


NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Rules of the Department of Energy,
(title)

Division of Oil and Gas - Series 1 through 8

The attached legislative rule constitutes the official rule approved by the Department of Energy - Division of Oil & Gas
(agency)

on 15th day of August, 1986 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.



Signature of Commissioner

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WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF OIL AND GAS
CHAPTER 22-1, 22B-1 and 20-5A
SERIES 4

1985 AUG 11 PM 2:07
OFFICE OF THE SECRETARY OF STATE
Page 7

FILED

Title: State National Pollutant Discharge Elimination System (NPDES)

Section 1.	General	1
	1.1 Scope	1
	1.2 Authority and related code citations	1
	1.3 Filing date	1
	1.4 Effective date	1
	1.5 Former rule superseded	1
	1.6 Incorporation by reference	1
2.	Definitions	2
	2.1 Waters of the United States	2
	2.2 Facility or activity	2
	2.3 State	2
3.	Permits	2
	3.1 Permit requirement	2
	3.2 General requirements	2
	3.3 Confidentiality	3
4.	Permit Application Requirements	3
	4.1 Application for a permit	3
	4.2 Signatories to permit applications and reports	3
	4.3 Separate storm sewers	3
	4.4 General permits	5
	4.5 New sources and new dischargers	5
5.	Permit Conditions	5
	5.1 Conditions applicable to all permits	5
	5.2 Additional conditions applicable to specified categories of NPDES permits	5
	5.3 Inspection and entry	5
	5.4 Transfer of permits	5
	5.5 Analytical variability	5

West Virginia Legislative Rule
Department of Energy
Division of Oil and Gas
Leg. Rule, 22-1, 22B-1 and 20-5A
Series 4

6.	Establishing Permit Conditions	6
6.1	Establishing permit conditions	6
6.2	Establishing limitations, standards, and other permit conditions	6
6.3	Calculating NPDES permit conditions	7
6.4	Duration of permits	7
6.5	Schedules of compliance	7
6.6	Requirements for recording and reporting of monitoring results	7
6.7	Disposal of pollutants into wells, into publicly owned treatment works or by land application	8
7.	Modification, Revocation and Reissuance, and Termination of Permits	8
7.1	Modification or revocation and reissuance of permits	8
7.2	Minor modifications of permits	8
7.3	Termination of permits	8
7.4	Appendix A - NPDES Primary Industry Catego- ries	8
	Appendix D - NPDES Permit Application Testing	8
	Requirements (including tables)	8
8.	Procedures for Permit Issuance	8
8.1	Application for a permit	8
8.2	Modification, revocation and reissuance,	8
8.3	Draft permits	8
8.4	Statement of basis	8
8.5	Fact sheet	8
8.6	Administrative record for draft permits	8
8.7	Public notice of permit actions and public comment period	9
8.8	Public comments and requests for public hearings	9
8.9	Public hearings	9
8.10	Reopening of the public comment period	9
8.11	Issuance and effective date of permit	9
8.12	Response to comments	9
8.13	Administrative record for final permit	9
8.14	Computation of time	9

West Virginia Legislative Rule
Department of Energy
Division of Oil and Gas
Leg. Rule, 22-1, 22B-1 and 20-5A
Series 4

8.15	Timing for processing variances	9
8.16	Permits required on a case-by-case basis	9
8.17	Fact sheets	9
8.18	Public notice for thermal variances	9
8.19	Conditions requested by the Corps of Engineers and other government agencies	9
8.20	Decision on variances	9
8.21	Emergency permit modifications and temporary permits	9
8.22	Appeals	10
9.	Criteria and Standards; Variances	10
10.	Federal Effluent Limitations Guidelines and Standards	10
11.	Toxic Pollutant Effluent Standards	10

Title 38

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF OIL AND GAS
~~CHAPTER 22-1, 22B-1 and 20-5A~~
SERIES ~~4e p~~

Title: State National Pollutant Discharge Elimination System (NPDES)

Section 1. General

1.1 Scope - This legislative rule establishes requirements pertaining to the State National Pollutant Discharge Elimination System (NPDES) Program as it relates to the exploration, development, production, storage and recovery of oil and gas and related mineral resources in this state.

1.2 Authority and ~~Related Code Citation(s)~~ - W.Va. Code §§22-1-13; 22-1-15; 22-1-16; 22B-1-2; 22B-1-7; 20-5A-1 through 24.

1.3 Filing Date -

1.4 Effective Date - This rule shall become effective upon the date of the proclamation by the Governor pursuant to W. Va. Code §22-1-20 stating that final approval of the transfer of this program has been given by the United States Environmental Protection Agency or that such final approval is not necessary.

