

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENTS TO SURFACE MINING REGULATIONS

The Department of Natural Resources will hold a public hearing on Friday, June 8, 1983 at 2:00 p.m. in Room C of the Conference Center, State Capitol Complex.

The purpose of the public hearing is to receive oral or written comments on proposed regulations governing the consolidation of the water pollution control program under Article 5A (Chapter 20) with the surface mining program of Article 6 (Chapter 20).

Copies of the proposed regulations may be obtained by contacting:
Ron Shipley, Special Assistant to the Director, West Virginia
Department of Natural Resources, 1800 Washington Street, East, Building 3,
Room 669, Charleston, West Virginia 25305; telephone (304) 348-2754.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE May 8, 1984
Administrative Law Division



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

JOHN D. ROCKEFELLER IV
Governor

May 8, 1984

WILLIS H. HERTIG, JR.
Director

RONALD R. POTESTA
Deputy Director

The Honorable A. James Manchin
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25305

Dear Mr. Manchin:

Re: Filing of Proposed Regulations -
Series VII - West Virginia Surface
Mining Regulations; Section 10 -
Article 5A/NPDES Regulations

The Department is filing with your office proposed rules and regulations relating to the consolidation of the State's surface mining program and water pollution control program as it relates to coal mines, preparation plants, and all refuse and waste therefrom under Article 5A.

We are proposing these rules for public comment until the close of business on June 8, 1983 or until the end of the public hearing scheduled for that day. We have enclosed a separate Notice of Public Hearing.

Please file these proposed regulations at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "W. H. Hertig, Jr.".

Willis H. Hertig, Jr.
Chairman, Reclamation Commission

WHH/rsb

Attachments

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STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Willis H. Hertig, Jr., Chairman,
Title or Position

Reclamation Commission, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

This filing pertains to

Chapter 20
Article 6
Series VII
Section 10
Page No. _____

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THIS DATE 5-8-84
Administrative Law Division

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

May 8, 1984
Date Submitted

W. H. Hertig, Jr.
Signature of Person Authorizing
this Filing

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Article 5A/NPDES Regulations

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SECTION 10 - ARTICLE 5A/NPDES REGULATIONS

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Administrative Law Division

10A. GENERAL

10A.01 Scope and Purpose - This section establishes requirements implementing

the powers, duties and responsibilities of Article five-a of Chapter 20 which are vested in the Director pursuant fo W. Va. Code §20-6-43 with respect to all coal mines, preparation plants and all refuse and waste therefrom in the state.

10A.02 Authority - The regulations in this section are promulgated by the Reclamation Commission under authority of West Virginia Code Chapter 20, Article 6, Section 43(b).

10A.03 Effective Date - The regulations in this section become effective _____, 1984 being the date on which the Governor issued a proclamation stating that final approval of the partial transfer of the National Pollutant Discharge Elimination System (NPDES) established under the Federal Clean Water Act contemplated by this section has been given by the Administrator of the United States Environmental Protection Agency.

10A.04 Filing Date - The regulations in this section were filed in the Office of the Secretary of State on _____, 1984.

10A.05 Applicability - The regulations in this section shall apply to all coal mines, preparation plants and refuse and waste therefrom as defined in this section upon the effective date in §10A.03. The regulations in this section also establish a transition program for those pending Article 5A/NPDES Applications for which a draft permit has been prepared. See § 10C.07.

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10B. DEFINITIONS

The definitions set forth in Chapter 20, Article 5A, Section 2, of the Code of West Virginia shall apply to this section of these regulations along with the following definitions unless the context clearly indicates otherwise.

- 10B.01 "Abandonment" (for deep mines) means the terminating of mineral extraction prior to reclamation.
- 10B.02 "Administrator" means the administrator of the United States Environmental Protection Agency, or an authorized representative.
- 10B.03 "Applicable standards and limitations" means all State, interstate, and Federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA, Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405) and Article 5A, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and pretreatment standards.
- 10B.04 "Application" means a WW/NPDES application as defined in 10B.50.
- 10B.05 "Article 5A" or "SWPCA" means the West Virginia Water Pollution Control Act, West Virginia Code Chapter 20, Article 5A, Section 1 et seq.
- 10B.06 "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

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- 10B.07 "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs may include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- 10B.08 "Clean Water Act" ("CWA") means Public Law 92-500, as amended by Public Law 95-217 Public Law 95-576; 33 U.S.C. §1251 et seq. (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972)
- 10B.09 "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.
- 10B.10 "Coal mines, preparation plants and all refuse and waste therefrom" means any point source covered under 40 CFR Part 434 and any coal mine, coal preparation plant, coal preparation plant associated areas, refuse pile, coal waste pile, or other related activity required to have a permit under the CWA and Article 5A of Chapter 20 of the Code, excluding any sewage treatment facilities, bath houses, dredging operations or the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale.
- 10B.11 "Coal Mine" or "Mine" means the area, and any related structures, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal.

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- 10B.12 "Coal preparation plant" means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities or is loaded for transit to a consuming facility.
- 10B.13 "Coal preparation plant associated areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.
- 10B.14 "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
- 10B.15 "Discharge" when used without qualification means the discharge of a pollutant.
- 10B.16 "Discharge of a pollutant" means:
- (a) any addition of any pollutant or combination of pollutants to waters of the State from any point source;
 - (b) this definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, other conveyances owned by a person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

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- 10B.17 "Discharge Monitoring Report" ("DMR") means the form(s) prescribed by the Director and approved by EPA for the reporting of self-monitoring results by permittees under WV/NPDES.
- 10B.18 "Draft permit" means a document prepared under Section 10I, indicating the Director's tentative decision to issue, modify, reissue, suspend or revoke a permit.
- 10B.19 "Effluent limitation" means any restriction established under State or Federal law on quantities, discharge rates and concentrations of pollutants which are discharged from point sources into waters of the State.
- 10B.20 "Effluent limitations guidelines" means a regulation published by the Administrator under Section 304(b) of the CWA to adopt or revise effluent limitations. For the coal industry these regulations are published at 40 CFR Part 434.
- 10B.21 "Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.
- 10B.22 "Existing Source" means any coal mine, preparation plant and all refuse or waste therefrom:
(a) from which there is or may be a discharge of pollutants which commenced prior to September 19, 1977; and
(b) which is not a new source.
- 10B.23 "Facility" or "activity" means any coal mine, preparation plant and all refuse and waste therefrom or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this section.
- 10B.24 "General permit" means a permit authorizing a category of discharges within a geographical area.

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- 10B.25 "Hazardous substance" means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the CWA.
- 10B.26 "Indirect Discharger" means a nondomestic discharges introducing pollutants to publicly owned treatment works.
- 10B.27 "Interstate agency" means an agency of two or more states, including West Virginia, established on or under an agreement or compact approved by the Congress, or any other agency of two or more States including West Virginia, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.
- 10B.28 "Major facility" means any facility or activity classified as such by the Regional Administrator in conjunction with the Director.
- 10B.29 "Maximum daily discharge limitation" means the highest allowable daily discharge.
- 10B.30 "National Pollutant Discharge Elimination System" ("NPDES") means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of CWA, including any approved State program.
- 10B.31 "New discharger" means any coal mine, preparation plant and all refuse or waste therefrom:
- (a) from which there is or may be a discharge of pollutants that did not commence the discharge prior to August 13, 1979;
 - (b) which has never received a finally effective NPDES permit for discharges at that site; and
 - (c) which is not a new source.

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10B.32 "New source" means any facility covered under 40 CFR Part 434, including an abandoned mine which is being remined, the construction of which is commenced after September 19, 1977 or which is determined to constitute a major alteration.

