

Fish Tales Newsletter

West Virginia's Aquaculture Newsletter is produced to help inform, educate, and update those interested in producing quality aquatic products, in a sustainable manner, for the recreational and food fish markets.

Aquaculture and the Water Resources Protection Act

By Michael I. Stratton - WVDEP Program Manager

In 2004, the West Virginia legislature enacted the Water Resources Protection Act, which did two important things that have a direct bearing on aquaculture in the state:

- 1) It claimed all the waters within West Virginia for the state, including flowing water and groundwater;
- 2) It required anyone who withdrew more than 750,000 gallons of water in any month, from any source, to complete a survey and register with the Department of Environmental Protection.

So, if you obtain your water from a spring, or by diverting a creek, or from a well, you are using waters of the state and must complete the survey. By completing the survey, you complete the registration. The survey covers a three-year period. Some of the information required is the latitude and longitude of any withdrawal points, the latitude and longitude of your discharge points, the amount of water you withdrew and the amount of water you discharged from each point by month, and other general information relating to your water use and your facility. After registering, you do not need to contact DEP again unless (1) your annual water use changes by more than 10 percent of your three-year average, or (2) you change your withdrawal and/or discharge points. Registration is not a permit, and there is no fee. However, there is a penalty provision in the act for persons who refuse to provide the required information, or who provide false or misleading information.

For more information, go to www.wvdep.org and select the "Water Use" button at the top of the page. There you will find the final report submitted to the legislature in 2006, which includes copies of the act, the confidential information rule, the penalty rule, and a list of registered users. If you need to complete the survey and start your registration, please contact the DEP at (304) 926-0499, extension 1280, or send an e-mail to mstratton@wvdep.org, or write us at:

The Department of Environmental Protection
Division of Water and Waste Management
601 57th Street
Charleston, WV 25304
Attention: Michael Stratton

ARTICLE 26. WATER RESOURCES PROTECTION ACT.

§22-26-1. Short title; legislative findings.

(a) Short title - This article may be known and cited as the "Water Resources Protection Act."

(b) Legislative findings:

(1) The West Virginia Legislature finds that it is the public policy of the state of West Virginia to protect and conserve the water resources for the state and to provide for the public welfare. The state's water resources are vital natural resources of the state that are essential to maintain, preserve and promote quality of life and economic vitality of the state.

(2) The West Virginia Legislature further finds that it is the public policy of the state that the water resources of the state be available for the benefit of the citizens of West Virginia, consistent with and preserving all other existing rights and remedies recognized in common law or by statute, while also preserving this resource within its sovereign powers for the common good.

§22-26-2. Definitions.

For purposes of this article, the following words have the meanings assigned unless the context indicates otherwise:

(a) "Beneficial use" means uses that include, but are not limited to, public or private water supplies, agriculture, tourism, commercial, industrial, coal, oil and gas and other mineral extraction, preservation of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation and preservation of cultural values. (continued on page 2)

(Definitions from page 1)

(b) "Consumptive withdrawal" means any withdrawal of water which returns less water to the water body than is withdrawn.

(c) "Farm use" means irrigation of any land used for general farming, forage, aquaculture, pasture, orchards, nurseries, the provision of water supply for farm animals, poultry farming or any other activity conducted in the course of a farming operation.

(d) "Interbasin transfer" means the permanent removal of water from the watershed from which it is withdrawn.

(e) "Maximum potential" means the maximum designed capacity of a facility to withdraw water under its physical and operational design.

(f) "Person," "persons" or "people" means an individual, public and private business or industry, public or private water service, and governmental entity.

(g) "Non-consumptive withdrawal" means any withdrawal of water which is not a consumptive withdrawal as defined in this section.

(h) "Secretary" means the secretary of the Department of Environmental Protection or his or her designee.

(i) "Water resources," "water" or "waters" means 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 includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands: *Provided*, That farm ponds, industrial settling basins and ponds, and waste treatment facilities are excluded from the waters of the state.

(Continued on page 3)

Ken's Corner

Mike Stratton is an employee of DEP who attended the Aquaculture Forum held earlier this year. He participated in the panel discussion on legal issues and left the meeting with a new awareness of aquaculture in West Virginia. Those attending the session learned about the Water Resources Protection Act. I recall Mike commenting that he was unaware of our industry before attending the meeting. Since then, he developed the article that appears in this newsletter. We thank him for this contribution.

