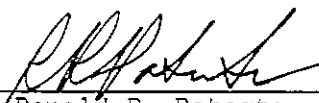


NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: WV/NPDES Regulations for the Coal Mining  
Point Source Category and Related Sewage Facilities

The attached legislative rule constitutes the official rule approved by the West Virginia Department of Natural Resources on 6th day of December, 1985 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rulemaking Review Committee.

  
\_\_\_\_\_  
Ronald R. Potesta  
Director

Submitted to State

1985 DEC -9 AM 11:16

FILED

LEGISLATIVE REGULATORY AMENDMENTS:

Chapter 20, Article 6, Series VII, Section 10 (1985)

The following sections of Legislative Rules, Chapter 20, Article 6, Series VII (1985) (NPDES) are hereby amended as follows:

- 10D05(a) 6 - Insert after "structures:" "each of its hazardous waste treatment, storage or disposal facilities"
- 10H.02(c)1.H. - Insert after "receiving stream" "and would not require new or different permit conditions."
- 10H.02(c)1.K. - Delete item K entirely.
- 10J.02(d)1.D. - New item D.
- 10J.02(d)1.E. - Renumber former item D as new item E.

FILED  
1985 DEC -9 AM 11:14  
STANDARD TIME

FILED

1985 DEC -9 AM 11:14

an abandonment permit at least 180 days prior to sealing of the deep mine. Any person proposing to abandon a surface mine facility under W.Va. Code §20-5A-5(b)(6) and 10C.01(a)5 shall apply for an abandonment permit with a request for Phase II bond release under 4I.

10D.05 Information Required from Applicants

(a) Information required from all applicants - All applicants for WV/NPDES permits shall provide the Director with a complete application in the manner and on a form prescribed by the Director. The form may require information in addition to that specified in this section.

1. The activities conducted by the applicant which require it to obtain a permit.

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

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

4. The operator's name, address, telephone number, ownership status, including the name and address of the owner if different, and status as Federal, State, private, public, or other entity.

5. Other relevant environmental permits necessary for the construction and/or operation of this facility such as dredge and fill permits under CWA §404 and Article 6 permits.

6. A topographic map drawn to a reasonable scale and extending at least one thousand (1000) feet beyond the site, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities 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.

(b) Information required from Existing Sources - All applicants (including all applicants for reissuance) for WV/NPDES permits whose facilities are existing sources shall also provide the following information to the Director:

1. Outlet location. For each point source, the latitude and longitude to the nearest second and the name of the immediate receiving water and river mile point. For haulroads and on-bench drainage control, the outlet location shall be considered to be the lowest downstream discharge point where water leaving the permit area enters the stream.

2. Line Drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing influent to the treatment

permit shall remain in effect for the duration of the permit.

(b) If the Director tentatively decides to modify a permit and the modification is made under paragraph (c)(2) (Major Modifications), he or she shall prepare a draft permit under Section 10J.01, follow the public notice procedures in Section 10J.02, and shall follow the procedural requirements in Section 8 of Article 5A. The draft permit shall fulfill the requirement of notice under Section 8 of the State Act. When a draft permit is prepared for the modification, only those conditions to be modified shall be reopened when a new draft permit is prepared.

(c) Causes for modification.

1. Minor modifications - Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section without preparing a draft permit under Section 10J.01, or following the procedures of Section 10J or 10K or procedures in Section 8 of the State Act. Minor modifications may:

- 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 Director determines that no other change in the permit is necessary, provided that any forms prescribed by the Director, including a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees have been submitted to the Director.
- E. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.
- F. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- G. Allow disposal system equipment substitution, when the substituted equipment would not alter the degree of treatment required by the permit.
- H. Allow rerouting of discharging lines, when the rerouted line would not discharge to a different receiving stream and would not require new or different permit conditions.

Dept. of Nat. Resources  
Reclamation Division  
Legislative Rules, Chapter 20  
Article 6, Series VII (1985) (NPDES)  
Section 10H.02

I. Allow relocation of elements of treatment facilities or disposal systems, due to topography or equipment failures.

J. When the WV/NPDES or NPDES permit becomes final and effective after March 9, 1982 conform to changes regarding 10E.13(d)(2) and 10E.15(c)(1).