(a) In making the determination of major alteration the Director shall take into account whether one or more of the following events resulted in a new, altered or increased discharge of pollutants after September 19, 1977 in connection with the facility covered under 40 CFR Part 434 for which the WW/NPDES permit is being considered:

1. Extraction of a coal seam not previously extracted by that mine;
2. Discharge into a drainage area not previously affected by wastewater discharge from the facility covered under 40 CFR Part 434;
3. Extensive new surface disruption at the mining operation;
4. A construction of a new shaft, slope or drift.
5. Cleaning of coal from a different seam and the disposal of refuse therefrom.

(b) No provision in this definition shall be deemed to affect the classification of a facility as a new source which was so classified under previous EPA regulations, but would not be classified as a new source under this definition. Nor shall any provision in this definition be deemed to affect the standards applicable to such facilities, except as provided in 40 CFR Section 434.65.

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- 10B.33 "Operator" means any person, firm or company who has responsibility for the overall operation of a coal mine, preparation plant and all refuse and waste therefrom but does not include any employee, agent or independent contractor of the person, firm or company who has responsibility for the overall operation of a facility subject to regulation.
- 10B.34 "Owner" means the owner of the facility subject to regulation.
- 10B.35 "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.
- 10B.36 "Privately owned treatment works" means any device or system which is used to treat wastes other than the owner's wastes and is not a POTW.
- 10B.37 "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.
- 10B.38 "Proposed permit" means a WW/NPDES permit prepared after the close of the comment period (and, when applicable, any public hearing) and which may be sent to EPA (pursuant to the Memorandum of Agreement) for review before final issuance by the Director.
- 10B.39 "Publicly owned treatment works" (POTW) means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality, public service district, sanitary district or other public body. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

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- 10B.40 "Recommencing discharger" means a source which recommences discharge after terminating operations.
- 10B.41 "Regional Administrator" means the Regional Administrator of Regional Office (III) of the Environmental Protection Agency, or an authorized representative.
- 10B.42 "Reissuance" means the issuance of a permit to a facility which has a previously issued effective permit and includes automatic revocation of the previously issued permit.
- 10B.43 "Schedule of compliance" means a schedule of remedial measures in a WV/NPDES permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA, State Act and regulations.
- 10B.44 "Secretary" as used in this chapter is the Secretary of the Army acting through the Chief of Engineers.
- 10B.45 "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
- 10B.46 "State" means the State of West Virginia.
- 10B.47 "Total dissolved solids" means the total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR Part 136.
- 10B.48 "Toxic pollutant" means any pollutant listed a toxic under Section 307(a)(1) of CWA (Appendix A).
- 10B.49 "Variance" means any mechanism or provision under Sections 301 or 316 of CWA or under 40 CFR Part 125 (Appendix B) or in the applicable effluent limitations guidelines which allows modification to or

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waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Sections 301(c), 301(g), 301(i), 302(b)(2), and 316(a) of the CWA, where appropriate.

10B.50 "WV/NPDES Application" - means the forms prescribed by the Director and approved by the EPA for applying for a permit or permit modification, including any additions, revisions or modifications to the WV/NPDES forms.

10B.51 "WV/NPDES Permit" or "Permit" means an authorization issued by the Director to implement the requirements of Article 5A including modifications to permits.

10B.52 "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that, under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

10C. PERMITS

10C.01 Permit Requirement; Exemptions.

(a) Except as authorized by a WV/NPDES permit no person shall:

1. discharge pollutants from a point source associated with any coal mine, preparation plant, and all refuse and waste therefrom;
2. make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet from a facility for the discharge of pollutants or the effluent therefrom into the waters of the State;

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3. acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated waste or effluent from any facility into the waters of this state, or any extension to or addition to such disposal system;
4. extend, modify, add to or increase in volume or concentration any pollutants or effluent from any point source associated with any facility in excess of the discharges or disposition specified or permitted under any existing permit;
5. construct, install, modify, open, reopen, operate or abandon any coal mine, coal preparation plant or coal preparation plant associated areas, whenever such facilities have associated with them or might reasonably be expected to have associated with them a discharge into or pollution of waters of the State except that a permit shall be required for any coal preparation plant regardless of whether it has, may have or might reasonably be expected to have a discharge.

(b) A WV/NPDES permit issued pursuant to this section shall be deemed to be a permit issued in accordance with Article 5A and the CWA.

(c) A WV/NPDES permit shall not be required for activities conducted under and in conformity with Section 9C.

10C.02 Prohibition Against Issuing a WV/NPDES Permit

A WV/NPDES permit may not be issued:

- (a) when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA and Article 5A;

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- (b) by the Director where the Regional Administrator has objected to issuance of the WW/NPDES permit;
- (c) when in the judgement of the Secretary, anchorage and navigation in or on any waters of the State would be substantially impaired by the discharge;
- (d) for the discharge of any radiological, chemical or biological warfare agent or high level radioactive waste;
- (e) for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA;
- (f) to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards unless the applicant has met the requirements of 10D.05(e) (Discharges into con-complying waters) or has met the requirements for a variance under 10D.05(f);
- (g) when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
- (h) to any facility which is an indirect discharger or discharges to a privately owned treatment works.

10C.03 Denial of Permits

WW/NPDES permits may be denied for noncompliance with these regulations including the reasons specified in 10H.04 or when a surface mining permit under Article 6 has been denied. In the case of an application for reissuance an outstanding violation of an existing permit is grounds for denial. Any denial of the WW/NPDES permit is appealable to the Water Resources Board pursuant to W.Va. Code §20-6-43(d) and in accordance with the procedures and authority of W.Va. Code §20-5A-15.

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10C.04 Effect of a Permit

- (a) Except for any toxic effluent standards and prohibitions imposed under Section 307 of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement with Sections 301, 302, 306, 307, 318, 403, and 405 of the CWA and Article 5A. However, a permit may be modified, reissued or revoked during its term for cause as set forth in Section 10H.
- (b) The issuance of a W/NPDES permit does not convey any property rights of any sort, or any exclusive privilege.

10C.05 Duration and Transferability of Permits

- (a) Duration - W/NPDES permits shall be effective for a fixed term not to exceed five (5) years. The Director may vary the term of a W/NPDES permit to ensure that expiration dates of the W/NPDES permit and the Article 6 Surface Mining permit coincide, but in no case may the W/NPDES permit be shortened to less than three and one-half years for the sole purpose of reconciling expiration dates of Article 6 and W/NPDES permits unless the permittee agrees.
- (b) Extensions - A W/NPDES 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. Timeliness of an application for permit reissuance is governed by Section 10D.04 (120 days prior to permit expiration). A complete application for the purpose of this extension shall mean that the required number of copies of the application were submitted, including the filing fee of \$50.00, the application questions are faithfully answered and the application

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forms were signed as required under Section 10D.07. A determination of the application's completeness as set forth in this section, shall not preclude the Director from requesting additional information from the applicant during the subsequent substantive review. Permits extended under this section remain fully effective and enforceable. When a W/NPDES permit is reissued the existing permit is automatically void.

- (c) Transfer of Permits - Permits may be transferred from a permittee to another person by either modifying an existing permit pursuant to Section 10H.02 (c)1(D), reissuing the permit under 10H.03(c)3 or by an automatic transfer under Paragraph (d) of this subsection. In transferring a permit from a permittee to another person, the Director shall determine that the proposed permittee has all necessary permit responsibility.
- (d) Automatic Transfer of Permits - Any permit may be automatically transferred to a new permittee if:
1. the current permittee notifies the director on the forms prescribed (DR-19A) at least thirty (30) days in advance of the proposed transfer date; and
 2. the notice includes a written agreement between the existing and proposed permittee containing a proposed date for transfer of the permit and explaining the extent of permit responsibility, coverage, and liability between them; and
 3. the proposed permittee complies with Section 3L.04 and 3L.05;
 4. the Director does not notify the existing permittee and the proposed new permittee of his intent:

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- A. to deny the transfer request, or
- B. to require the transfer through permit modification, or
- C. to require the transfer through reissuance and require a new application be filed rather than approving the transfer; and

5. Notification is not received by the permittee and proposed new permittee within thirty (30) days after receipt of proof of publication then the transfer is effective on the date specified in the agreement required by Paragraph 2 above.

