting its use. The Chief shall approve the request if the alternative method will reliably provide a comparable level of protection to underground sources of drinking water. The Chief may approve an alternative method solely for an individual well or for general use.

(2) In determining and specifying requirements for tubing and packer, the Chief shall consider the following factors:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, density, etc.);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate, temperature and volume of injected fluid; and

(vi) Size of casing.

(d) All parts of Class I wells which will come into contact with corrosive fluids (whether injected or in the native environment) shall be constructed of corrosion resistant material.

(e) Logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgable log analyst and submitted to the Chief. At a minimum such logs and tests shall include:

(1) Directional surveys conducted on all holes, including pilot holes, at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling;

(2) For surface casing intended to protect underground sources of drinking water:

(i) Resistivity, spontaneous potential and caliper logs before the casing is installed; and

(ii) A cement bond, temperature, or density log after the casing is set and cemented.

(3) For intermediate and long strings of casing intended to facilitate injection:

(i) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(ii) Fracture finder logs in appropriate situations as prescribed by the Chief; and

(iii) A cement bond, temperature, or density log after the casing

is set and cemented.

(f) At a minimum, the following information concerning the injection formation shall be determined for new Class I wells, and submitted to the Chief:

(1) Fluid pressure;

(2) Temperature;

(3) Fracture pressure;

(4) Other physical and chemical characteristics of the injection matrix;

(5) Physical and chemical characteristics of the formation fluids; and

(6) Compatibility of injected fluids with formation fluids.

8.03 Abandonment of Class I Wells.

(a) Class I wells shall be abandoned in a manner to be prescribed by the Chief under Section 13.07(f). At a minimum, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water.

(b) Placement of the cement plugs shall be accomplished by one of the following:

(1) The Balance Method;

(2) The Dump Bailer Method;

(3) The Two-Plug Method; or

(4) An alternative method approved by the Chief which will reliably provide a comparable level of protection to USDW's.

(c) The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or a comparable method prescribed by the Chief, prior to the placement of the cement plug(s).

(d) The owner or operator shall assure, through a performance bond or other appropriate means, the availability of resources necessary for the proper abandonment of the well as required in Section 13.07(g).

8.04 Operating, Monitoring and Reporting Requirements.

(a) Operating Requirements:

The Chief shall, under Section 13.07(c) prescribe requirements governing the operation of injection wells in the permit. Requirements for Class I shall, at a minimum, specify that:

(1) Except during stimulation, injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water;

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited; and

(3) Unless an alternative to tubing and packer has been approved, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Chief and a pressure, also approved by the Chief, shall be maintained on the annulus.

(b) Monitoring Requirements:

The Chief shall prescribe requirements for the monitoring of the injection fluids, the injection well, and the underground sources of drinking water that could potentially be affected by the injection. Monitoring requirements shall, at a minimum, include:

(1) Testing of the injected fluids with sufficient frequency to yield representative data of its characteristics;

(2) Continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long strings of casing;

(3) Demonstration of mechanical integrity at least every five (5) years during the life of the well;

(4) Type, number and location of wells within the area of review to monitor any migration of fluids into and pressure in the underground sources of drinking water with the parameters to be measured and the frequency of monitoring specified; and

(5) The maintenance of the results of required monitoring for at least three (3) years.

(c) Reporting Requirements:

The Chief shall prescribe the form, manner, content and frequency of reporting by the operator. The operator shall be required to identify the types of tests and methods used to generate the monitoring data. At a minimum, requirements shall include:

(1) Quarterly reports to the Chief on:

(i) The physical, chemical and other relevant characteristics of injection fluids;

(ii) Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(iii) Monitoring of pressure and quality in underground sources of drinking water.

(2) Reporting with the first quarterly report after the completion of:

(i) Periodic demonstration of mechanical integrity; and

(ii) Any other test of the injection well conducted by the permittee if required by the Chief.

(3) Written notice to the Chief within 30 days after any compliance schedule date whether the permittee has or has not complied with the requirement in question;

(4) Immediate reports to the Chief of any violation of a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.

8.05 Information to be Considered by the Chief Prior to the Issuance of a Permit.

(a) Prior to the issuance of a permit for an existing or new Class I well, the Chief shall consider the following information: For an existing Class I well the Chief may rely on the existing State permit file for those items of information listed below which are current and accurate in the State file. For a new Class I well, the Chief shall require the submission of all the information listed below. For both existing and new Class I wells, paragraphs (3), (4), and (6) of this section may be included in the application by reference if the reference is specific in identifying the maps in question and the maps are readily available to the Chief. The following information is required:

(1) Any increase in the amount of hazardous waste or change in the type of hazardous waste injected;

(2) A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, mines (surface and subsurface), quarries, water wells and other pertinent

surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(3) A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well's type, location, depth, record of plugging and/or completion, and any additional information on these wells as the Chief may require;

(4) Maps and cross sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(5) Maps and cross sections detailing the geologic structure of the local area;

(6) Generalized maps and cross sections illustrating the regional geologic setting;

(7) Operating data:

(i) The anticipated average and maximum pressure and flow rate at which the permittee will operate; and

(ii) Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

(8) Formation testing program to obtain an analysis of the chemical, physical, and radiological characteristics of and other information on the receiving formation;

(9) Stimulation program;

(10) Injection procedure;

(11) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(12) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of contaminating fluids into any underground source of drinking water;

(13) All available logging and testing program data on the well;

(14) Plans for meeting the monitoring requirements;

(15) For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under Sections 6.01 and 13.09;

(16) Construction procedures including a cementing and casing program, logging procedures, directional survey, and a drilling, testing, and coring program;

(17) Feasibility of monitoring permeable strata located between the injection zone and underground sources of drinking water;

(18) Compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining strata;

(19) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well under Section 13.07(g);

(20) A satisfactory demonstration of mechanical integrity under Section 13.07(h) and Section 6.02; and

(21) Such other information as the Chief may reasonably require.

