

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED  
1990 JUN -1 10:33  
WEST VIRGINIA

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Department of Commerce, Labor and Environmental Resources, Division of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code §20-5A-6a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 26

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

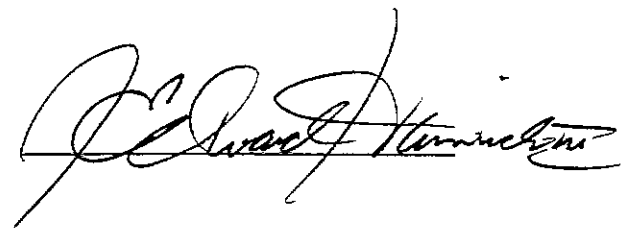
"Water Pollution Control Permit Fee Schedules"

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Please see the attached sheets.

Use Additional Sheets If Necessary.



3.80.

DATE: June 1, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Commerce, Labor, and Environmental  
Resources, Division of Natural Resources

EMERGENCY RULE TITLE: Water Pollution Control  
Permit Fee Schedules

1. Emergency rule was filed on: June 1, 1990
2. Statutory authority for promulgating the emergency rule:  
West Virginia Code, Chapter 20, Article 5A, Section 6a
3. Proposed legislative rule was filed on: June 1, 1990
4. Does the emergency rule adopt new language or does it  
amend or repeal a current legislative rule?

The emergency rule repeals and replaces a current  
legislative rule.

5. Has the same or similar emergency rule previously been  
filed and expired?

No.

6. State, with particularity, those facts and circumstances  
which make the emergency rule necessary for the immediate  
preservation of public peace, health, safety, or welfare.

Not applicable.

7. If the emergency rule was promulgated in order to comply  
with a time limit established by the Code or federal  
statute or regulation, cite the Code provision, federal  
statute, or federal regulation and time limit established  
therein.

Not applicable.

EMERGENCY RULE TITLE: Water Pollution Control  
Permit Fee Schedules

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This emergency rule repeals and replaces a nearly identical rule that was approved by the Legislature during the 1990 Regular Session. In approving that rule, the Legislature amended the schedule of annual permit fees proposed by the agency in order to ease a perceived financial burden imposed upon small public service districts and municipalities. In amending this schedule to establish fees based upon number of customers, rather than upon volume of discharge as originally proposed by the agency, the Legislature inadvertently raised the minimum fee from \$50 to \$250. As a result, both public and private sewage treatment facilities that serve fewer than 1,000 customers are to be assessed this higher annual fee.

The economic impact on a sewage system serving only a very few customers is apparent. The higher fee can be a detriment to the attraction of new commercial enterprises and the construction of new housing units. In order to prevent substantial harm to the public interest that will result from lost economic development opportunities, this emergency rule subdivides the permit fee structure for facilities serving fewer than 1,000 customers into three smaller categories, with a minimum annual permit fee of \$50 for the smallest facility. For the same reason, this rule also lowers the annual permit fees for those facilities, especially water treatment works, that discharge relatively small amounts of industrial or other wastes. By these fee reductions, no facility will pay a fee higher than originally proposed by the agency and many facilities will pay less, thereby reducing economic hardship as was intended by the Legislature.

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1990 JUN -1 AM 10:39

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF NATURAL RESOURCES  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

SERIES 26  
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

§47-26-1. General.

1.1. Scope and Purpose. -- This emergency rule establishes schedules of permit application fees and annual permit fees for state water pollution control permits and national pollutant discharge elimination system permits issued by the chief of the Section of Water Resources. This rule applies to any person who is required to apply for and obtain a permit from the chief in order to conduct an activity that is enumerated in W. Va. Code §20-5A-5.

1.2. Authority. -- W. Va. Code §20-5A-6a.

1.3. Filing Date. -- June 1, 1990.

1.4. Effective Date. -- June 1, 1990.

1.5. Incorporation by Reference. -- Whenever federal or State statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on July 1, 1989.

1.6. Repeal of Former Rule. -- This emergency rule repeals and replaces 47 C.S.R. 26 "Water Pollution Control Permit Fee Schedules" that was filed on April 10, 1990 and became effective on June 1, 1990.

§47-26-2. Definitions.

2.1. "Activity" means an activity for which a permit is required pursuant to the provisions of W. Va. Code §20-5A-5.

2.2. "Average Discharge Volume" or "ADV" means:

2.2.1. For a State water pollution control permit, the flow reported on the permit application.

2.2.2. For a national pollutant discharge elimination system permit for industrial wastes or for other wastes, the sum of the average flows reported on the permit application, as described in 46 C.S.R. 2 §4.4.b.3.