10C.06 NPDES Permits Issued by EPA and the Chief of the Division of Water Resources

- (a) The Director shall administer and enforce all WW/NPDES or Article 5A permits relating to coal mines, preparation plants and all refuse and waste therefrom issued by the Chief.
- (b) The Director shall administer and enforce all NPDES permits relating to coal mines, preparation plants, and all refuse and waste therefrom that have been adopted by the Chief prior to the effective date of this section, provided that in the event of a conflict between an adopted NPDES permit and a WW/NPDES permit or Article 5A permit the more stringent provisions shall apply.
- (c) The Director may adopt as permits issued under Article 5A all NPDES permits relating to coal mines, preparation plants and all refuse and waste therefrom issued by the Regional Administrator which are transferred by the Regional Administrator and accepted by the Director. Acceptance of an NPDES permit from the Regional Administrator shall not supercede any permit previously issued

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under Article 5A. All provisions of both permits shall be in force, except that, in the event of a conflict, the more stringent provisions shall apply. All permits relating to the same facility shall be deemed consolidated and considered as a single permit for the purposes of reporting, administration and enforcement.

- (d) Unexpired permits previously issued under Article 5A shall be void whenever a new W/NPDES permit is issued for the same facility. Any unexpired NPDES permit issued by the EPA shall not be enforceable by the Director upon the issuance of a new W/NPDES permit for the same facility.

10C.07 Transition and Consolidation Program for W/NPDES and Article 6 Permits.

- (a) Transition - Any W/NPDES or Article 5A permit already in public notice pursuant to Section 10I on the effective date of these regulations shall continue to be processed by either the Division of Water Resources or the Division of Reclamation at the Director's option, provided however that the applicant will not be required to submit a new application or any additional information in order to receive a W/NPDES permit. If the Water Resources Chief proposes issuance of the W/NPDES permit, then the Director will issue the permit.

(b) Consolidation of permit processing

1. Whenever a facility requires a permit under both Article 6 and Article 5A processing of two or more applications for those permits may be consolidated. The first step in consolidation for a new source is the submission of a joint application under 10D.05(c). The first step in consolidation for an

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existing source or new discharger is to issue a joint public notice under Section 10I and 3B.

2. Whenever the permits are jointly noticed, the public hearings under 10I and informal conferences under W. Va. Code §20-6-20 may be held on the same day.
3. The final permits may be issued together. They need not be issued together if in the judgement of the Director, joint issuance would result in unreasonable delay in the issuance of one or more permits. Whenever an existing facility or activity requires additional permits under both of the statutes covered by these regulations, the Director may coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously subject to the provision of 10C.05(a). Processing of the subsequent applications for renewal permits may then be consolidated.
4. Any permittee who has either an NPDES, W/NPDES or Article 5A permit must apply for reissuance in accordance with Section 10D.04(a). If such permit expires within eighteen (18) months of the expiration of the Article 6 permit then such permit will automatically be given an extension to the expiration date of the Surface Mining permit provided the permittee complies with Subsection 10C.05(b).
5. Any permittee who has either an NPDES, W/NPDES or Article 5A permit which will expire within eighteen (18) months after the expiration of a Division of Reclamation permit must apply

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for the reissuance of the NPDES, W/NPDES or Article 5A permit when requesting renewal of the Surface Mining permit pursuant to Section 3M.

10D. APPLICATION FOR PERMITS

10D.01 Duty to Apply

Any person who discharges or proposes to discharge pollutants, or who proposes to undertake any activity listed in 10C.01(a) and who does not have an effective permit for such discharge or activity, except persons covered by general permits or those covered by 10C.01(c), shall submit a complete application in the manner and form prescribed by the Director and in accordance with the following applicable subsections.

10D.02 Responsible Party Applies - When a facility or activity is owned by one person but is operated by another, the Director may require documentation of the W/NPDES permit responsibility and liability of the owner and operator and may propose and issue the W/NPDES permit to either one or both the owner and operator, but only after notice to both the owner and operator; or the Director may refuse to issue the W/NPDES permit until the responsible person applies for the W/NPDES permit.

10D.03 Completeness - An application for a permit is complete when the Director receives an application form and any supplemental information including maps, plans, designs and other application materials which are completed to his or her satisfaction. The completeness of any application for a W/NPDES permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

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10D.04 Time to Apply

- (a) Reissuance - Any person with an existing WV/NPDES permit shall submit an application for reissuance of such permit at least 120 days before the expiration date of the existing WV/NPDES permit.
- (b) Abandonment Permit - Any person proposing to abandon a facility under W.Va. Code §20-5A-5(b)(6) and Section 10C.01(a)5 shall apply for an abandonment permit at least 120 days prior to abandonment.

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.

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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; 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 or New Dischargers -

All applicants (including all applicants for reissuance) for WW/NPDES permits whose facilities are existing sources or new dischargers 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 outfall 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 units and effluent. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (b)(3) of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater and storm water runoff (including material storage area runoff), the average flow each process contributes and a description of the treatment, if any, the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms.
4. Intermittent flows. If any of the discharges described in paragraph (b)(3) of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).
5. Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement project, and a listing of the required and projected final compliance dates.
6. Effluent characteristics. Information on the discharge of pollutants is specified in this subparagraph. When "quantitative data" (concentration and mass) for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must

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3. Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater and storm water runoff (including material storage area runoff), the average flow each process contributes and a description of the treatment, if any, the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms.
4. Intermittent flows. If any of the discharges described in paragraph (b)(3) of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).
5. Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement project, and a listing of the required and projected final compliance dates.
6. Effluent characteristics. Information on the discharge of pollutants is specified in this subparagraph. When "quantitative data" (concentration and mass) for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must

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provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents the Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfall.

- A. (1) Every applicant must report quantitative data for every outlet for the following pollutants:
- a. Biochemical Oxygen Demand (BOD₅)
 - b. Chemical Oxygen Demand (COD)
 - c. Total Organic Carbon (TOC)
 - d. Total Suspended Solids
 - e. Ammonia (as N)
 - f. Temperature (both winter and summer)
 - g. pH
- (2) If sewage or bath house waste is not a part of the effluent the reporting requirements for biochemical oxygen Demand, COD, TOC and ammonia are waived.
- B. Each applicant contributing to a discharge must report quantitative data for the pollutants listed in Appendix C (the toxic metals, cyanide, and total phenols) in each outlet containing process wastewater.
- C. Each applicant must report for each outlet quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outlet (see Paragraph (F.) below):

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- (1) All pollutants listed in Appendix C or Appendix D (the toxic pollutants) for which quantitative data is not otherwise required under paragraph (b)6(B) of this section unless the applicant qualifies for a small business exemption under (b)(7);
 - (2) All pollutants in Appendix E (certain conventional and nonconventional pollutants).
- D. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix F (certain hazardous substances and asbestos) are discharged from each outlet (see paragraph (E) below). For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.
- E. Each applicant must report qualitative data generated using a screening procedure not calibrated with analytical standards, for TCDD [2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin] if it uses or manufactures 2, 4, 5,-T [2, 4, 5 - trichlorophenoxy acetic acid]; Silvex, 2, 4, 5, -TP [2-(2, 4, 5 - trichlorophenoxy propanoic acid)]; Erbon [2-(2, 4, 5-trichlorophenoxy) ethyl, 2, 2-dichloropropionate]; Ronnel [0, 0-dimethyl 0-(2, 4, 5-trichlorophenyl)phosphorothioate]; TCP [(2, 4, 5-trichlorophenol)]; or HCP [(hexachlorophene)] or knows or has reason to believe that TCDD is or may be present in an effluent.