I read the article and found myself asking, "Does this make sense?" Many questions came to mind, so we got a copy of the act to see what it said. Included in this issue of Fish Tales are the definitions from the act and some other passages of interest. You are encouraged to read it for yourself. It was passed in March of 2004, so some of the dates cited in the act have already passed. If you see that it is necessary to register your water usage, do not look online. It is best to contact Mike Stratton directly.

It turns out that 750,000 gallons/month is about the same as 17 gallons/minute. It may be enough to water a herd of beef cattle, but it is a very small volume for growing fish. This means that using a flow of water that would fill four separate 5-gallon buckets of water/minute all month long for any single month requires you to register. Flow rates in the spring season alone may be enough to trigger this requirement.

It seems that individual ponds are not the target of this act, as it states that "Farm ponds, industrial settling basins, and ponds and waste treatment facilities are excluded from the waters of the state." I wonder if a network of ponds used to grow fish that relies on a common reservoir would also be exempt. I wonder if water used from a spring that flows at 20 gallons per minute is exempt. If not, someone growing a few trout for home consumption would need to register. Common sense raises the question of whether this is really necessary. (continued on page 3)

Freshwater Institute hires Aquaculture Veterinarian

In January 2007 **Dr. Christopher Good** came to West Virginia from Canada to work for the Freshwater Institute. Dr. Good has studied bacterial gill disease and will be a great asset. Welcome Chris!

(j) "Watershed" means a hydrologic unit utilized by the United States Department of Interior's geological survey, adopted in 1974, as a framework for detailed water and related land-resource planning, denoted by an eight digit hydrologic unit code, and by which West Virginia is, as of the effective date of the act, divided into thirty-two separate hydrologic units.

(k) "Withdrawal" means the removal or capture of water from a water resource of the state regardless of whether it is consumptive or non-consumptive: *Provided*, That water encountered during coal, oil, gas or other mineral extraction and diverted, but not used for any purpose and not a factor in low flow conditions for any surface water or groundwater, is not deemed a withdrawal.

§22-26-3. Waters claimed by state; water resources protection survey; need for study; registration requirements; agency cooperation; information gathering.

(a) The waters of the state of West Virginia are hereby claimed as valuable public natural resources held by the state for the use and benefit of its citizens. The state shall manage the quantity of its waters effectively for present and future use and enjoyment and for the protection of the environment. Therefore, it is necessary for the state to determine the nature and extent of its water resources, the quantity of water being withdrawn or otherwise used and the nature of the withdrawals or other uses: *Provided*, That no provisions of this article may be construed to amend or limit any other rights and remedies created by statute or common law in existence on the date of the enactment of this article.

(continued on page 4)



Trout growers diverting water to raceways are the most common form of aquaculture that would need to register. I have spoken with some trout farmers who see registration as the first step to regulation that will require permitting and eventually payment to the state for use of the water. They do not wish to participate in such a process and are reluctant to register. It is curious that another agency, the Division of Natural Resources, requires these producers to obtain a Fish Pond License in order to legally sell their product.

Fish farmers understand that AQUACULTURE IS AGRICULTURE, but the West Virginia Code seems to do a poor job of accommodating the needs of this industry. The practice is viewed differently in different contexts. For example, trout manure removed from a raceway under an effluent permit (NPDES) from DEP may be considered industrial waste and must satisfy a different set of rules if it is to be used as fertilizer on a field like cow manure or poultry litter. The fish we grow are considered wild animals by the Division of Natural Resources. This contrasts with other forms of agriculture that use domesticated livestock. Though aquaculture is spelled incorrectly in the Water Resources Protection Act, at least it is included as a farm use and qualifies as a beneficial use.

Like other groups, fish farmers seek to conserve our natural resources, especially our water resources, and seek to use these resources to generate income and contribute to a quality of life. Unlike some industries, we do not consume the water or seek to export it out of the state. If you grow fish and use waters the state has claimed, please read the information in this newsletter. So far, the West Virginia aquaculture industry has not been part of the process that created the Water Protection Act. As we work to secure the future of our aquaculture businesses, we need to be engaged in the process by working to see that things do make sense.

NEW FDA APPROVED TREATMENT

The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for the use of florfenicol by veterinary feed directive (VFD) for the control of mortality in freshwater-reared salmonids due to coldwater disease associated with *Flavobacterium psychrophilum*.

For more information on AQUAFLO, producers should contact fish health specialists, veterinarians, diagnosticians, Extension representatives, feed mills, or Schering-Plough Animal Health at 1-800-521-5767 or www.AQUAFLO-USA.com.