1.5 Former Rule Superseded - ²This legislative rule supersedes West Virginia Administrative Regulations, "State Water Resources Board, Chapter 20-5A, Series ~~4e~~ Requirements Governing the State National Pollutant Discharge Elimination System (NPDES) Program," in effect on July 11, 1985 to the extent that such rule pertains to the exploration, development, production, storage and recovery of oil and gas, and related mineral resources in this state. Such regulations were continued in effect pursuant to W.Va. Code §22-1-15 for the benefit of the Department of Energy to the extent that they pertained to the provisions of The West Virginia Energy Act.

1.6 Incorporation by Reference - All incorporations by reference in these regulations of federal regulations shall refer to those federal provisions in effect as of May 1, 1986. A copy of the incorporated regulations was filed with the Secretary of State on May 14, 1986.

Section 2. Definitions

Unless the context in which used clearly requires a different meaning, the definitions set forth in W.Va. Code §§20-5A-2, 22B-1-1 and 22-1-3 shall apply to this rule along with the following definitions. In the event of any conflict in the definitions between W.Va. Code §20-5A-2 and W.Va. Code §§22B-1-1 and 22-1-3, the definitions in W.Va. Code §§22B-1-1 and 22-1-3 shall control. The definitions contained in 40 C.F.R. §122.2 are hereby incorporated by reference. Each time the word "EPA" or "Administrator" or "Regional Administrator" appears in the federal regulations, it shall be construed to mean the Director of the Division of Oil and Gas unless the context clearly indicates the term to stand as "EPA."

2.1 "Waters of the United States" shall be construed to mean "waters of the State."

2.2 "Facility or Activity" shall be construed to be limited to those facilities and activities subject to the jurisdiction of the Director pursuant to W.Va. Code §22B-1-1 et seq.

2.3 "State" shall mean West Virginia.

Section 3. Permits

3.1 Permit Requirement - No person shall discharge pollutants from a point source subject to these regulations into surface waters of the State except as authorized pursuant to a State NPDES permit, general permit or combined well work-permit issued under these regulations. A NPDES permit issued pursuant to this rule shall be deemed to be a permit issued in accordance with W.Va. Code §§20-5A-5 and 22B-1-7.

3.2 General Requirements - The following provisions of 40 C.F.R. are hereby incorporated by reference:

3.2.1 Exclusions - 40 C.F.R. §122.3;

3.2.2 Prohibitions - 40 C.F.R. §122.4;

3.2.3 Effect of a permit - 40 C.F.R. §122.5;

3.2.4 Continuation of expiring permits - A permit may be extended by the Director for a period not to exceed eighteen (18) months beyond its expiration date if the applicant has made

a timely and complete application for permit reissuance. Such continued permits remain fully effective and enforceable. When a permit is issued, the extended permit, if still effective, becomes automatically void.

3.3 Confidentiality - Any information submitted pursuant to these regulations may be claimed as confidential by the submitter in accordance with the State Freedom of Information Act, W.Va. Code §29B-1-1 et seq. and Series 10 of the Division's rules. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or in the case of other submission, by stamping or writing the word "confidential" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. However, the following information may not be claimed as confidential:

3.3.1 The name and address of any permit applicant or permittee;

3.3.2 Permit applications, permits, and effluent data.

Section 4. Permit Application Requirements

The following provisions of 40 C.F.R. are hereby incorporated by reference:

4.1. Application for a permit - 40 C.F.R. §122.21, as amended by 50 Fed. Reg. 35203 (Aug. 29, 1985), except §122.21(h), (i), (k) and (m);

4.2 Signatories to permit applications and reports - 40 C.F.R. §122.22;

4.3 Separate storm sewers -

4.3.1 "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

4.3.1.1 Located in an urbanized area as ^{designated} designed by the U.S. Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

4.3.1.2 Not located in an urbanized area as designated under Section 4.3.5.

4.3.2 Except as provided in Section 4.3.3 section, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the Director under Section 4.3.5 is not considered a point source and is not subject to the provisions of this series.

4.3.3 Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from land or facilities used for industrial or commercial activities, into waters of the State or into separate storm sewers are point sources subject to the requirements of this series but are not separate storm sewers for purposes of this section. As used in this paragraph, "wastes" does not include sand, silt and gravel.

4.3.4 Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA.

4.3.5 Case-by-case designation of separate storm sewers. The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

4.3.5.1 A Water Quality Management plan under Section 208 of CWA which contains requirements applicable to such point sources is approved; or

4.3.5.2 The Director determines that a storm sewer is a significant contributor of pollution to the waters of the State. In making this determination the Director shall consider the following factors:

4.3.5.2.1 The location of the discharge with respect to waters of the State;

4.3.5.2.2 The size of the discharge;

4.3.5.2.3 The quantity and nature of the pollutants reaching waters of the State; and

Department of Energy
Division of Oil and Gas
Leg. Rule, 22-1, 22B-1 and 20-5A
Series 4, Sec. 4

4.3.5.2.4 Other relevant factors.

4.4 General permits - 40 C.F.R. §122.28, except §122.28(b)(1), last sentence, in which the phrase "and §124.58 for EPA" shall be deleted; and except that §122.28(b)(2)(F)(ii) shall apply to DOE-issued general permits; §122.28(c) shall also be deleted.