- F. The requirements in paragraphs (b)6(C) and (D) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. The Director may require that grab samples or composite samples be used for particular pollutants. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.
7. Small business exemption. Coal mines or preparation plants with a probable total annual production of less than 100,000 tons per year per mine or plant are exempt from the requirements in paragraph (b)6(C)(1) of this section to submit quantitative data for the pollutants listed in Appendix D (the organic toxic pollutants):
8. Used or manufactured toxics. A listing of any toxic pollutant which the applicant does or expects to use or manufacture as an intermediate or final product or by-product during the next five (5) years.
9. Potential discharges. A description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two times the values reported in paragraph (b)(6) of this section over the next five (5) years.

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10. Biological toxicity tests. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.
 11. Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by paragraph (b)(6) of this subsection, the identity of each laboratory or firm and the analyses performed.
 12. Plan for Abandonment. The information required in a plan for abandonment pursuant to 10D.05(d).
 13. Discharges into non-complying waters. Compliance with 10D.05(e).
 14. Variances. Compliance with 10D.05(f) or (g) if applicable.
 15. Additional information. In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the facility and discharges from the facility and to determine whether to issue a WV/NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity to aquatic life of the discharges and requirements to determine the cause of the toxicity.
- (c) Information Required for New Sources.
1. All applicants for WV/NPDES permits whose facilities are new sources must submit a complete application for a surface mining permit under Article 6 (Sections 3A through 3L) and

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the information required by Section 10D.05(a), 10D.05(b)(1), (2), (8) and estimates of the flow and effluent characteristics in 10D.05(b)(3)-(6) and a plan for abandonment pursuant to 10D.04(d). Incorporation by reference of material supplied in the Article 6 application is permissible.

2. Any new source which is applying for a reissuance permit must submit an application consisting of the material required by 10D.05(a) and (b).

(d) Plan for Abandonment and Application to Abandon a Mine.

1. Deep Mines - the plan for abandonment may be consolidated with and incorporate information contained in the surface mining permit under Article 6 (see § 7A.04). Unless waived in writing, in whole or in part by the Director, an applicant for a deep mine under either Section 10D.05(b) or (c) shall provide a plan for abandonment which contains the following information:

A. A mine map to scale showing among other things:

- (1) the proposed mine boundary for the initial five (5) years of the mine and the proposed final limits of mining (to be shown in different colors); thickness of barriers against outcrop;
- (2) any adjacent deep and strip mines and auger holes;
- (3) predicted final water elevation in the proposed mine;
- (4) water level and its elevation in any adjacent mines;
- (5) seam structural contours at an interval not to exceed those available on the latest U.S.G.S. 7.5 minute quadrangle, fault plane or weak plane;

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- (6) proposed location of all mine seals and sectionalization dams if any;
 - (7) all proposed mine portals, boreholes;
 - (8) elevations at the top and at the mineral bed of portals and boreholes;
 - (9) the north line;
 - (10) general strike and dip direction of the mineral bed and the average dip.
- B. If there are mine workings either below or above the mine workings to be abandoned, information on whether they are active, inactive or abandoned, the final limits of mining (to be shown in different colors on the mine map in A(1)), elevation of water pools in these mines, the thickness and nature of parting between the workings, whether water from the mine to be abandoned will flow through the adjacent mines or the mines above or below, and whether water from adjacent mines or mines below or above will flow through the mine to be abandoned and if it will, the quality of the water.
- C. The type and number of permanent seals proposed, their design details and drawings and the materials to be used for construction.
- D. Whether there will or might reasonably be expected to be a discharge from the mine after abandonment; the maximum rate of discharge expected; whether the discharge, if any, will need treatment; if treatment is required the

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type of treatment proposed and its details and if treatment will not be required, the reasons for assuming so.

- E. Provisions that shall be made for assuring acceptable water quality from any discharges after abandonment of the mine. Should the mine become filled with water, the effect on groundwater quality and plans to eliminate or minimize the adverse effects if any on groundwater quality.
- F. Any other information which the Director may deem necessary to evaluate the water pollution potential of the facility.
- G. The information required in Section 7A.04.

- 2. Other Facilities Requiring Plans for Abandonment. For all coal mines, preparation plants and preparation plant associated areas, other than deep mines, the reclamation plan required under Article 6 shall be the plan for abandonment.
- 3. Plan for Abandonment; Reissuance. Unless waived in writing in whole or in part by the Director, in addition to the information required by Sections 4.04(a) and (b), an applicant for the reissuance of a WW/NPDES permit shall provide information to update or add to the information required in Paragraph 1 and 2 above.
- 4. Application for Permit to Abandon. An application for a permit to abandon shall contain the information requested under Paragraph 1 and 2 updated to show final determinations on each item which reflects current knowledge, provided that where the information submitted under 1 and 2 has not significantly changed further updating will not be required, and the following:

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- A. a statement from the applicant which predicts the likelihood of a discharge from the abandoned mine.
 - B. At least one representative cross section map across the coal seam and overburden along a line parallel to the dip of the mineral bed showing the name and thickness of each strata above and the immediate strata below the mineral bed, the position of the water table and the direction of the flow of water, the final likely level of water in the mineral bed on abandonment and the likely extent of fracturing in the overburden due to mining. The line of cross section shall be shown on the mine map submitted under (d)1.
 - C. A report on the quality of water being discharged from the mine during the past two years, and a prediction of expected discharge quality should a discharge occur.
- (e) Discharges into non-complying waters - The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of effluent limitations required by Section 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the State has performed a pollutant load allocation for the pollutants to be discharged, must demonstrate, before the close of the comment period, that:
- 1. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - 2. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into

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compliance with applicable water quality standards; or

3. that the applicant qualifies for a variance under subsection (f) below or has made an adequate demonstration to the Director pursuant to the Water Resources Board's Administrative Regulations, Series I, Section 8.

(f) Variance Requests - A facility may request a variance from effluent limitations under any of the following statutory or regulatory provisions within the times specified. Requests must explain how the requirements of EPA variance regulations have been met. EPA regulations governing the variances in this section are promulgated at 40 CFR Part 125 (Appendix B).

1. Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be made by the close of the public comment period under Section 10I.02. The request shall explain how the requirements of 40 CFR Part 125, Subpart D have been met.
2. Non-conventional pollutants. A request for a variance from the BAT requirements for CWA Section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to Section 301(g) of CWA because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

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- A. Submitting an initial request to the Regional Administrator, as well as to the Director, stating the name of discharger, the permit number, the outlet number(s), the applicable effluent guideline, and whether the discharger is requesting a Section 301(c) or Section 301(g) modification or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; or
 - B. Submitting a completed request no later than the close of the public comment period under Section 10I.02 demonstrating that the applicable requirements of 40 CFR Part 125 have been met, unless an extension is granted under 10D.05(g)(2).
 - C. Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with paragraph (B) of this section and need not be preceded by an initial request under paragraph (A) of this section.
3. Innovative technology. An extension under CWA Section 301(k) from the statutory deadline of July 1, 1984 under Section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under Section 10I.02 for the discharger's initial permit requiring compliance with Section 301(b)(2)(A).
4. Water quality related effluent limitations. A modification to any water quality related effluent limitation under Section 302(b)(2) of the CWA of requirements under 302(a) of

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the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 10I.02 on the permit from which the modification is sought.

(g) Expedited Variance Procedures and time extensions

1. Notwithstanding the time requirements in paragraph (f) of this subsection, the Director may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variance. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit information explaining how the requirements applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.
2. A discharger who cannot file a complete request required under paragraph (f)(2)(B) of this subsection may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

10D.06 Record Keeping by Applicant - Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of at least three (3) years from the date the application is signed.

