

TITLE 60
PROCEDURAL RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SECRETARY'S OFFICE

SERIES 6
ADMINISTRATIVE PROCEDURES AND CIVIL ADMINISTRATIVE PENALTY
ASSESSMENT
WATER RESOURCES PROTECTION ACT

§60-6-1. General.

1.1. Scope. -- This rule establishes administrative procedures related to survey and registration requirements under the Act and a procedure for assessment of a civil administrative penalty for failure to complete the survey or register, providing false or misleading information on the survey or registration, or failure to provide other information as required by the Act.

1.2. Authority. -- W. Va. Code §§ 22-1-6(d)(3); 22-26-3(m); 22-26-6(b).

1.3. Filing Date. -- April 14, 2005.

1.4. Effective Date. -- May 16, 2005.

§60-6-2. Definitions.

2.1. "Act" means the Water Resources Protection Act, W. Va. Code § 22-26-1 et seq.

2.2. "Person" means an individual, public and private business or industry, public or private water service and governmental entity.

2.3. "Secretary" means the secretary of the department of environmental protection or his or her designee.

§60-6-3. Applicability.

3.1. This rule applies to any person required to provide information to the Secretary pursuant to section 3(c) of the Act.

§60-6-4. Survey and Registration Response-Secretary's Determination.

4.1. Persons subject to this rule must complete the survey and registration requirements established by the Secretary in accordance with the Act. If a good faith effort has been made to comply, a penalty will not initially be assessed when the Secretary disagrees with any interpretations or calculations made in completing the survey or registration.

4.2. When the Secretary disagrees with any interpretations or calculations submitted in a survey or registration, he or she will issue a written determination explaining why the agency disagrees and establishing the appropriate calculations and interpretations to be used in the survey or registration.

4.3. The written determination will be sent by certified mail and will notify the person of the requirement to correct the information within thirty (30) days. The determination will also inform the person that if the corrected information is not submitted within thirty (30) days of receipt, or some greater time designated by the Secretary, the person will be considered to be in violation and the Secretary will assess a penalty in accordance with this policy.

4.4. A non-confidential version of each written determination issued by the Secretary will be posted on the Water Resources Protection Act web page. These determinations will be the governing documents for interpretations and calculations for all future surveys or registrations.

§60-6-5. Civil Administrative Penalty Assessment.

5.1. Upon failure of a person to submit the corrected information as required by a written

determination within the specified time frame, a notice of violation will be sent to the violator by certified mail. The notice will include the specifics of the violation, a requirement to respond within thirty (30) days, and will assess a civil administrative penalty of \$1,000.

5.2. Any person who fails to complete a survey or registration, provides false or misleading information on the survey or registration, or fails to provide any other information than that required in a written determination under section 4, will be sent a notice of violation by certified mail. The notice of violation will contain the specifics of the violation and provide thirty (30) days from receipt to respond and/or correct the violation. The notice of violation will also inform the violator that civil administrative penalties of up to \$5,000 may be assessed in the future for each thirty (30) days of continuing noncompliance.

5.3. Upon failure to respond to any first notice of violation issued under subsection 5.1 or 5.2, a second notice of violation will be sent by certified mail noting the continuing noncompliance. This second notice of violation will include the specifics of the violation, a requirement to respond within thirty (30) days and will assess a civil administrative penalty of up to \$5,000.

5.4. Every thirty (30) days after the initial imposition of a civil administrative penalty, another penalty may be assessed in an amount up to \$5,000 if the information is not provided.

§ 60-6-6. Additional Enforcement.

6.1. If, after issuance of the notices of violation specified in section 5, a person fails or refuses to submit the required information or pay the civil administrative penalty imposed by such notice, the Secretary will issue an order requiring that the information be submitted and the penalty be paid.

6.2. Such order will be sent by certified mail to the person and will include findings of fact upon which the Secretary based his or her determination to issue the order and a specific time limit for the completion of the action.