(b) Prior to granting approval for the plugging and abandonment of a Class I well the Chief shall consider the following information:

(1) The type and number of plugs to be used;

(2) The placement of each plug including the elevation of the top and bottom;

(3) The type and grade and quantity of cement to be used;

(4) The method for placement of the plugs; and

(5) The procedure to be used to meet the requirements of Section 8.03.

Section 9.00 Criteria and Standards Applicable to Class II Wells

9.01 General.

(a) The criteria and standards applicable to Class II wells shall be those which are required pursuant to Chapter 22-4-1 et seq. and Chapter 22-4A-1 et seq. and the regulations thereunder, and any other requirements that the Chief considers reasonably necessary to ensure that no pollution of USDW's occurs.

(b) Owners and operators of Class II wells shall either be authorized by rule or obtain permits in accordance with the requirements of Section 13.00 of these regulations.

Section 10.00 Criteria and Standards Applicable to Class III Wells

10.01 General.

This section sets forth requirements for underground injection control programs to regulate Class III wells.

10.02 Construction Requirements.

The Chief shall prescribe requirements for the construction of Class III injection wells. Existing wells shall achieve compliance with such requirements according to a specific compliance schedule established by the

Chief as a condition of the permit. New wells shall be in compliance with construction requirements before injection operations begin. The owner or operator of a proposed injection well shall submit plans for testing, drilling and construction to the Chief and obtain the approval of the Chief of the initial plans as a condition of the permit. The Chief's approval of any modifications of the plans shall be obtained before incorporating them into the construction of the injection well. At a minimum, such requirements shall specify that:

(a) All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Chief may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources of drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the Chief shall consider the following factors:

(1) Depth to the injection zone;

(2) Injection pressure (external pressure, internal pressure, axial loading, etc.);

(3) Hole size;

(4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, construction material, etc.);

(5) Corrosiveness of injected and formation fluids;

(6) Lithology of possible injection and confining zones; and

(7) Type and grade of cement.

(b) All parts of Class III wells which will come into contact with corrosive fluids (whether injected or in the native environment) shall be constructed of corrosive resistant material.

(c) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Chief.

The Chief shall specify the logs and tests appropriate to each type of Class III well based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, such logs and tests, shall, as appropriate, include:

(1) Deviation checks conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling;

(2) For surface casing intended to protect underground sources of drinking water:

(i) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(ii) A cement bond, temperature, or density log after the casing is set and cemented.

(3) For intermediate and long strings of casing intended to facilitate injection:

(i) Restivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(ii) Fracture finder logs in appropriate situations as prescribed by the Chief; and

(iii) A cement bond, temperature, or density log after the casing is set and cemented.

(d) Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

(1) Fluid pressure;

(2) Fracture pressure;

(3) Physical and chemical characteristics of the formation fluids; and

(4) The nature and volume of the injected fluid, the formation water and the process by-products.

(e) Where the injection formation is not a water bearing formation, the information in paragraph (d)(2) of this section must be submitted.

(f) Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any underground sources of drinking water above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

(g) Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

(h) Where the injection wells penetrate an USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

(i) In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

(1) The population relying on the USDW affected or potentially affected by the injection operation;

(2) The proximity of the injection operation to points of withdrawal of drinking water;

(3) The local geology and hydrology;

(4) The operating pressures and whether a negative pressure gradient is being maintained;

(5) The nature and volume of the injected fluid, the formation water, and the process by-products; and

(6) The injection well density.

10.03 Abandonment of Class III Wells.

(a) Class III wells shall be abandoned in a manner, prescribed by the Chief, under Section 13.07(f). At a minimum the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The Chief may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

(b) Placement of the cement plugs shall be accomplished by one of the

following:

(1) The Balance Method;

(2) The Dump Bailer Method;

(3) The Two-Plug Method; or

(4) An alternative method approved by the Chief, which will reliably provide a comparable level of protection to underground sources of drinking water.

(c) The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or a comparable method prescribed by the Chief, prior to the placement of the cement plug(s).

(d) The owners or operators shall assure, through a performance bond or other appropriate means, the availability of resources necessary for the proper abandonment of the well as required under Section 13.07(g).

(e) The plugging and abandonment plan required in Section 13.07(f) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under Section 3.00, also demonstrate adequate protection of USDWs. The Chief shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs.

10.04 Operating, Monitoring and Reporting Requirements.

(a) Operating Requirements: The Chief shall prescribe requirements governing the operation of injection wells in the permit. Requirements for Class III wells shall, at a minimum, include that:

(1) Except during well stimulation the injection pressure at the well-head shall be calculated so as to assure that the pressure in the

injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an underground source of drinking water; and

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore shall be prohibited.