10D.07 Signatories to Permit Applications and Reports

(a) Applications. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - A. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - B. the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures, or an attorney in fact with appropriate authorization.
2. For a partnership or sole proprietorship: by a general partner or the proprietor.

(b) Reports. All reports required by WW/NPDES permits and other information requested by the Director for compliance with Article 5A, shall be signed by a person described in paragraph (a) of this subsection, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in paragraph (a) of this section;
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the

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regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility.

(A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Director.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:
"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

10D.08 Filing Fee - A filing fee of \$50 shall be required with all WV/NPDES Applications and shall be deposited with the State Treasurer to the

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credit of the operating permit Fees Fund in accordance with 20-6-9(f) of the State Act.

10E CONDITIONS APPLICABLE TO ALL PERMITS

The following conditions apply to all WW/NPDES permits. All conditions shall be incorporated into the WW/NPDES permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

10E.01 Duty to comply

(a) The permittee must comply with all conditions of this permit.

Permit noncompliance constitutes a violation of the CWA and Article 5A and is grounds for enforcement action; for permit modification, suspension or revocation; or for denial of a permit reissuance application.

(b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(c) The Clean water Act and Article 5A provide that any person who violates a permit condition implementing sections 301, 302, 306, 308, 318 or 405 of the Clean Water Act, or any provision of a WW/NPDES permit or rule or regulation promulgated under Article 5A, is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Act or any provision of Article 5A or its

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W/NPDES permit, is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one (1) year, or both.

- 10E.02 Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this W/NPDES permit, the permittee must apply for a new permit at least 120 days prior to expiration of the permit.
- 10E.03 Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. Upon reduction, loss or failure of the treatment facility the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power to the treatment facility fails or is reduced or lost.
- 10E.04 Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- 10E.05 Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance,

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adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

- 10E.06 Permit actions. This W/NPDES permit may be modified, reissued, suspended, or revoked for cause (see Section 10H). The filing of a request by the permittee for a permit modification, reissuance, termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- 10E.07 Transfer. This permit is not transferable to any person except after notice to the Director and by following one of the procedures listed in 10C.05(c).
- 10E.08 Property rights. This W/NPDES permit does not convey any property rights of any sort, or any exclusive privilege.
- 10E.09 Duty to provide information. The permittee shall furnish to the Director, within a specified time, any information which the Director may request to determine whether cause exists for modifying, reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this W/NPDES permit.
- 10E.10 Inspection and entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the W/NPDES permit;

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2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

10E.11 Monitoring and records

- (a) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this W/NPDES permit.
- (b) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (c) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recording for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (d) Records of monitoring information shall include:
 1. The date, exact place, and time of sampling or measurements;
 2. The individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;

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4. The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;
 5. The analytical techniques or methods used; and
 6. The results of such analyses.
- (e) Monitoring results shall be reported on DMRs and at the intervals specified elsewhere in this permit.
- (f) If the permittee monitors any pollutant at any monitoring point specified in the permit more frequently than required by the permit, using approved test procedures or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.
- (g) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- (h) The permittee shall not knowingly render inaccurate any monitoring device required to be used under this permit.

10E.12 Signatory requirement.

- (a) All applications, reports, or information submitted to the Director shall be signed and certified as required in Section 10D.07 of this section.
- (b) The CWA and Article 5A provide that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation,

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or by imprisonment for not more than six (6) months per violation, or by both.

10E.13 Reporting requirements

- (a) Planned changes. The permittee shall give notice to the Director thirty (30) days prior to any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge and of any planned changes in the method of operating the facility which may affect the nature or quantity of the discharge.
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.
- (d) Immediate reporting
 - 1. The permittee shall report any noncompliance with the WW/NPDES permit or Article 5A which may endanger health or the environment immediately after becoming aware of the circumstances by using the Division of Water Resources' Emergency Notification Number 1-800-642-3074. A written submission shall be provided to the Reclamation Chief within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance

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and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The following shall also be reported immediately:
 - (A) Any unanticipated bypass (see Section 10E.14(a)) which exceeds any effluent limitation in the permit;
 - (B) Any spill or accidental discharge (upset) (see Section 10E.15) which exceeds any effluent limitation shall be reported to the Director via the Division of Water Resources designated spill telephone number. Such notification shall set forth the time and place of such spill or discharge, type and quantities of pollutants and any actions taken to stop or mitigate the spill or accidental discharge and any other information as may be requested. A written verification of such notification shall be submitted upon request of the Reclamation Chief.
 - (C) Violation of a maximum daily discharge limitation for any of the pollutants which the Director has required in the permit to be reported immediately.
3. The Director may waive the written report for 2 above on a case-by-case basis if the oral report has been received in accordance with the above.
4. Notification Levels. The permittee must notify the Director in writing as soon as they know or have reason to believe:

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- A. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (1) One hundred micrograms per liter (100 ug/l);
 - (2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 10D.05(b)(6) or 10D.05(b)(9); and
 - (4) The level established by the Director in accordance with Section 10F.02(h).
- B. That they have begun or expect to begin to use as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under Section 10D.05(b)(8).
- (e) Other noncompliance - The permittee shall report all instances of noncompliance not reported under paragraphs 10E.11(e),(f) and (g), and 10E.13(c) and (d) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph 10E.13(d)(1) of this section.
- (f) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted

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incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10E.14 Bypass

(a) Definitions

1. "Bypass" means the intentional temporary diversion of waste streams from any portion of a treatment facility; and
2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur (for reasons other than sediment control) which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) Notice

1. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least ten (10) days before the date of the bypass;
2. Unanticipated Bypass. If the permittee does not know in advance of the need for a bypass, notice shall be submitted as required in paragraph 10E.13(d) of this section.

(d) Prohibition of bypass

1. Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for bypass, unless:

A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

C. The permittee submitted notices as required under paragraph (c) of this subsection.

(e) Approval of Bypass. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (d)(1) of this subsection.

10E.15 Upset

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment

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facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;
2. The permitted facility was at the time being properly operated;
3. The permittee submitted notice of the upset as required in paragraph 10E.13(d)2(B) of this section; and
4. The permittee complied with any remedial measures required under Section 10E.04.

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

10E.16 Reopener Clause. In accordance with W. Va. Code §20-5A-14, the Director may reopen the permit through modification or by reissuance to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(c) and W.Va. Code §20-5a-7(b) (water quality based

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effluent limitations and standards), 301 (b)(2)(D) (Toxics), 304(b)(2) (best available treatment) and 307(a)(2) (Toxics) of the CWA, which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

10F. ESTABLISHING WV/NPDES PERMIT CONDITIONS

10F.01 General - In addition to conditions required in all WV/NPDES permits, the Director shall establish conditions in WV/NPDES permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the CWA, Article 5A and this section. An applicable requirement is a State or Federal or interstate compact, statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit, or is any requirement which takes effect prior to final administrative disposition of a permit and is also any requirement which takes effect prior to the modification or reissuance of a permit. Section 10I.02(d) (Reopening of comment period) provides a means for reopening a WV/NPDES permit proceeding at the discretion of the Director where new requirements become effective during the permitting process. An applicable requirement is also any requirement which takes effect prior to a modification or reissuance of a permit.

10F.02 Effluent Limitations - Each permit shall include conditions meeting the following requirements when applicable:

- (a) Technology based effluent limitations and standards for existing sources based on effluent limitations and standards under Section 301 of CWA or new source performance standards promulgated under

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Section 306 of CWA, or case-by-case effluent limitations determined under Section 402(a)(1) of CWA, or a combination of the two in accordance with 40 CFR Part 125. For new sources or new discharges, these technology based limitations and standards are subject to the provisions of Subsection 10K (protection period).

