

NOTICE OF EMERGENCY RULE

FILED

1985 JUN -3 PM 3:55

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

WV DEPARTMENT OF ENVIRONMENTAL HEALTH  
SECRETARY OF STATE

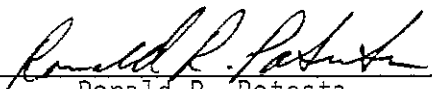


The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

On May 30, 1985, the United States Environmental Protection Agency granted approval of the State's application for revising the NPDES program as it relates to the coal mining point source category and related sewage facilities. That approval was effective immediately but was conditioned on the State immediately adopting emergency regulations amending the Department's regulations promulgated at Chapter 20, Article 6, Series VII, Section 10. The EPA letter is attached.

This transfer of the NPDES program authority was legislatively directed.

Emergency regulations amending the Department's regulations are necessary to maintain program approval and are, therefore, necessary to: (1) preserve the welfare of the State; (2) comply with the time limitation of the federal Environmental Protection Agency and (3) prevent substantial harm to the public interest by jeopardizing the State's retention of program delegation.

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



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

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OFFICE OF THE  
SECRETARY OF STATE

ARCH A. MOORE, JR.  
Governor

- May 30, 1985

RONALD R. POTESA  
Director

MICHAEL A. FOTOS  
Deputy Director

The Honorable Ken Hechler  
Secretary of State  
State Capitol, Suite 157-K  
Charleston, West Virginia 25305

Dear Mr. Hechler:

Re: Filing of Emergency Rules:  
Chapter 20, Article 6, Series VII (NPDES)

Dear Mr. Hechler:

Enclosed for your filing are a copy of emergency legislative rules and necessary ancillary filings which amend legislative rules: Chapter 20, Article 6, Series VII (1985)(NPDES).

The emergency rules are effective upon filing and remain in effect for fifteen months or until final regulations are promulgated.

Please file these regulations at your earliest convenience.

Sincerely,

Ronald R. Potesta  
Director

RRP/rss

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

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MAY 24 1985  
SECRETARY OF STATE

Mr. Ronald R. Potesta  
Director, Department of  
Natural Resources  
State of West Virginia  
Charleston, W.V. 25306

RECEIVED

DEPT. OF NATURAL RESOURCES

MAY 29 1985

Re: NPDES Regulations regarding Coal Facilities

Dear Mr. Potesta:

Office of Secretary

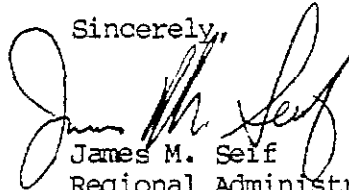
Thank you for your letter of May 8, 1985. As you know, Mr. Ron Shipley of your staff and Jed Z. Callen, of our Office of Regional Counsel have been in frequent communication over the past week attempting to resolve EPA's final concerns which stood in the way of approval of the State's November 19, 1984 request for NPDES Program revision transferring NPDES authorities over coal facilities from DWR to DR. Your letter of May 8, 1984 was extremely helpful to us in resolving those issues. By telephone on May 16, 1985, Mr. Shipley and Mr. Callen were able to resolve a final issue not discussed in your letter. The result of all of these communications is that EPA is prepared to approve the State's program revision request based upon your commitment to promulgate and implement the following regulatory amendments:

1. Amend § 10D.05(a)(6) by inserting after the word "structures", and before the words "and those wells", the following words: "each of its hazardous waste treatment, storage, or disposal facilities".
2. Add a regulatory provision parallel to 40 C.F.R. § 122.44(c)(2) (August 8, 1984), providing that all permits must reflect BAT and BCT limits whether or not effluent guidelines have been promulgated.
3. Add a provision parallel to 40 C.F.R. § 124.10(c)(1)(ix), providing for copies of public notices of draft permits to be sent to local governments.
4. Amend § 10H.02(c)1(H) by adding after "receiving stream" the following words: "and would not require new or different permit conditions." [This will conform it to existing WRB Reg. § 9.05(h)]
5. Delete § 10H.02(c)1(K), which is an unacceptably over-broad category of "minor" permit modifications not requiring public participation.

Mr. Shipley has represented to Mr. Callen that DNR will file, as immediately effective emergency regulatory amendments, the items listed as 1, 3, 4 and 5 above. Item 2 above (the 40 C.F.R. § 122.44(c)(2) provision), will be proposed for public comment and promulgation as soon as possible, but no later than August 8, 1985. I understand that the four items that will be made immediately effective as emergency regulations will also go through concurrent public notice and subsequent promulgation by the regular process.

I wish to thank you and particularly Ron Shipley, for the excellent and tireless work represented by this program revision. I look forward to our continued collaboration in the area of the prevention of water pollution.

Sincerely,



James M. Seif  
Regional Administrator

cc: Nandan Kenkeremath, Esq. (LE-132W)  
Marilyn Goode, Esq. (EN-335)  
Jed Z. Callen, Esq. (3RC30)  
Dan Sweeney (3WM51)

EMERGENCY REGULATORY AMENDMENTS:

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Chapter 20, Article 6, Series VII, Section 1000(1985)

1985 JUN -3 PM 3:55

(May 31, 1985)

OFFICE OF THE  
SECRETARY OF STATE



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

- 10D.05(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.

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an abandonment permit at least 180 days prior to sealing of ~~any~~ <sup>SECRETARY OF STATE</sup> 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  
Emergency 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  
Emergency 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 when 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.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

Telephone (304) 345-4000  
Corporations, 342-8000

WILLIAM H. HARRINGTON  
Chief of Staff

RICH O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA SECRETARY OF STATE

Charleston 25305

Dec. 9, 1985

## NOTICE OF EXPIRATION OF EMERGENCY RULES

THE FOLLOWING EMERGENCY LEGISLATIVE RULE FILED BY THE DEPARTMENT OF NATURAL RESOURCES HAS EXPIRED, THIS RULE WAS NOT FILED WITH LEGISLATIVE RULE MAKING REVIEW COMMITTEE WITHIN THE TIME REQUIRED BY WV CODE 29A-3-15(a) (2).

*Amendment to WV/Npdes rule, Series 7, Section 10; Coal Mining Point Source Category and Related Sewage Facilities filed as an emergency on June 3, 1985 and filed for public hearing on Aug. 2, 1985. This Emergency Rule Expired on Dec. 3, 1985.*

DEPARTMENT OF STATE

1985 DEC -9 PM 3:02

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