## EMERGENCY RULE

2.2.3. For a national pollutant discharge elimination system permit for sewage, the design flow reported on the permit application.

2.3. "Chief" means the chief of the Section of Water Resources of the Division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources.

2.4. "Closed System Facility" means a facility that is required by effluent limitation guidelines or other statutory or regulatory mandates to maintain no discharge or to maintain a recycle system or that otherwise maintains a closed system.

2.5. "Customer" means any person who is provided wastewater disposal services from a facility permitted under W. Va. Code §20-5A. For the purpose of these regulations, commercial customers and residential customers other than single family dwellings (e.g., apartment complexes, trailer parks) shall be translated into customer equivalents by dividing their total daily estimated volume of wastewater by three hundred and fifty gallons per day (350 gpd).

2.6. "Existing Facility" means a facility for which a State water pollution control permit or a national pollutant discharge elimination system permit had been issued by the chief prior to July 1, 1989.

2.7. "Facility" means any plant, means, system, disposal field, lagoon, pumping station, constructed drainage ditch, surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, solid waste facility, or other works that is installed for the purpose of treating, neutralizing, stabilizing, holding, disposing, or controlling the quality and rate of flow of sewage, industrial wastes, or other wastes.

2.8. "Industrial Wastes" means any liquid, gaseous, solid, or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade, or business, or from or incidental to the development, processing, or recovery of any natural resources. The term "industrial wastes" includes the admixture of industrial wastes with sewage or other wastes.

2.9. "Major Facility" means a facility or activity classified as a major facility by the Regional Administrator of the United States Environmental Protection Agency for Region III in joint consultation with the chief.

## EMERGENCY RULE

2.10 "Major Modification" means a modification of an issued permit made in accordance with the provisions of 46 C.S.R. 2 §9.2.b.

2.11. "Minor Modification" means a modification of an issued permit made in accordance with the provisions of 46 C.S.R. 2 §9.2.a.

2.12. "Minor POTW" means a POTW that is not a major facility.

2.13. "New Facility" means a facility for which a State water pollution control permit or a national pollutant discharge elimination system permit had not been issued by the chief prior to July 1, 1989.

2.14. "Other Wastes" means garbage; refuse; decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand; lime; cinders; ashes; offal; night soil; silt; oil; tar; dyestuffs; acids; chemicals; heat; and all other materials and substances that are not, by definition, sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the State.

2.15. "Permit" means a State water pollution control permit or a national pollutant discharge elimination system permit issued by the chief.

2.16. "Person" means:

2.16.1. Any industrial user, public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country;

2.16.2. The State of West Virginia;

2.16.3. Any governmental agency, including federal facilities;

2.16.4. Any political subdivision of this State, including a county commission, municipality, sanitary district, public service district, drainage district, soil conservation district, or watershed improvement district;

2.16.5. Any partnership, trust, or estate;

2.16.6. Any person or individual;

EMERGENCY RULE

2.16.7. Any group of persons or individuals acting individually or as a group; or

2.16.8. Any other legal entity.

2.17. "Primary Industry Category" means any industry category listed in Appendix A of 40 C.F.R. Part 122.

2.18. "Priority Pollutant" means any substance listed in 40 C.F.R. §401.15.

2.19. "Publicly-Owned Treatment Works" or "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 as defined by Section 502(4) of the Clean Water Act. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

2.20. "Secondary Industry Category" means any industry category not listed in Appendix A of 40 C.F.R. Part 122.

2.21. "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface waters as may be present.

2.22. "Solid Waste Facility" means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste including landfills, transfer stations, incinerators, resource recovery facilities, recycling facilities, and other such facilities not herein specified.

2.23. "Toxic Chemical" means:

2.23.1. Any substance listed in Table V of 47 C.S.R. 35;

2.23.2. Any substance listed in Table VI of 47 C.S.R. 35;

2.23.3. Any substance listed in 40 C.F.R. §116.4;

2.23.4. Any substance listed in 40 C.F.R. §302.4;

2.23.5. Any substance listed in 40 C.F.R. §372.65;

## EMERGENCY RULE

2.23.6. Any substance listed in 40 C.F.R. §712.30 or 40 C.F.R. §716.120; or

2.23.7. Any substance for which replicated test data exist to indicate that exposure to that substance poses a risk of injury to human health or the environment.

### §47-26-3. Fee Assessment and Collection.

3.1. Assessment of Permit Application Fees. Any person who applies for a permit shall pay the appropriate permit application fee in accordance with the provisions of Sections 4 through 6 of these regulations.