- (b) Other effluent limitations and standards under Section 301, 302, 303, 307, and 318 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or reissue the permit to conform to the toxic effluent standard or prohibition.
- (c) Water Quality Standards - Any more stringent requirements necessary to achieve water quality standards established pursuant to the CWA or the State Act and regulations, including requirements of other affected States.
- (d) Reopener Clause - Any WW/NPDES permit issued shall include effluent limitations and a compliance schedule to meet the requirements of Sections 301(b)(2)(A), (C), (D), (E) and (F) of CWA whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits shall include a reopener condition (10E.16) stating that, if an applicable standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or

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limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be modified or revoked and reissued to conform to that effluent standard or limitation.

- (e) Any requirements necessary to ensure consistency with the requirements of a Water Quality Management Plan approved by EPA under Section 208(b) of CWA.
- (f) Alternate limits - Incorporate alternate effluent limitations or standards where warranted by "fundamentally different factors" under 40 CFR Part 125, Subpart D.
- (g) For toxic pollutants - limitations established under paragraphs (a), (b), or (c) of this section, to control pollutants meeting the criteria listed in paragraph 1 of this subsection. Limitations will be established in accordance with paragraph 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.
 - 1. Limitations must control all toxic pollutants which:
 - (A) The Director determines (based on information reported in a permit application under §10D.05(b)(6) and (8) or in a notification under 10E.13(d)4 or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology based treatment requirements appropriate to the permittee; or
 - (B) The discharger does or may use or manufacture a toxic pollutant as an intermediate or final product or by-product.

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2. The requirement that the limitations control the pollutants meeting the criteria of paragraph 1 of this section above will be satisfied by:

(A) Limitations on those pollutants; or

(B) Limitations on other pollutants which, in the judgement of the Director, will provide the necessary treatment of the pollutants.

(h) Notification level. A "notification level" which exceeds the notification level of Section 10E.13(d)4, upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology based treatment requirements appropriate to the permittee.

(i) Immediate Reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 10E.13(d)2(C) (Immediate Reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or an pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(j) Monitoring requirements - In addition to Section 10E.11, all permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the

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monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 4 below. Reporting shall be no less frequent than specified in the above regulations.

4. To assure compliance with permit limitations, requirements to monitor:

A. The volume of effluent discharged from each outlet;

B. Other measurements as appropriate, including pollutants in internal waste streams under Section 10G.08; pollutants in intake water for net limitations under Section 10G.07; frequency rate of discharge, etc., for noncontinuous dischargers under Section 10G.04; and pollutants subject to notification requirements under Section 10E.13(d)4.

5. Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(k) Best management practices to control or abate the discharge of pollutants when:

1. Authorized under Section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary activities;

2. Numeric effluent limitations are infeasible; or

3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA.

(1) Reissued Permits

1. Except as provided in paragraph (1)(2), when a permit is reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance).
2. When effluent limitations were imposed under Section 402 (a)(1) of the CWA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:
 - A. The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);
 - B. The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (Section 301(b)(2)(E) of CWA);

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- C. The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance; or
- D. There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(m) Navigation. Any conditions that the Secretary considers necessary to ensure that navigation and anchorage will not be substantially impaired.

(n) Schedules of Compliance - The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and State Act and regulations.

1. Any schedules of compliance for existing sources shall require compliance as soon as possible, but in no case later than the applicable statutory deadline (i.e. July 1, 1984 for technology based limits under CWA 301(b)(1)(B); July 1, 1972 for water quality based effluent limits under CWA 301 (b)(1)(C); or July 1, 1987 or three years after promulgation for control of a toxic pollutant under 207(a)).
2. The first W/NPDES permit issued to a new source, a new discharger or a recommencing discharger shall not contain a schedule of compliance under this section.

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3. Interim dates. Any permit may contain a schedule of compliance for completion of interim requirements and require submission of reports detailing progress toward completion of such interim requirements. If a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements (for example, actions, operations or milestone events) and the dates for their achievement, but the time between interim dates shall not exceed one (1) year.
4. If the time necessary for completion of any interim requirement is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
5. Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final compliance date, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements or submit progress reports if section (d) is applicable.

10G. CALCULATING WV/NPDES CONDITIONS

- 10G.01 Outlets and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outlet or discharge point of the permitted facility, except as otherwise provided under Section 10F.03(k0. (BMP's where limitations are infeasible) and Section 10G.08 (limitations on internal waste streams).

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- 10G.02 Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal (that is, the sum of the dissolved and suspended fractions of the metal) unless:
- (a) An applicable effluent standard or limitation has been promulgated under CWA and specifies the limitation for the metal in the dissolved or valent form; or
 - (b) In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of CWA.
- 10G.03 Continuous Discharges. For all continuous discharges, all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations.
- 10G.04 Non-continuous Discharges. Discharges which are not continuous, shall be particularly described and limited, considering the following factors, as appropriate:
- (a) Frequency;
 - (b) Total mass;
 - (c) Maximum rate of discharge of pollutants during the discharge; or
 - (d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.
- 10G.05 Mass limitations - Any pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.
- 10G.06 Pollutants in intake water. Except as provided in section 10G.07, effluent limitations imposed in permits shall not be adjusted for

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pollutants in the intake water.

10G.07 Net limitations.

(a) Upon request of the permittee, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, adjusted to reflect credit for pollutants in the permittee's intake water, if the permittee demonstrates that its intake water is drawn from the same body of water into which its discharge is made and if:

1. A. The applicable effluent limitations and standards specifically provide that they shall be applied on a net basis; or
B. The permittee demonstrates that pollutants present in the intake water will not be entirely removed by its treatment systems operated by the permittee; and
2. The permit contains conditions requiring the permittee to conduct additional monitoring as necessary to determine continued eligibility for and compliance with any such adjustments.

(b) The permittee shall notify the Director if eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit may be modified or reissued.

(c) Permit effluent limitations or standards adjusted under this subsection shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the permittee. Adjustments under this subsection shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the permittee.

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In addition, effluent limitations or standards shall not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor may effluent limitations or standards be adjusted to the extent that the permittee significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same. Nor shall effluent limitations or standards be calculated on a "net" basis for permittees whose intake water comes from underground water systems.

10G.08 Internal waste streams.

- (a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring requirements under Section 10E.11 shall also be applied to the internal waste streams.
- (b) Limits on internal waste streams will be imposed only when the fact sheet under Section 10J sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impractical, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

10G.09 Disposal of pollutants into wells, or by land application.

(a) Calculations of Effluent Limitations - Generally. When part of a discharger's process wastewater is not being discharged into surface waters of the State because it is disposed into a well, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters of the State, applicable effluent standards and limitations for the discharge in a WW/NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Unless the conditions of paragraph (b) apply, effluent limitations and standards in the permit shall be calculated by one of the following methods:

1. If none of the waste from a particular process is discharged into surface waters of the State, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.
2. In all cases other than those described in paragraph (1) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the State, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more stringent if discharges to wells, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

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(b) Calculations of Effluent Limitations for Pollutants Either Specified or Expressed in Concentrations. Paragraph (a) of this subsection shall not apply to the extent that promulgated effluent limitations guidelines:

1. Control concentrations of pollutants discharged but not mass;
or
2. Specify a different specific technique for adjusting effluent limitations to account for well injection or land application.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under Sections 10E or 10F of this chapter.

10H. MODIFICATION, REISSUANCE, SUSPENSION AND REVOCATION OF PERMITS

10H.01 General

- (a) Permits may be modified, reissued, suspended or revoked either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may be modified, reissued, suspended or revoked only for the reasons specified in this section. All requests shall be submitted to the Director in writing and shall contain facts or reasons supporting the request. The Director may require additional information, and in the case of a major modification, may require submission of an updated permit application.
- (b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, suspension or revocation are not subject to public notice, comment, or hearings.