(b) Monitoring Requirements:

(1) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by Section 10.05(a)(6)(ii) is incorrect or incomplete, a new analysis shall be provided to the Chief;

(2) Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;

(3) Demonstration of mechanical integrity pursuant to Section 6.02 at least every five (5) years during the life of the well for salt solution mining;

(4) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 10.02(f) semi-monthly;

(5) Quarterly monitoring of wells required by Section 10.02(h);

(6) All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring.

Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

(c) Reporting Requirements: The Chief shall prescribe the form, manner, content and frequency of reporting by the permittee. The permittee shall be required to identify the types of tests and methods used to generate the monitoring data. At a minimum, requirements shall include:

(1) Quarterly monitoring of wells;

(2) Results of mechanical integrity and any other periodic test required by the Chief reported with the first regular quarterly report after the completion of the test;

(3) Written notice to the Chief within 30 days of any compliance schedule date of whether the permittee has or has not complied with the requirement in question; and

(4) Immediate reports to the Chief on any violation of a permit condition or malfunction of the injection system which may cause fluid migration into underground sources of drinking water.

10.05 Information to be Considered by the Chief Prior to the Issuance of a Permit.

(a) Prior to the issuance of a permit for an existing or new Class III well, the Chief shall consider the following information. For an existing Class III injection operation the Chief may rely on the existing permit file for those items of information listed below which are current and accurate in the State file. For a new Class III injection well the Chief

shall require the submission of all the information listed below. For both existing and new Class III wells, paragraphs (2), (3), (5) and (6) of this section may be included by reference if the maps are specifically identified and readily available to the Chief:

(1) A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells and dry holes. The map may also show surface bodies of water, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map;

(2) Maps and cross sections indicating the vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

(3) Maps and cross sections detailing the geologic structure of the local area;

(4) Generalized maps and cross sections illustrating the regional geologic setting;

(5) A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and

completion, and any additional information the Chief may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Chief may elect to only require data on a representative number of wells;

(6) Operating data:

(i) The anticipated average and maximum pressure and flow rate at which the permittee will operate;

(ii) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request confidentiality.

If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon the request to the Chief as part of any enforcement investigation; and

(iii) An analysis of the physical and chemical characteristics of the formation.

(7) Formation testing program;

(8) Stimulation program;

(9) Injection procedure;

(10) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(11) Plans (including maps) for meeting the monitoring requirements of Section 10.04(b);

(12) Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;

(13) Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into underground sources of drinking water;

(14) All available logging and testing data on the well;

(15) The corrective action proposed to be taken under Section 6.01;

(16) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well under Section 13.07(g); and

(17) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells as required by Section 6.02.

(b) Prior to granting approval for the plugging and abandonment of a Class III well the Chief shall consider the following information:

(1) The type and number of plugs to be used;

(2) The placement of each plug including the elevation of the top and bottom;

(3) The type, grade and quantity of cement to be used;

(4) The method of placement of the plugs; and

(5) The procedure to be used to meet the requirements of Section 10.03.

Section 11.00 Criteria and Standards Applicable to Class IV Wells

11.01 General.

(a) This section sets forth criteria and standards for underground injection control programs to regulate wells, including non-residential septic system wells, used by generators of hazardous wastes and owners and operators of hazardous waste management facilities to inject into or above strata that contain an underground source of drinking water.

(b) All new Class IV wells are prohibited.

11.02 Notification by Owners or Operators.

The owner or operator of an existing Class IV well shall submit to the Chief:

(a) Notice of the existence of any Class IV well under his control; and

(b) Information regarding the well.

11.03 Closure of Class IV Wells.

(a) The operation of any existing Class IV well shall be prohibited six (6) months after the effective date of these regulations.

(b) In determining the enforcement strategy and time allowed for closure, the Chief shall consider the following criteria:

(1) Population relying on the underground source of drinking water affected or potentially affected by the injection;

(2) Local geology and hydrology;

(3) Toxicity and volume of injected fluid; and

(4) Injection well density.

(c) The owners or operators of Class IV wells shall be notified by certified mail of the time by which closure must be accomplished as decided upon by the Chief and, if appropriate, of a compliance schedule leading to closure.

(d) Nothing in this section is intended to limit the Chief in taking immediate action necessary to protect the health of persons.

11.04 Monitoring and Reporting Requirements.

The Chief shall prescribe monitoring and reporting requirements for existing Class IV wells while they are operating.

(a) Monitoring requirements shall, at a minimum include:

(1) Record keeping as required in Chapter 20-5E of the West Virginia Code and the regulations thereunder.

(2) Weekly monitoring of existing water supply wells in the vicinity for parameters based upon the characteristics of the injection fluids.

(3) Maintenance of the results of monitoring under Section 13.06(b) and 13.12(j)(2).

(b) Reporting requirements shall prescribe the form, manner, content and frequency of reports to the Chief. The permittee shall be required to identify the types of tests and methods used to generate the monitoring data. At a minimum, the requirements shall include:

(1) Quarterly reporting of the results of monitoring required under paragraph (a) of this section;

(2) Immediate notification to the Chief of any change in the concentration of any parameter measured at an existing water supply well; and

(3) Written notification to the Chief within 30 days after any compliance schedule date of whether the owner or operator has or has not complied with the requirement in question.

Section 12.00 Criteria and Standards Applicable to Class V Injection Wells

12.01 General.

This section sets forth requirements for underground injection control porgrams to regulate all injection not regulated in Sections 8, 9, 10 and 11.