4.5 New sources and new dischargers - 40 C.F.R. §122.29;

Section 5. Permit Conditions

The following provisions of 40 C.F.R. are hereby incorporated by reference:

5.1 Conditions applicable to all permits - 40 C.F.R. §122.41, except §122.41(a)(2), §122.41(i), §122.41(j)(5), §122.41(k)(2), and §122.41(l)(3);

5.2 Additional conditions applicable to specified categories of NPDES permits - 40 C.F.R. §122.42(a);

5.3 Inspection and entry - Whenever required to carry out the objectives of these regulations, the Director or his authorized representative, upon presentation of credentials or other documents as may be required by law:

5.3.1 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 by these regulations are located, and

5.3.2 May at reasonable times have access to and copy any records, inspect any monitoring equipment or method required and sample and monitor or analyze any streams in the area as well as sample and monitor and analyze any effluents which the owner or operator of the source is required to sample.

5.4 Transfer of permits - 40 C.F.R. §122.61.

5.5 Analytical variability - All values reported on DMR's or otherwise shall have imputed to them the analytical variability of the specified test procedure, if any, in accordance with Section 6.6.

Section 6. Establishing Permit Conditions

The following provisions of 40 C.F.R. are hereby incorporated by reference:

6.1 Establishing permit conditions - 40 C.F.R. §122.43;

6.2 Establishing limitations, standards, and other permit conditions - 40 C.F.R. §122.44, except §122.44(j), (n), (o) and (p);

6.2.1 Nothing in this section precludes the application of Real Time Water Quality Control in achieving water quality standards. Such real time management may be used where water quality standards cannot be achieved after installation of treatment technology to comply with established technology-based effluent limits. In establishing any such water quality-based effluent limitation the following shall apply:

6.2.1.1 Water quality-based effluent limitations may be utilized only where violations of water quality standards are identified or projected as likely to occur as the result of the permitted discharge.

6.2.1.2 Permit requirements for monitoring effluent toxicity may be imposed only where there is a significant likelihood of toxic effects to biota in the receiving water.

6.2.1.3 Permit requirements for monitoring effluent toxicity shall not be imposed where toxic effects are present but there is a significant likelihood that compliance with technology-based requirements will sufficiently mitigate the effect; however, the Director may require chemical and toxicity testing after installation of the treatment technology and may reopen the permit to incorporate additional limitations if needed to meet water quality standards.

6.2.1.4 Effluent toxicity monitoring requirements should be used only where effluents are complex or where combined effects of multiple discharges are of concern.

6.2.1.5 In making a determination to require effluent toxicity monitoring as a permit condition, the Director shall take into account the degree of impact, the complexity and variability of the discharge, the water body type and hydrology,

the potential for human health impact, the amount of existing data, the level of certainty desired in water quality assessment, the appropriateness of the toxicity monitoring technique for use in protection and monitoring water quality, other sources of pollutants, and the ecology of the receiving stream.

6.2.1.6 If upon the basis of such effluent toxicity monitoring, it is determined that there is a significant likelihood of toxic effects to biota in the receiving water, then the Director may require the permittee to conduct a toxicity reduction evaluation.

6.2.1.7 If, as a result of such toxicity reduction evaluation, specific pollutants are identified as causing such toxic effects to biota in the receiving water, the permit may be modified to limit such pollutants.

6.2.1.8 All biological or other toxicity monitoring procedures required in a permit shall be approved pursuant to 40 C.F.R. Part 136 or, unless permittee agrees otherwise, be based upon studies establishing that such analyses have been properly validated by scientifically accepted interlaboratory procedures.

6.3 Calculating NPDES permit conditions - 40 C.F.R. §122.45, except §122.45(b)(1) and §122.45(b)(2)(ii)(A)(2);

6.4 Duration of permits - 40 C.F.R. §122.46;

6.5 Schedules of compliance - 40 C.F.R. §122.47;

6.5.1 Schedules of compliance may also be granted pursuant to W.Va. Code §20-5A-7, provided they do not violate Section 301 of the federal Clean Water Act.

6.6 Requirements for recording and reporting of monitoring results - 40 C.F.R. §122.48;

6.6.1 Inherent variabilities in 40 C.F.R. 136 test procedures are acknowledged. Exceedances of effluent limitations established in a permit will not be deemed permit violations unless the reported value exceeds the effluent limitation by an amount greater than the variability recognized in applicable sampling and analytical procedures; however, all test values shall be reported.