10H.02 Modifications

- (a) General - All requests for modification shall be submitted in writing to the Director citing facts or reasons supporting the request for modification and indicating under which subsection the request is made. The Director may request additional information and may require the submission of an updated permit application. When a permit modification is requested, only the conditions subject to modification are reopened. All other conditions of the 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 10I.01, follow the public notice procedures in Section 10I.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 10I.01, or following the procedures of Section 10I or 10J or procedures in Section 8 of the State Act. Minor modifications may:
 - A. Correct typographical errors.

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- 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.

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- I. Allow relocation of elements of treatment facilities or disposal systems, due to topography or equipment failures.
 - J. Other causes not specified as major causes of modification.
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 10I.01 and the public notice procedures of Section 10I.02, unless an emergency is declared by the Director (see Paragraph M). 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 Section 10K).
 - 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

cummulative 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
 - c. A permittee requests modification within ninety (90) days of Federal Register or State Register notice of the action on which the request is based.
- (2) For judicial decisions, when a court of competent jurisdiction has remanded and stayed State or Federal promulgated regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee within ninety (90) days of judicial remand.

(3) Where new regulations, standards or judicial decisions occur, all previously issued permits may be modified by a general modification which will be subject to public notice procedures by publishing the notice in major daily newspapers throughout the State.

- D. Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, (see Section 10F.02(n)) such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case shall a compliance schedule be modified to extend beyond an applicable CWA statutory deadline (e.g. technology based effluent limits under CWA 301(b)(1)(B) or water quality based effluent limits under CWA 301 (b)(1)(C).
- E. Variances - When the permittee has filed a timely request for a variance under CWA Sections 301(c), 301(g), 301(h), 301(i), 301(k), 302(b)(2), or 316(a), or for "fundamentally different factors" (See Appendix B).
- F. Toxics - When required to incorporate an applicable 307(a) toxic effluent standard or prohibition.
- G. Reopener - When required by the "reopener" conditions in a permit, which are established in the permit under Section 10F.02.
- H. Net Limits - Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Section 10G.07(a) and (b).
- I. Non-limited Pollutants - When the level of discharge of any

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pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the permittee.

- J. Use of Toxics - When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application.
- K. Notification Levels - To establish a "notification level" as provided in Section 10E.13(d)4.
- L. Upon failure of the Director to notify another State as required by Section 10I.02(d) whose waters may be affected by a discharge from this State and different permit conditions are required to comply with the other states water quality standards.
- M. Emergency Modifications - If an emergency is declared by the Director pursuant to Chapter 20, Article 5A, Section 12(a), the provisions of this subsection shall apply. He may either immediately modify the permit without prior public notice or preparation of a draft permit or shorten the time period for public notice but that public notice period shall be no less than ten (10) days. When the Director immediately modifies the permit, he or she shall at the same time, also prepare a draft permit and follow the public notice procedures for permit modifications so that the public may scrutinize his action and comment upon it. Following the preparation of the draft permit and public notice procedures, the Director may again modify the permit in a manner consistent with public comment.

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10H.03 Reissuance

- (a) General - The Director may reissue permits prior to their expiration date for any cause specified in this section. When a WW/NPDES permit is to be reissued the entire permit is reopened and the Director shall require submission of a new permit application. During any reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued. Reissuance requires a draft permit under Section 10I.01 and the public notice procedures of Section 10I.02. Processing of a reissuance application does not exempt the permittee from compliance with any permit term or condition.
- (b) Reissuance Based on Permittee Request or Agreement - The following are causes for reissuance of a permit when the permittee requests or agrees:
1. All causes for modification listed under 10H.02(c)2.
 2. The WW/NPDES permit will expire within eighteen (18) months and the permittee has submitted an application for reissuance which is approvable.
- (c) Reissuance Without Permittee Request or Agreement - The following are causes for reissuance of a permit:
1. Cause exists for suspension or revocation of the WW/NPDES permit under 10H.04 and the Director determines reissuance is appropriate.
 2. The facility has an Article 5A permit which was issued prior to July 1, 1974 which does not have an expiration date.
 3. The Director has received notification of a proposed transfer of the permit and has determined to reissue both the WW/NPDES

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permit and surface mining permit.

4. Conditions exist which allow reopening and reissuance of the permit under 10E.16.

- 10H.04 Suspension and Revocation of Permits - when suspending or revoking a permit the Director shall follow the procedures of Section 10I and 10J. A Notice of Intent to revoke a permit is a type of draft permit which follows the same procedures as any draft permit under Section 10I.01. The following are causes for revocation or suspension of a permit during its term, or for denying a permit reissuance application:
- (a) Noncompliance by the permittee with any condition of the permit; or
 - (b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
 - (c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation; or
 - (d) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

10I. PROCEDURE FOR PERMIT ISSUANCE

10I.01 General

- (a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
- (b) If the Director decides to prepare a draft permit, it shall contain the following information:

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1. All applicable conditions under Sections 10E and 10F;
2. All monitoring requirements; and
3. Effluent limitations, standards, prohibitions and conditions and all variances under 10M that are to be included.

(c) All draft permits shall be accompanied by a fact sheet if required under Section 10J and shall be publicly noticed and available for public comment in accordance with Section 10I.02.

10I.02 Public Notice, Comment and Hearings

(a) Public Notice

1. Scope

- A. Public notice shall be given that a draft permit has been prepared.
- B. Public notices may describe more than one permit or permit action.

2. Timing

- A. Public notice of the preparation of a draft permit shall allow at least 51 days for public comment. (Extra time may be allowed if requested.)
- B. Public notice of a public hearing shall be given at least 14 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(b) Reopening of the Public Comment Period - If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments

submitted.

(c) Proof of Publication. The applicant shall be responsible for publication of a Public Notice in a newspaper of general circulation in the location of the proposed permit area. Upon publication the applicant shall send the Director a copy of the advertisement and proof of publishing along with an affidavit certifying that the notice, and a fact sheet, if required, was sent to all persons listed in paragraphs (d) 1. A, B, and C.

(d) Methods. Public notice of draft permit shall be given by the following methods:

1. By the applicant mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph 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 State Historic Preservation Unit of the Department of Culture and History, and other appropriate government authorities, including any affected States and including the U. S. Army Corps of Engineers;

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

C. Any other State or Federal agency which the Director has issued or is required to issue a permit for the same facility or activity under any of the following

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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. 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 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).

(e) Contents

1. All public notices. All public notices issued under this section shall contain the following minimum information:
 - A. Name and address of the office processing the permit action for which notice is being given;
 - B. Name and address of the permittee or permit applicant and a location map of the proposed area, except in the case of general permits;
 - C. A brief description of the business conducted at the facility or activity described in the permit application or in the draft permit, except in the case of general permits;
 - D. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;
 - E. A brief description of the comment procedures required and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and
 - F. A general description and map of the location of the facility and the name of the receiving water(s). For draft general permits, this requirement will be satisfied by a map or description of the permit area.

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3. In addition to the general public notice described in paragraph 4 of this section, all persons identified in (d)3(A) of this Section shall be mailed a copy of the fact sheet, if any, and notification of where to inspect or how to receive a copy of the draft permit and application.

(f) Public Comments and Requests for Public Hearings. During the public comment period provided under Section 10I.02(a), any interested person may submit written comments on the draft permit and may request a public hearing, if a public hearing has not been already scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 10I.04.

10I.03 Public Hearings.

(a) The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). The Director also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the issues to be considered and the scope of the reopening and will be sent to all who originally commented and to anyone who was a party to a public hearing.

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(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph 2A shall automatically be extended to the close of any public hearing under this section.

(d) A tape recording or written transcript of the hearing shall be made available to the public, upon request.

10I.04 Response to Comments

(a) At the time that any final permit is issued, the Director shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

10I.05 Public Comment by Government Agencies

(a) If during the comment period for a draft permit, the District Engineer of the U. S. Army Corps of Engineers advises the Director in writing that anchorage and navigation of any of the waters of the State would be substantially impaired by the granting of a

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permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit under this section or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made under the provisions of this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be stayed in the WW/NPDES permit for the duration of that stay.