Generally, wells covered by this section inject non-hazardous fluids into strata that contain underground sources of drinking water. It includes, but is not limited to, the following types of injection wells: waste disposal wells, such as drainage wells, cooling water return flow wells, air conditioning return flow wells, salt water barrier wells and subsidence control wells (not associated with oil and gas production). It also includes wells not covered in Class IV that inject radioactive material listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

12.02 Inventory and Assessment.

(a) The owner or operator of Any Class V well shall, within one (1) year of the effective date of these regulations, notify the Chief of the existence of any well meeting the definitions of Class V under his control, and submit a description of:

(1) The construction features of the well;

(2) The nature and volume of injected fluids;

(3) The alternative means of disposal available to the operator;

(4) The environmental and economic consequences of well disposal and its alternatives;

(5) Facility name and location;

(6) Name and address of legal contact;

(7) Ownership of facility;

(8) Nature and type of injection wells; and

(9) Operating status of injection wells.

12.03 Requirement.

If at any time the Chief gains knowledge of a Class V well which presents a significant risk to the health of persons, he/she shall prescribe such action

as necessary (including the immediate closure of the injection well) to remove such risk.

12.04 Wells Regulated by Rule and Permit.

(a) All Class V wells shall be authorized by rule pursuant to Section 13.02 unless the Chief requires an individual permit.

(b) Information to be considered by the Chief prior to issuance of a permit.

(1) [Reserved].

Section 13.00 Injection Well Permitting Program

13.01 General Prohibition and Prohibition of Movement of Fluid into Underground Sources of Drinking Water.

(a) Underground injection is prohibited unless authorized by permit or rule. The construction of any well required to have a permit is prohibited until the permit has been issued.

(b) No authorization by permit or rule shall allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. Part 142 or promulgated pursuant to West Virginia Code, Chapter 16-1-1 et seq., or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(c) For Class I, II, and III wells, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW except as authorized under these regulations, the Chief shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be revoked if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see Section 13.02.

(d) For Class V wells, if at any time the Chief learns that a Class V well may cause a violation of primary drinking water regulations under 40 C.F.R. Part 142 or West Virginia Code, Chapter 16-1-1 et seq., he or she shall:

(1) Require the injector to obtain an individual permit;

(2) Order the injector to take such actions (including where required closure of the injection well) as may be necessary to prevent the violation; or

(3) Take enforcement action.

(e) Whenever the Chief learns that a Class V well may be otherwise adversely affecting the health of persons, he or she may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under paragraph (d) of this section.

(f) Notwithstanding any other provision of this section, the Chief may take emergency action under Section 12a of the State Act upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to health of persons.

13.02 Authorization of Underground Injection by Rule.

(a) Types of underground injection which may be authorized by rule. Facilities may be authorized by rule under these regulations as outlined in this paragraph. Underground injections not authorized by rule or permit are prohibited:

(1) Injection into existing Class I, II, and III wells may be authorized by rule for periods up to five (5) years from the effective date of these regulations. All such wells must

be issued permits within the five (5) year period or close down at its end, unless the rule is continued under Section 13.02(a)(2);

(2) Notwithstanding the prohibition in Section 13.01(a) rules under paragraph (a)(1) of this section authorizing Class II and III wells or projects in existing fields or projects may allow them to continue normal operations until permitted, including construction, operation, and plugging and abandonment of wells provided the owner or operator maintains compliance with all applicable requirements;

(3) Injection into existing Class IV wells as defined in Section 4.04 may be authorized for a period not to exceed six (6) months after the effective date of these regulations. Such rules shall apply the requirements of Section 7.04 and Section 11.04;

(4) Injections into Class V wells may be authorized for a period of five (5) years, subject to the requirements of (b) and (d) of this section and Section 12.00. However, the Chief has authority to withdraw the authorization if required under this section.

(b) Requirements of rules. Any facility authorized by rule pursuant to this section shall meet the following requirements no later than one (1) year after authorization by such rules:

(1) Section 13.06(a) - (exemption from rule where authorized by temporary permits);

(2) Section 13.06(b) - (retention of records);

(3) Section 13.06(d) - (immediate reporting);

(4) Section 13.06(e) - (notice of abandonment);

(5) Sections 13.07(f), 8.03, 10.03 - (plugging and abandonment);

(6) Construction requirements under Section 8.02 (Class I), Section 10.02 (Class III), and any requirements determined necessary by Section 9.01(a) (Class II);

(7) For Class I, II, or III wells corrective action under Section 6.01;

(8) Operating, monitoring, and reporting requirements under Section 8.04 (Class I), Section 10.04 (Class III), and any requirements determined necessary under Section 9.01(a) (Class II wells);

(9) Section 13.07(g) - (financial responsibility);

(10) Mechanical integrity requirements under Section 6.02; and

(11) Section 7.04 - (special requirements for wells injecting hazardous waste).

(c) Requiring a permit.

(1) The Chief may require any Class I, II, III, or V injection well authorized by rule to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include, but are not limited to:

(i) The injection well is not in compliance with any requirement of the rule;

(NOTE: any underground injection which violates any rule under this section is subject to appropriate enforcement action).

(ii) The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule;

(iii) The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule; and

(iv) As a part of the orderly implementation of the UIC Program during the period of authorization by rule.