(b) The secretary shall conduct a water resources survey of consumptive and non-consumptive surface water and groundwater withdrawals in this state. The secretary shall determine the form and format of the information submitted, including the use of electronic submissions. The survey shall collect information covering the years two thousand three, two thousand four and two thousand five. The secretary shall establish a statewide registration program to monitor large quantity users of water resources of this state beginning in two thousand six.

(c) Beginning in the year two thousand three, every person utilizing the state's water resources whose withdrawal from a water resource during any month exceeds seven hundred fifty thousand gallons, except those who purchase water from a public or private water utility or other service that is reporting its total withdrawal, shall provide all requested information regarding withdrawals of the water resource. Multiple withdrawals of water from a particular water resource that are made or controlled by a single person and used at one facility or location shall be considered a single withdrawal of water. Water withdrawals for self-supplied farm use and private households will be estimated. Water utilities regulated by the public service commission pursuant to article two, chapter twenty-four of the code are exempted from providing information on inter-basin transfers to the extent those transfers are necessary to provide water utility services within the state.

§22-26-3. Parts d through n are not included in this newsletter.

§22-26-4. **Confidentiality.** Is not included in this newsletter.

§22-26-5. **Joint legislative oversight commission on state water resources.** Is not included in this newsletter.

The full text of the Water Resources Protection Act can be obtained from the W.Va. Division of Environmental Protection Web site: [www.wvdep.org/Docs/9773_2005_Appendix A_Enrolled.pdf](http://www.wvdep.org/Docs/9773_2005_Appendix_A_Enrolled.pdf) W.Va. DEP page with reports regarding the Water Resources Protection Act is at: www.wvdep.org/item.cfm?ssid=11&sslid=722

The Water Resources Protection Act Final Report, was released in December of 2006. The report can be found on the WVDEP Web site at: www.wvdep.org/Docs/12809_Final_Report_Revised_Apr_07.pdf

§22-26-6. **Mandatory survey and registration compliance.**

(a) The water resources survey and subsequent registry will provide critical information for protection of the state's water resources and, thus, mandatory compliance with the survey and registry is necessary.

(b) Any person who fails to complete the survey or register, provides false or misleading information on the survey or registration, fails to provide other information as required by this article may be subject to a civil administrative penalty not to exceed five thousand dollars to be collected by the secretary consistent with the secretary's authority pursuant to this chapter. Every thirty days after the initial imposition of the civil administrative penalty, another penalty may be assessed if the information is not provided. The secretary shall provide written notice of failure to comply with this section thirty days prior to assessing the first administrative penalty.

Did YOU KNOW?

The source of water used for fish production is one of the most important factors a fish grower needs to consider before investing in an operation. There are three types of water that can be used.

Surface water

Streams and rivers provide a reliable source of water for many fish operations. Although it is relatively cheap to use it can be a source of production problems that include flooding, temperatures that get too cold in the winter and too warm in the summer, turbidity after heavy rains, and disease.

Groundwater

Springs and artesian wells are free-flowing groundwater sources that usually maintain temperatures in the 50s for most of the year. Pumped well water has the same general characteristics but has the additional cost of pump maintenance and electrical costs. Groundwater is not expected to harbor diseases that originate from carriers like other fish, birds, worms, and snails. As such, it is considered more "biosecure" than surface water. In West Virginia, another type of groundwater used for fish production is mine water.

Municipal / City Water

This type of water comes from a water treatment plant that monitors the quality to be clear and free of human pathogens. Chlorine is commonly added, which is detrimental to fish. Treating city water with a carbon filter will remove the chlorine. Aquarists know that they can let water stand in a bucket for 24 hours and the chlorine will not pose a danger to their fish.

Indian Lake Fisheries

Farm raised Channel Catfish, Flathead Catfish, Blue Catfish, Goldfish, Bluegill, and Rainbow Trout. Limited supply of Brook Trout and Golden Trout. Stocking pay lakes, farm ponds, and streams. Delivery and pick-up available. Let us service your fish needs. 304 965-5661 Call for prices and details. Chris Veltri, or Jeff Tincher

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We encourage story contributions to Fishtales newsletter by W.Va. residents. If you are interested in contributing, please contact Dan Miller at dmille31@wvu.edu or call 304-293-4832, ext. 4465. The deadline for the next issue of Fishtales is August 1, 2007.

This publication is available, in a printable format, on the Web at:
www.wvu.edu/~agexten/aquaculture/newsletter.htm

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