3.2. Assessment of Annual Permit Fees. Any person who holds a permit shall pay an annual permit fee in accordance with the provisions of Section 7 of these regulations.

3.3. Method of Fee Payment. All fees assessed under these regulations shall be submitted to the chief by check or money order payable to the West Virginia Division of Natural Resources.

3.4. Collection of Permit Application Fees. The permit application fee shall be submitted to the chief with the permit application. No permit application will be processed until the appropriate fee has been received by the chief.

3.4.1. A person may seek verification of the correct amount of a permit application fee by submitting his calculation of the fee to the chief in writing. This calculation shall be submitted sufficiently in advance of the permit application so that the provisions of 46 C.S.R. 2 §4.3 are met. Within thirty (30) days of the receipt of this calculation, the chief shall notify the applicant of the accuracy of his calculation. If the applicant's calculation is incorrect, the chief shall advise him of the correct amount to be submitted as the permit application fee.

3.4.2. If the chief determines that a submitted application is incomplete and must be returned to the applicant for additional information, a permit application resubmission fee shall accompany the refiled application. This fee shall be either a sum equivalent to five percent (5%) of the permit application fee or fifty dollars (\$50), whichever is greater.

3.5. Collection of Annual Permit Fees. The annual permit fee shall be submitted to the chief by no later than the anniversary of the date of permit issuance in each year of the term of the permit.

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3.5.1. A permit will become void if the annual permit fee has not been paid within one hundred and eighty (180) days of the due date.

3.5.2. A permit will not be reissued until all annual permit fees due during the term of that permit have been paid in full.

### §47-26-4. Initial Permit Application Fees.

4.1. Fee Calculation. Except as provided in Sections 4.2 through 4.4 of these regulations, all initial permit application fees shall be calculated through the use of the following formula: the initial permit application fee shall equal the volume fee multiplied by the facility factor multiplied by the waste factor (i.e., Initial Permit Application Fee = Volume Fee X Facility Factor X Waste Factor).

4.1.1. The appropriate volume fee shall be determined through the use of the "New Facility" column of Table A of these regulations.

4.1.2. The appropriate facility factor shall be determined through the use of Table B of these regulations.

4.1.3. The appropriate waste factor shall be determined through the use of Table C of these regulations.

4.2. Publicly-Owned Treatment Works. The initial permit application fee for a POTW that operates a collection system only shall be two thousand five hundred dollars (\$2,500).

#### 4.3. Closed System Facilities.

4.3.1. The initial permit application fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be seven thousand five hundred dollars (\$7,500).

4.3.2. The initial permit application fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be three hundred fifty dollars (\$350).

4.4. Solid Waste Facilities. The initial permit application fee for a solid waste facility shall be set and collected in accordance with the provisions of 47 C.S.R. 38.

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### §47-26-5. Permit Renewal Application Fees.

5.1. Fee Calculation. Except as provided in Sections 5.2 through 5.4 of these regulations, all permit renewal application fees shall be calculated through the use of the following formula: the permit renewal application fee shall equal the volume fee multiplied by the facility factor multiplied by the waste factor (i.e., Permit Renewal Application Fee = Volume Fee X Facility Factor X Waste Factor).

5.1.1. The appropriate volume fee shall be determined through the use of the "Existing Facility" column of Table A of these regulations.

5.1.2. The appropriate facility factor shall be determined through the use of Table B of these regulations.

5.1.3. The appropriate waste factor shall be determined through the use of Table C of these regulations.

5.2. Publicly-Owned Treatment Works. The permit renewal application fee for a POTW that operates a collection system only shall be one thousand dollars (\$1,000).

#### 5.3. Closed System Facilities.

5.3.1. The permit renewal application fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be two thousand five hundred dollars (\$2,500).

5.3.2. The permit renewal application fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be one hundred seventy five dollars (\$175).

5.4. Solid Waste Facilities. The permit renewal application fee for a solid waste facility shall be set and collected in accordance with the provisions of 47 C.S.R. 38.

### §47-26-6. Permit Modification Application Fees.

6.1. Fee Calculation. Except as provided in Sections 6.2 through 6.6 of these regulations, all permit modification application fees shall be calculated through the use of the following formula: the permit modification application fee shall equal the volume fee multiplied by the facility factor multiplied by the waste factor (i.e., Permit Modification Application Fee = Volume Fee X Facility Factor X Waste Factor).

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6.1.1. The appropriate volume fee shall be determined through the use of the "Existing Facility" column of Table A of these regulations. Only the discharge volume of the activity affected by the modification shall be used in determining the appropriate volume fee.