K. Other causes not specified as major causes of modification which do not affect the quality or quantity of the effluent or change the outlet location to a different stream.

2. Major Modifications - The following are causes for major modification, but not reissuance of a permit unless the permittee requests or agrees, and requires the preparation of a draft permit under Section 10J.01 and the public notice procedures of Section 10J.02. If the permittee requests or agrees, then the following causes can be reason for a permit reissuance which will open the entire permit for comment and change.

A. 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 (Note: Certain reconstruction activities may cause the new source provisions of 40 CFR §122.29 and Part 434 to be applicable. See also Sections 10B.30 and 10L).

B. Information. The Director has received new information. Permits 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. This cause shall include any information indicating that cumulative effects on the environment are unacceptable.

C. New Regulations or Judicial Decision. 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 may be modified during their terms for this cause only as follows:

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

a. The permit condition to be modified was based on a promulgated effluent limitation guideline or water quality standards; and

b. The EPA or State has revised, withdrawn or modified that portion of the effluent limitation guideline or water quality standard on which the permit condition was based; and

Dept. of Nat. Resources  
Reclamation Division  
Legislative Rules, Chapter 20  
Article 6, Series VII (1985) (NPDES)  
Section 10J.02

may waive his or her rights to receive notice for any classes and categories of permits):

A. Federal, State and interstate agencies with jurisdiction over fish and wildlife resources, (U.S. Fish and Wildlife Service; Dept. of Natural Resources, Division of Wildlife Resources), the U. S. Army Corps of Engineers, the State Historic Preservation Unit of the Department of Culture and History, the Advisory Council on Historic Preservation and other appropriate government authorities, including any affected States.

B. The Division of Water Resources, Attn: Public Information Office.

C. Any other State or Federal agency which the Director knows has issued or is required to issue a permit for the same facility or activity under any of the following Federal programs: RCRA, UIC, 404, and PSD. For RCRA, and UIC these are: The division of Water Resources, Hazardous Waste/Groundwater Branch and the W. Va. Air Pollution Control Commission; for UIC, the Division of Water Resources, Hazardous Waste/Groundwater Branch and the Commission of Oil and Gas; for 404, the United States Army Corps of Engineers, Pittsburgh District or Huntington District; for PSD, the West Virginia Air Pollution Control Commission.

D. To any unit of local government having jurisdiction over the area where the facility is proposed to be located;

E. 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.

2. After receipt of its copy of the Public Notice, the Division of Water Resources shall send the Public Notice to persons on a mailing list which is 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 such publications as regional and State funded newsletters or environmental bulletins. (The list may be updated from time to time by requesting written indication of continued interest from those listed. Persons may be deleted from the list if they fail to respond to such a request).

3. In addition to the general public notice described in paragraph (e) of this section, all persons identified in (d)(A), (B) and (C) of this Section shall be mailed a copy of the fact sheet, if any, and the draft permit and application unless such person requests, in writing, that these documents not be sent.



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

FILED

1985 AUG -2 AM 11:17

SECRETARY OF STATE

ARCH A. MOORE, JR.  
Governor

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

DEPARTMENT OF NATURAL RESOURCES  
PREAMBLE TO PROPOSED REGULATIONS

PROGRAM: WATER POLLUTION CONTROL: COAL MINING

AUTHORITY: WEST VIRGINIA CODE, CHAPTER 20, ARTICLE 1, SECTION 7, SUBSECTION (30).

ACTION: PROPOSED RULE AMENDING WEST VIRGINIA ADMINISTRATIVE REGULATIONS, CHAPTER 20, ARTICLE 6, SERIES VII, SECTION 10.

TOPIC: AMENDMENTS NECESSARY TO SATISFY EPA CONDITIONS OF NPDES DELEGATION

SUMMARY: The Department of Natural Resources is proposing to amend its rules relating to the NPDES program for "coal mines, preparation plants and all refuse and waste therefrom" as that term is defined in DNR Regulations, Series VII, § 10B.09. These proposed regulations result from EPA requirements sent in a letter dated May 24, 1985 designed to ensure that the state's program is consistent and equivalent with the federal program. The state adopted these proposed rules as emergency regulations on June 3, 1985.