Department of Energy
Division of Oil and Gas
Leg. Rule, 22-1, 22B-1 and 20-5A
Series 4, Sec. 6

6.7 Disposal of pollutants into wells, into publicly owned treatment works or by land application - 40 C.F.R. §122.50.

Section 7. Modification, Revocation and Reissuance, and Termination of Permits

The following provisions of 40 C.F.R. are hereby incorporated by reference:

7.1 Modification or revocation and reissuance of permits - 40 C.F.R. §122.62;

7.2 Minor modifications of permits - 40 C.F.R. §122.63;

7.3 Termination of permits - 40 C.F.R. §122.64;

7.4 40 C.F.R. §122,

Appendix A - NPDES Primary Industry Categories

Appendix D - NPDES Permit Application Testing Requirements (including tables)

Section 8. Procedures for Permit Issuance

The following provisions of 40 C.F.R. are hereby incorporated by reference:

8.1 Application for a permit - 40 C.F.R. §124.3;

8.2 Modification, revocation and reissuance, or termination of permits - 40 C.F.R. §124.5, except for the last sentence in §124.5(b) and except §124.5(f) and (g);

8.3 Draft permits - 40 C.F.R. §124.6, except for the last two sentences of §124.6(e);

8.4 Statement of basis - 40 C.F.R. §124.7;

8.5 Fact sheet - 40 C.F.R. §124.8;

8.6 Administrative record for draft permits - 40 C.F.R. §124.9;

Department of Energy
Division of Oil and Gas
Leg. Rule, 22-1, 22B-1 and 20-5A
Series 4, Sec. 8

8.7 Public notice of permit actions and public comment period - 40 C.F.R. §124.10, except §124.10(a)(i), (iv), and (v); §124.10(c)(1)(iv) as it applies to the National Marine Fisheries Service; §124.10(c)(1)(vi) and (vii), and §124.10(d)(1)(viii) and (d)(2)(iv);

8.8 Public comments and requests for public hearings - 40 C.F.R. §124.11;

8.9 Public hearings, - 40 C.F.R. §124.12, except §124.12(a)(3) and (e);

8.10 Reopening of the public comment period - 40 C.F.R. §124.14, except §124.14(a)(3);

8.11 Issuance and effective date of permit - 40 C.F.R. §124.15(a). A final permit shall not become effective less than 30 days after the date of issuance of the final permit unless an earlier date is requested by the permittee;

8.12 Response to comments - 40 C.F.R. §124.17;

8.13 Administrative record for final permit - 40 C.F.R. §124.18;

8.14 Computation of time - 40 C.F.R. §124.20;

8.15 Timing for processing variances - 40 C.F.R. §124.51(b);

8.16 Permits required on a case-by-case basis - 40 C.F.R. §124.52;

8.17 Fact sheets - 40 C.F.R. §124.56, except §124.56(d);

8.18 Public notice for thermal variances - 40 C.F.R. §124.57(a);

8.19 Conditions requested by the Corps of Engineers and other government agencies - 40 C.F.R. §124.59;

8.20 Decision on variances - 40 C.F.R. §124.62;

8.21 Emergency permit issuance and modifications - If an emergency is determined by the Director to exist in which a discharge constitutes a clear present and immediate danger to

Department of Energy
Division of Oil and Gas
Leg. Rule, 22-1, 22B-1 and 20-5A
Series 4, Sec. 8

public health or public water supplies, the provisions of this subsection will apply. The Director may either immediately issue a temporary emergency permit or modify an existing permit without prior public notice or preparation of a draft permit, or, shorten the time period for public notice to no less than ten (10) days. If such immediate action is taken, the Director shall, at the same time, follow the usual procedures for permit modifications and issuance so that the public may comment. The permit or modification may be altered or revoked based upon the public comment received. All such immediate modifications or temporary emergency permits shall be for as brief a period as possible and no more than six (6) months.

8.22 Appeals - For NPDES permits, appeals may be taken to the State Water Resources Board pursuant to W.Va. Code §20-5A-15;

Section 9. Criteria and Standards; Variances

The following provisions of 40 C.F.R. are hereby incorporated by reference: 40 C.F.R. Part 125, Subparts A, C, D, E, F, G, H, J, and K.

Section 10. Federal Effluent Limitations Guidelines and Standards

The provisions of 40 C.F.R., Chapter I, Subchapter N, Parts 401, 403, as amended by 50 Fed. Reg. 38811 (Sept. 25, 1985), and 435 are hereby incorporated by reference.

Section 11. Toxic Pollutant Effluent Standards

The provisions of 40 C.F.R. Part 129 are hereby incorporated by reference.