(2) Any owner or operator authorized by a rule may request to be excluded from the coverage of the rule by applying for an individual or area UIC permit. The owner or operator shall submit an application under Section 13.03 with reasons supporting the request to the Chief. The Chief may grant any such request.

(d) Inventory requirements. All injection wells covered by rule shall submit inventory information to the Chief. Any rule under this section shall provide for the automatic termination of authorization for any well which fails to comply within the time specified in paragraph (d)(3) of this section.

(1) Contents. The Chief shall require:

(i) Information regarding pollutant loads and schedules for attaining compliance with water quality standards;

(ii) Facility name and location;

(iii) Name and address of legal contact;

(iv) Ownership of facility;

(v) Nature and type of injection wells; and

(vi) Operating status of injection wells.

(2) Notice. Upon approval of the State UIC Program, the Chief shall notify owners or operators of injection wells of their duty to submit inventory information. The method of notification selected by the Chief must assure that the owners or operators will be made aware of the inventory requirement.

(3) Deadlines. Owners or operators of injection wells must submit inventory information no later than one (1) year after the authorization by rule. The Chief need not require inventory information from any facility with interim status under Chapter 20, Article 5E of the West Virginia Code.

13.03 Application for a Permit; Authorization by Permit.

(a) Permit application. Except as provided in Section 13.02 (authorization by rule) all underground injections into Class I, II, or III wells shall be prohibited unless authorized by permit. Those authorized by a rule under Section 13.02 must still apply for a permit under this section unless authorization was for the life of the well or project. Rules authorizing well injections for which permit applications have been submitted shall lapse for a particular well injection or project upon the effective date of the permit or permit denial for that well injection or project.

(b) Time to apply. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Chief in accordance with the State UIC Program as follows:

(1) For existing injection wells as expeditiously as practicable and in accordance with the schedule contained in the State UIC Program description, but no later than four (4) years from the effective date of these regulations or as required under Section 7.03 for wells injecting hazardous waste.

(2) For new injection wells, except new wells in projects authorized under Section 13.02(a)(1) or covered by an existing area permit under Section 13.04(c), a reasonable time before construction is expected to begin.

(c) Contents of UIC application.

(Reserved.)

13.04 Area Permits.

(a) The Chief may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Chief may accept a single description of wells with substantially the same characteristics;

(2) Within the same well field, facility site, reservoir project, or similar unit in the State;

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized; and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Chief at such time as the permit requires;

(2) The additional well satisfies the criteria in paragraph (a) of this section and meets the requirements specified in the permit under paragraph (b) of this section; and

(3) The cumulative effects of drilling and operation of additional injection wells are considered by the Chief during evaluation of the area permit application and are acceptable to the Chief.

(d) If the Chief determines that any well constructed pursuant to paragraph (c) of this section does not satisfy any of the requirements of paragraphs (c)(1) and (c)(2) of this section, the Chief may modify the permit under Section 13.18, revoke under Section 13.19, or take enforcement action. If the Chief determines that cumulative effects are unacceptable, the permit may be modified under Section 13.18.

13.05 Emergency Permits.

(a) Coverage. Notwithstanding any other provision of these regulations, the Chief may temporarily permit a specific underground injection which has not otherwise been authorized by rule or permit if:

(1) An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or

(2) A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and

(i) Timely application for a permit could not practicably have been made; and

(ii) The injection will not result in the movement of fluids into underground sources of drinking water; or

(3) A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water.

(b) Requirements for issuance.

(1) Any temporary permit under paragraph (a)(1) of this section shall be for no longer term than required to prevent the hazard.

(2) Any temporary permit under paragraph (a)(2) of this section shall be for no longer than ninety (90) days, except

that if a permit application has been submitted prior to the expiration of the ninety (90) day period, the Chief may extend the temporary permit until final action on the application.

(3) Any temporary permit under paragraph (a)(3) of this section shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.

(4) Notice of any temporary permit under this paragraph shall be published within ten (10) days of the issuance of the permit.

(5) The temporary permit under this section may be either oral or written. If oral, it must be followed within five (5) calendar days by a written temporary emergency permit.

(6) The Chief shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water.

13.06 Additional Conditions Applicable to all UIC Permits.

The following conditions, in addition to those set forth in Section 13.12, apply to all UIC permits and shall be incorporated into all permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

(a) In addition to Section 13.12(a) (duty to comply): the permittee need not comply with the provisions of this permit to the

extent and for the duration such non-compliance is authorized in a temporary emergency permit under Section 13.05.

(b) In addition to Section 13.12(j)(2) (monitoring and records): the permittee shall retain all records concerning the nature and composition of injected fluids until three (3) years after completion of any plugging and abandonment procedures specified under Section 13.07(f). The Chief may require the owner or operator to deliver the records to the Chief at the conclusion of the retention period.

(c) In addition to Section 13.12(l)(l) (notice of planned changes): except for all new wells authorized by an area permit under Section 13.04(c), a new injection well may not commence injection until construction is complete, and:

(1) The permittee has submitted notice of completion of construction to the Chief; and

(2) (i) The Chief has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(ii) The permittee has not received notice from the Chief of his or her intent to inspect or otherwise review the new injection well within thirteen (13) days of the date of the notice in paragraph (c)(1) of this section, in which case prior inspection or review is waived and the permittee may commence injection. The Chief shall include in the notice a reasonable time period in which he or she shall inspect the well.