DATES: The emergency rules were effective June 3, 1985. The proposed rules are available for public comment beginning today until the close of business September 6, 1985.

CONTACT: All comments should be submitted to the Department of Natural Resources, 1800 Washington Street, East, Room 669, Charleston, West Virginia 25305. Attention: Mr. Ron Shipley, Special Assistant to the Director.

PUBLIC HEARING: A public hearing will be held on Friday, September 6, 1985 at 3:00 p.m. in Room 674, 1800 Washington Street, East, Charleston, West Virginia 25305.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

On May 30, 1985, the Regional Administrator for the United States Environmental Protection Agency approved the State of West Virginia's NPDES Program Revision for Coal Facilities. This program revision transferred authority for implementing the NPDES program as it relates to coal mines, preparation plants and all refuse and waste therefrom including associated sewage facilities from the Chief of the department's Division of Water Resources to the Director of the department.

The Regional Administrator's approval, however, was preceded by EPA review which resulted in EPA finding that certain state regulations needed amending in order for EPA to approve the program revision. These four (4) regulatory changes were made effective under the emergency rulemaking authority of the State's Administrative Procedures Act (SAPA) on June 3, 1985. The SAPA requires that emergency rules be proposed for final rulemaking and a public hearing scheduled within 60 days of the emergency filing. Accordingly, the Department is proposing the emergency rules for final rulemaking and announcing a public comment period and public hearing.

## II. PROPOSED RULE

The proposed rule amends four subsections of the department's NPDES regulations for coal facilities, W. Va. Administrative Regulations, Chapter 20, Article 6, Series VII, Section 10.

The first would require all applicants for NPDES permits under this program to show on the topographic map he submits with the WV/NPDES application each of his hazardous waste treatment, storage or disposal facilities associated with the facility to be permitted.

The second amendment would clarify the basis for allowing minor modifications of permits. This amendment would clarify that a minor modification could be given for the rerouting of discharge lines when the rerouted line would not discharge to a different receiving stream, only when such rerouting would not require new or different permit conditions.

The third amendment would delete 10H.02(c)1.K which allowed the state to make minor modifications to permits for reasons not specifically listed in the regulations if the modifications did not affect the quality or quantity of the effluent or change the outlet location to a different stream. EPA objected to this provision since their program allows minor modifications for only specific reasons, i.e. if the regulations do not specify the alteration as being eligible for a minor modification, then it must be treated as a major modification.

The fourth amendment adds new subsection 10J.02(d)1.D. This addition requires that public notices of draft permits must be sent to local governmental units where the facility is located. Adding a new subsection requires that the remaining sections are renumbered.



## ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Natural Resources

Subject: Proposed rule and regulation relating to WV/NPDES  
Regulations for the Coal Mining Point Source  
Category and Related Sewage Facilities

---

### PERTINENT DATES

Filed for public comment: August 2, 1985

Hearing held: September 6, 1985

Filed in Secretary of State's Office: December 9, 1985

Filed LRMRC: December 10, 1985

Filed as emergency rule: June 3, 1985

FN:

### ABSTRACT

The proposed rule would amend a current legislative rule to bring it into conformity with EPA requirements.

Section 10D.05 has been amended to require that the topographic map, which must be filed with the application, also depict each of the facility's hazardous waste treatment, storage or disposal facilities.

Section 10H.02(c)1.H has been amended to allow as minor modifications, the rerouting of discharging lines when the rerouted line would not discharge to a different receiving stream only if it would not require new or different permit conditions.

Section 10H.02(c)1.k which would allow as minor modifications, other causes not specified as major causes of modification which do not affect the quality or quantity of the effluent or change the outlet location to a different stream has been deleted.

Section 10J.02(d)1.D is new. It requires the applicant for a permit to also give notice to any unit of local government having jurisdiction over the area where the facility is proposed to be located, that a draft permit has been prepared.

#### AUTHORITY

Statutory authority: W. Va. Code, §20-1-7(30)

W. Va. Code, §20-1-7(30) provides as follows:

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to: ...

(30) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided that all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board; and ....

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. Under the above-cited code provision the Director has the general authority to promulgate rules and regulations of the type proposed.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes, although it would be very helpful if counsel would be supplied with a complete copy of an amended section so that it is clear to counsel what the amendment is supposed to provide.