- (b) If during the comment period, any other State or Federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial risk to public health, impairment of fish, shellfish, wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the CWA and Article 5A.
- (c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

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10I.06 Public Access to Information -Public access to information shall be governed by the Freedom of Information Act, Chapter 29B of the West Virginia Code.

10J FACT SHEET

10J.01 When Fact Sheet Prepared - A fact sheet shall be prepared for every draft permit for:

1. a major facility or activity;
2. every general permit;
3. every draft permit that incorporates a variance; and
4. every draft permit which the Director finds is the subject of widespread public interest or raises major issues.

The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant, to the Division of Water Resources and, on request, to any other person.

10J.02 Contents - The fact sheet shall include, when applicable:

- (a) A brief description of the type of facility or activity which is the subject of the draft permit.
- (b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being discharged.
- (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.
- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified.

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- (e) A description of the procedures for reaching a final decision on the draft permit including:
 - 1. The beginning and ending dates of the comment period under Section 10I.02 and the address where comments will be received;
 - 2. Procedures for requesting a hearing and the nature of that hearing; and
 - 3. Any other procedures by which the public may participate in the final decision.
- (f) Name and phone number of a person to contact for additional information.
- (g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.
- (h) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - A. Limitations to control toxic pollutants under Section 10F.02(g);
 - B. Limitations on internal waste streams under Section 10G.08; or
 - C. Limitations on indicator pollutants under 40 CFR §125.3(g).
- (i) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

10K NEW SOURCES AND NEW DISCHARGER

10K.01 Definitions.

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- (a) "Site", "new source", "new discharger" and "existing source" are defined in Section 2.
- (b) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.
- (c) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

10K.02 Effect of Compliance With New Source Performance Standards.

- (a) Except as provided in paragraph (b) of this subsection, any new discharger or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology based standards under Section 301(b)(2) of CWA for the shortest of the following periods:
 - 1. Ten years from the date that construction is completed;
 - 2. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

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3. The period of depreciation or amortization of the facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code of 1954.
- (b) The protection from more stringent standards of performance afforded by paragraph (c)(1) of this section does not apply to:
1. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under Section 307(a) of CWA; or
 2. Additional permit conditions controlling pollutants listed as toxic under Section 307(a) (toxic pollutants) of the CWA or as hazardous substances under Section 311 of the CWA and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.
- (c) When a W/NPDES permit is issued to a source with a "protection period" under paragraph (a) of this subsection which will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to comply with the requirements of Section 301 and any other applicable requirements of CWA immediately upon the expiration

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of the protection period. No additional period for achieving compliance with these requirements shall be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(d) The owner or operator of a new source, a new discharger, or a recommencing discharger shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet the conditions of its permit before beginning to discharge.

(e) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

10L GENERAL PERMITS

10L.01 Coverage. - The Director may issue a general permit in accordance with the following:

(a) Area. The general permit shall be written to cover a category of discharges described in the permit under paragraph (a)(2) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;
2. City, County, or State political boundaries;
3. State highway systems;

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4. Standard metropolitan statistical area as defined by the U.S. Office of Management and Budget;
 5. Any other appropriate division or combination of boundaries.
- (b) Sources. The general permit shall be written to regulate, within the area described in paragraph (a) of this subsection, either:
1. A category of point sources from coal mines, preparation plants and refuse areas that:
 - (1) Involve the same or substantially similar types of operations;
 - (2) Discharge the same types of wastes;
 - (3) Require the same effluent limitations or operating conditions;
 - (4) Require the same or similar monitoring; and
 - (5) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.
 2. If the Director tentatively decides to issue a general permit, he or she shall prepare a draft general permit under Section 10I.01(a).

10L.02 Administration

- (a) In general. General permits may be modified, reissued, suspended, or revoked in accordance with the applicable requirements of 10H of this Section.
- (b) Requiring an individual permit - The Director may require any person authorized by a general permit to apply for and obtain

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an individual permit. Any interested person adversely affected or aggrieved may petition the Director to take action under this subparagraph. Cases where an individual permit may be required include the following:

- 1 The discharger is not in compliance with the conditions of the general permit;
- 2 A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- 3 Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- 4 A Water Quality Management plan containing requirements applicable to such point sources is approved.

10M DECISION ON VARIANCES

10M.01 Actions by Director

(a) The Director may grant or deny requests for the following variances:

1. An alternate water quality based effluent limitation pursuant to the Water Resource Board's Administrative Regulations, Series I, Section 8.
2. After consultation with the Regional Administrator, extensions under CWA Section 301(k) based on the use of innovative technology; or
3. Variances under CWA Section 316(a) for thermal pollution.

(b) The Director may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

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1. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;
2. A variance based on the economic capability of the applicant under CWA Section 301(c);
3. A variance based upon certain water quality factors under CWA Section 301(g); or
4. A variance based on water quality related effluent limitations under CWA Section 302(b)(2) [40 CFR part 125 (subpart D)].

10M.02 Actions By EPA

- (a) The Regional Administrator may deny, forward, or submit to the EPA Deputy Assistant Administrator for Water Enforcement with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the Director.
- (b) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance request submitted under paragraph (c) of this section. If the Deputy Assistant Administrator approves the variance, the Director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 CFR § 124.64.

10N. ENFORCEMENT

10N.01 General

The provisions of this chapter may be enforced by all of the applicable provisions in the State Act, including:

- (a) Orders issued by the Director in accordance with Sections 7, 8, 10 and 12A of Article 5A;

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(b) Civil penalties and injunctive relief in accordance with Article 5A, Section 17; and

(c) Criminal penalties in accordance with Section 19 of Article 5A.

10N.02 Citizen Participation. The Director shall provide for public participation in enforcement by the following:

(a) Investigating and providing a written response to all signed, written complaints from citizens;

(b) Not opposing intervention by any citizen when permissive intervention is authorized by statute or rule; and

(c) Publishing notice in a newspaper of general circulation in the county in which the discharge is located at least 30 days prior to the final settlement of any civil action or consent order issued by the Board. This notice will identify the person discharging, the specific enforcement action to be taken, and the name and address where information on the proposed settlement can be obtained. The Director shall consider all comments received during the 30 day period.

10N.03 After the Fact Permitting. Any applicant conducting an activity required to have a permit under 10C.01 who does not have a valid and effective W/NPDES, NPDES or Article 5A permit for such activity and who is at fault for not having such a permit, may be assessed an administrative penalty under W.Va. Code § 20-6-17 in the amount of \$2,000 for each month the activity has been conducted without one of the required permits.

Appendix A

307(a) Toxic Pollutants

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/Dieldrin
5. Antimony and compounds
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than dichlorobenzenes)
15. Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers chloroethyl and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites
35. Ethylbenzene
36. Fluoranthene
37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, - bromophenylphenyl ether, bis (chloroethoxy) methane and polychlorinated diphenyl ethers)
38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
39. Heptachlor and metabolites
40. Hexachlorobutadiene
41. Hexachlorocyclohexane
42. Hexachlorocyclopentadiene
43. Isophorone
44. Lead and compounds
45. Mercury and compounds
46. Naphthalene
47. Nickel and compounds
48. Nitrobenzene
49. Nitrophenols (including 2,4-dinitrophenol dinitrocresol)
50. Nitrosamines
51. Pentachlorophenol
52. Phenol
53. Phthalate ester
54. Polychlorinated biphenyls (PCBs)
55. Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
56. Selenium and compounds
57. Silver and compounds
58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
59. Tetrachloroethylene
60. Thallium and compounds
61. Toluene
62. Toxaphene
63. Trichloroethylene
64. Vinyl chloride
65. Zinc and compounds