(d) The following shall be included as information which must be reported immediately under Section 13.12(1)(6):

(1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDWs; and

(2) Any non-compliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between the USDWs.

(e) The permittee shall notify the Chief at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

13.07 Establishing UIC Permit Conditions.

In addition to conditions required in all permits (Sections 13.06 and 13.12), the Chief shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the SDWA and State Act and regulations. An applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit and is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit. Each permit shall include conditions meeting the following requirements when applicable:

(a) Construction requirements as set forth in Sections 8.02 and 10.02. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as

part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements. New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Chief as minor modifications. No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Chief.

(b) Corrective action as set forth in Sections 6.01 and 13.09.

(c) Operation requirements as set forth in Sections 8.04 and 10.04. The permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with operation requirements.

(d) Requirements for wells managing hazardous waste, as set forth in Sections 7.00 and 11.00.

(e) Monitoring and reporting requirements as set forth in Sections 8.04 and 10.04. The permittee shall be required to identify types of tests and methods used to generate the monitoring data.

(f) Plugging and abandonment. Any Class I, II, or III permit shall include, and any Class V permit may include, conditions to ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another.

Any applicant for a UIC permit shall be required to submit a plan for plugging and abandonment. Where the plan meets the requirements of this paragraph, the Chief shall incorporate it into the permit as a condition. Where the Chief's review of an application indicates that the permittee's plan is inadequate, the Chief shall require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the application. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment.

(g) Financial responsibility. The permit shall require the permittee to maintain financial responsibility and resources to close, plug, and abandon underground injection wells in a manner prescribed by the Chief. The permittee must show evidence of financial responsibility to the Chief by submission of a surety bond, or other adequate assurance, such as a financial statement or other material acceptable to the Chief.

(h) Mechanical integrity. A permit for any Class I, II, or III well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Chief under Section 6.02 that the well has mechanical integrity.

(i) Additional conditions. The Chief shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

13.08 Waiver of Requirements by the Chief.

(a) When injection does not occur into, through, or above an underground source of drinking water, the Chief may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required in Sections 8, 10, and 13.07 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(b) When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under Section 5.03(a) is smaller or equal to the radius of the well, the Chief may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required in Sections 8, 10 and 13.07 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(c) When reducing requirements under paragraph (a) or (b) of this section, the Chief shall explain the reason for the action by preparing a fact sheet under Section 13.31.

13.09 Corrective Action.

(a) Applicants for Class I, II (other than existing wells) or III injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone. For such wells which are improperly sealed, completed, or abandoned, the applicant shall also submit

a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water ("corrective action" under Section 6.01). Where the plan is adequate, the Chief shall incorporate it into the permit as a condition. Where the Chief's review of an application indicates that the permittee's plan is inadequate, he or she shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under paragraph (b) of this section, or deny the application.

(b) Requirements.

(1) Existing injection wells. Any permit issued for an existing injection well (other than Class II) requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (a) of this section to be completed as soon as possible.

(2) New injection wells. No permit for a new injection well may authorize injection until all required corrective action has been taken.

(3) Injection pressure limitation. The Chief may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance

schedule and last until all other required corrective action has been taken.

(4) Class III wells only. When setting corrective action requirements the Chief shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in Section 10.04(b) shall be designed to verify the validity of such determinations.

13.10 Application for a Permit.

This section shall apply in addition to the requirements of Sections 8.05, 10.05, and 13.03.

(a) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Chief as described in this section. Persons currently authorized with UIC authorization by rule shall apply for permits when required by the Chief.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) Completeness. The Chief shall not issue a permit under a program before receiving a complete application, except for an emergency permit. An application for a permit under a program is

complete when the Chief receives an application form and any supplemental information which are completed to his or her satisfaction.

(d) Information requirements. All applicants for UIC permits shall provide the following information to the Chief, using the application form provided by the Chief:

(1) The activities conducted by the applicant which require it to obtain permits under UIC.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA and West Virginia Code, Chapter 20-5E-1 et seq.

(ii) NPDES program under CWA and State Act.

(iii) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(iv) Nonattainment program under the Clean Air Act.

(v) National Emission Standards for Hazardous Pollutants (NESHAPS) pre-construction approval under the Clean Air Act.

(vi) Dredge or fill permits under Section 404 of CWA.

(vii) Other relevant environmental permits, including State permits.

(6) A topographic map (or other map if topographic map is unavailable) extending one (1) mile beyond the property boundaries of the source, depicting the facility and each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(7) A brief description of the nature of the business.

(e) Record keeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Section 13.03 for a period of at least three (3) years from the date the application is signed.

13.11 Signatories to Permit Applications and Reports.

(a) Applications. All permit applications, except those submitted for Class II wells under the UIC program shall be signed as follows:

(1) For a corporation: by a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits, other information requested by the Chief, and all permit applications submitted

for Class II wells shall be signed by a person described in paragraph (a) above of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the Chief.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Chief prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

13.12 Conditions Applicable to All Permits.

The following conditions are applicable to all permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the SDWA and the State Act and is grounds for enforcement action; for permit suspension or revocation, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would nave been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) Proper operation and maintenance. The permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory

and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, suspension or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Chief within a reasonable time, any information which the Chief may request to determine whether cause exists for modifying, revoking and reissuing, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Chief, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Chief, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated

or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA and State Act, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Chief at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) Signatory requirement. All applications, reports, or information submitted to the Chief shall be signed and certified, as required under Section 13.11.

(ℓ) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Chief as soon as possible of any planned significant physical alterations or additions to the permitted facility, or any planned significant changes in the operation of the facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Chief of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) Transfers. This permit is not transferable to any person except after notice to the Chief. The Chief may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA and the State Act and regulations. In some cases, modification or revocation and reissuance is mandatory (see Section 13.17).

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(6) Immediate reporting. The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Division's designated spill alert telephone number. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a

description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (1), (4), (5), and (6) of this section, at the time monitoring reports are submitted. The report shall contain the information listed in paragraph (ℓ)(6) of this section.

(8) Other information. Where the permittee becomes aware that he/she failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Chief, he/she shall promptly submit such facts or information.

13.13 Duration of Permits.

UIC permits for Class I, II, III and Class V wells shall be effective for a fixed term not to exceed five (5) years.

(a) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(b) The Chief may issue any permit for a duration that is less than the full allowable term under this section.

13.14 Schedules of Compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the SDWA, the State Act and regulations.

(1) Time for compliance. Any schedules of compliance under this

section shall require compliance as soon as possible.

(2) In addition, schedules of compliance shall require compliance not later than three (3) years after the effective date of the permit.

(3) Interim dates. Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one (1) year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(4) Reporting. The permit shall be written to require that no later than 30 days following each interim date and the final date of compliance, the permittee shall notify the Chief in writing of its compliance or noncompliance with the interim or final requirements.

(b) Alternative schedules of compliance. A UIC permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Chief may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with

applicable requirements;

(iv) Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Chief, such as a resolution of the board of directors of a corporation.

13.15 Requirements for Recording and Reporting of Monitoring Results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified elsewhere by these regulations.

13.16 Effect of a Permit.

(a) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(b) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

(c) Except for Class II and III wells, compliance with a permit during its term constitues compliance, for purposes of enforcement, with Part C of SDWA. However, a permit may be modified, revoked and reissued, suspended or revoked during its term for cause as set forth in Sections 13.18 and 13.19.

13.17 Transfer of Permits.

(a) Transfers by modification. Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the SDWA and the State Act and regulations.

(b) Automatic transfers. As an alternative to transfers under paragraph (a) of this section, any UIC permit for a well not injecting hazardous waste may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Chief at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section.

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility coverage, and liability between them and, in the case of UIC permits, the notice demonstrates that the financial responsibility requirements of Section 13.07(g) will be met by the new

permittee; and

(3) The Chief does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this section may also be a minor modification under Section 13.20. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

13.18 Modification or Revocation and Reissuance of Permits.

When the Chief receives any information (for example, inspects the facility, receives information submitted bv the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exists. If cause exists, the Chief may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section or Section 13.20, the Chief shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section 13.20 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared.

(a) Causes for modification. The following are causes for modification

but not revocation and reissuance of permits, except for Class II and III wells in which case the following may be causes for revocation and reissuance as well as modification. The following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Chief has received information. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For UIC area permits, this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(3) New regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class II or III wells may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition to be modified was based on a State regulation requiring compliance with 40 CFR Part 146; and

(B) The State has revised, withdrawn, or modified that

portion of the regulation on which the permit condition was based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed State promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based.

(4) Compliance schedules. The Chief determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for revocation under Section 13.19 and the Chief determines that modification or revocation and reissuance is appropriate.

(2) The Chief has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer under Section 13.17(b) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

13.19 Revocation and Suspension of Permits.

(a) The Chief may revoke or suspend a permit during its term or deny a permit renewal application for the following causes:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation.

13.20 Minor Modifications of Permits.

Upon the consent of the permittee, the Chief may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section. Any permit modification not processed as a minor modification under this section must be made for cause and with a draft permit and public notice as required in Section 13.18. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Chief determines that no other change in the permit is necessary, provided that a written agreement containing a specific

date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Chief; or

(c) Allow the following:

(1) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgement of the Chief would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;

(2) Change construction requirements approved by the Chief pursuant to Section 13.07(a), provided that any such alteration shall comply with the requirements of these regulations.

(3) Amend a plugging and abandonment plan which has been updated under Section 13.06(e).

13.21 Confidentiality of Information.

(a) Any information submitted to the State pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "CONFIDENTIAL BUSINESS INFORMATION" on each page containing such information. If no claim is made at the time of submission, the State may make the information available to the public without further notice.

(b) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee.

(2) Information which deals with the existence, absence, or level

of contaminants in drinking water.

13.22 Identification of Underground Sources of Drinking Water and Exempted Aquifers.

(a) The Chief may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under paragraph (b) of this section, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an "underground source of drinking water" in Section 2.00. Even if an aquifer has not been specifically identified by the Chief, it is an underground source of drinking water if it meets the definition in Section 2.00.

(b)(1) The Chief may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Chief proposes to designate as exempted aquifers using the criteria in Section 3.00.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator of the U. S. EPA as part of the State program.

(c)(1) For Class III wells, the Chief shall require an applicant for a permit which necessitates an aquifer exemption under Section 3.01(b)(1) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the

amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Chief in addition to the information required by Section 13.03.

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Chief upon a demonstration by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Chief, to the extent such information is available.

13.23 Public Access to Information.

(a) Any records, reports, or information contained under these regulations and any permits, permit applications, and related documentation shall be available to the public for inspection and copying in accordance with Series VIII,West Virginia Administrative Regulations (Freedom of Information Act); provided, however, that upon a satisfactory showing to the Chief that such records, reports, permit documentation, or information (other than that listed in Section 13.21(b), would, if made public,

divulge methods or processes entitled to protection as trade secrets, the Chief shall consider, treat and protect such records as confidential.

(b) It shall be the responsibility of the person claiming any information as confidential under the provisions of section (a) above to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

(c) Any document submitted to the Chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

(d) No information shall be protected as confidential information by the Chief unless it is submitted in accordance with the provisions of paragraph (c) above and no information which is submitted in accordance with the provisions of paragraph (c) above shall be afforded protection as confidential information unless the Chief finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste materials and probable effects of the introduction of such wastes or by-products into the environment. The person who submits information claimed as confidential shall receive written notice from the Chief as to whether the information has been accepted as confidential or not.

(e) All information which meets the tests of paragraph (d) above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the Chief that such information in the form presented to him meets the criteria of paragraph (d) above, the Chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

(f) Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Chief or his designee.

(g) Nothing in this section may be construed as limiting the disclosure of information by the Division to any officer, employee or authorized representative of the State or Federal government concerned with the State UIC program.

13.24 Public Participation in Permit Process.

(a) Scope. Public notice shall be given that the following actions have occurred:

(1) A draft permit has been prepared; or

(2) A hearing has been scheduled.

(b) Timing.

(1) Public notice of the preparation of a draft permit required under this section shall allow at least 30 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing.

(c) Methods. Public notice of activities described in this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any

person otherwise entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits):

(i) The applicant;

(ii) Any other agency including EPA which the Chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES permit for the same facility or activity.

(iii) Federal and State and interstate agencies with jurisdiction over fish and wildlife resources, public health, the State Historic Preservation Unit of the Department of Culture and History, and other appropriate government authorities, including any affected states;

(iv) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the State.

(v) By mailing a copy to each agency having authority under State law with respect to the construction or operation of such facility;

(2) For any permit, the Chief shall send the public notice to the applicant, who shall be responsible for publication of a Class I legal advertisement by a date, and in a paper specified by the Chief.

Upon publication, the applicant shall send the Chief a copy of the certificate of publication. The costs of publication shall be borne by the applicant; and

(3) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

13.25 Contents of a Public Notice.

(a) All public notices issued under this section shall contain the following minimum information:

(1) Name and address of the office processing the permit action for which notice is being given.

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted at the facility described in the permit application or the draft permit.

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application.

(5) A brief description of the comment procedures required by Sections 13.26 and 13.27 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

(b) In addition to the general public notice described in Section 13.25(a), the public notice of a hearing shall contain the following

information:

(1) Reference to the date of previous public notices relating to the permit.

(2) Date, time, and place of the hearing.

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) In addition to the general public notice, all persons identified in Section 13.24(c)(1)(i), (ii) and (iii) shall be mailed a copy of the fact sheet, the permit application and the draft permit.

13.26 Public Comment and Requests for Public Hearings.

During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 13.30.

13.27 Public Hearings.

(a) The Chief shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft permit(s). The Chief also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(b) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 13.24(b)(1) shall automatically be extended to 10 days after the close of any public

hearing under this section.

(c) A tape recording or written transcript of the hearing shall be made available to the public, upon request.

13.28 Obligation to Raise Issues and Provide Information During the Public Comment Period

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Chief's tentative decision to prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, documents of general applicability, or other generally available reference materials. Submitters of comments shall make supporting material not already included in the administrative record available to the State as directed by the Chief.

13.29 Reopening of the Public Comment Period.

(a) If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Chief may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified;

(2) Prepare a revised fact sheet and reopen the comment period under this section; or

(3) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

13.30 Response to Comments.

(a) Any time that any final permit is issued, the Chief shall prepare a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

13.31 Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major facility or activity and for every draft permit which the Chief finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Chief shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under Section 13.24(c)(1)(i), (ii), and (iii).

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of fluids, which are proposed to be or are being injected;

(3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the public comment period and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision;

(5) Name and telephone number of a person to contact for additional information.

13.32 Draft Permits.

(a) Once an application is complete, the Chief shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Chief decides to prepare a draft permit, it shall contain the following information:

(1) All conditions under Sections 13.06, 13.07, and 13.12;

(2) All compliance schedules; and

(3) All monitoring requirements.

FISCAL NOTE ON THE REGULATIONS FOR WEST VIRGINIA

UNDERGROUND INJECTION CONTROL PROGRAM

These regulations are designed to enable the State to assume full responsibility for the Federal Underground Injection Control Program. The cost to the State in the Federal fiscal year 1982 is $45,791. These are the 25% matching funds required to obtain $137,373 of Federal grant funds. For a discussion of the costs to persons affected by the regulations, see the Federal Register, Volume 45, No. 123, Tuesday, June 24, 1980, pages 42493 to 42500. In these pages, the U. S. EPA presents a detailed discussion of the costs of compliance with the regulations for each class of wells, citing the sources of the figures presented.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

CHAPTER 20 - 5E

1982

SERIES VII AND XV

HAZARDOUS WASTE MANAGEMENT REGULATIONS