6.1.2. The appropriate facility factor shall be determined through the use of Table B of these regulations.

6.1.3. The appropriate waste factor shall be determined through the use of Table C of these regulations.

### 6.2. Publicly-Owned Treatment Works.

6.2.1. The permit modification application fee for a POTW that operates a collection system only shall be ten percent (10%) of the initial permit application fee for an application seeking a major modification.

6.2.2. The permit modification application fee for a POTW that operates a collection system only shall be two percent (2%) of the initial permit application fee or fifty dollars (\$50), whichever is greater, for an application seeking a minor modification.

### 6.3. Closed System Facilities.

6.3.1. The permit modification application fee for a closed system facility shall be ten percent (10%) of the initial permit application fee for an application seeking a major modification.

6.3.2. The permit modification application fee for a closed system facility shall be two percent (2%) of the initial permit application fee or fifty dollars (\$50), whichever is greater, for an application seeking a minor modification.

6.4. Solid Waste Facilities. The permit modification application fee for a solid waste facility shall be set and collected in accordance with the provisions of 47 C.S.R. 38.

6.5. Non-Volume-Related Major Modifications. Except as provided in Sections 6.2 through 6.4 of these regulations, the permit modification application fee shall be ten percent (10%) of the initial permit application fee for an application seeking a major modification where no discharge volume is involved.

6.6. Non-Volume-Related Minor Modifications. Except as provided in Sections 6.2 through 6.4 of these regulations,

## EMERGENCY RULE

the permit modification application fee shall be fifty dollars (\$50) for an application seeking a minor modification where no discharge volume is involved.

### §47-26-7. Annual Permit Fees.

7.1. Facilities Discharging Sewage. The annual permit fee for a facility that discharges sewage shall be determined through the use of Table D of these regulations.

7.2. Facilities Discharging Industrial Wastes or Other Wastes. The annual permit fee for a facility that discharges industrial wastes or other wastes shall be determined through the use of Table E of these regulations.

7.3. Publicly-Owned Treatment Works. The annual permit fee for a POTW that operates a collection system only shall be determined through the use of Table D of these regulations.

#### 7.4. Closed System Facilities.

7.4.1. The annual permit fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be two thousand five hundred dollars (\$2,500).

7.4.2. The annual permit fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be fifty dollars (\$50).

7.5. Solid Waste Facilities. The annual permit fee for a solid waste facility shall be two thousand five hundred dollars (\$2,500).

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TABLE A  
Volume Fees

Average Discharge Volume (gallons per day)	Existing Facility Volume Fee	New Facility Volume Fee
less than 1,001	\$50	\$200
1,001 to 5,000	\$100	\$300
5,001 to 50,000	\$150	\$500
50,001 to 100,000	\$200	\$600
greater than 100,000	\$250	\$750

Note: Stormwater runoff shall be included when calculating the average discharge volume of a facility that discharges industrial waste or other waste. Calculations of the average discharge volume for stormwater runoff shall be made in accordance with the provisions of Appendix A of these regulations.

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TABLE B  
Facility Factors

Type of Facility	Facility Factor
Major Facility	5.0
Primary Industry Category (except Auto and Other Laundries)	5.0
Secondary Industry Category	3.0
Minor POTWs	2.0
Auto and Other Laundries Category	1.0
Facility covered under a General Permit	0.9
All other facilities and activities	1.0

EMERGENCY RULE

TABLE C  
Waste Factors

Type of Waste	Waste Factor
Process Waste	2.0
Sewage	1.7
Contact Cooling Water	1.5
Contaminated Stormwater	1.3
Blowdowns	1.1
Once-Through Cooling Water With Additives	1.1
Once-Through Cooling Water Without Additives	1.0
Uncontaminated Stormwater	1.0
Other Waste	1.0

Note: When an industrial facility discharges more than one type of waste, the highest applicable waste factor shall be used in the calculation of the permit application fee.

TABLE D  
Annual Permit Fees For  
Facilities Discharging Sewage

Number of Customers	Annual Permit Fee
less than 100	\$50
100 to 499	\$100
500 to 999	\$250
1,000 to 1,499	\$500
1,500 to 1,999	\$750
2,000 to 2,499	\$1,000
2,500 to 2,999	\$1,250
3,000 to 3,499	\$1,500
3,500 to 3,999	\$1,750
4,000 to 4,499	\$2,000
4,500 to 4,999	\$2,250
greater than 5,000	\$2,500

EMERGENCY RULE

TABLE E

Annual Permit Fees For  
Facilities Discharging  
Industrial Wastes or Other Wastes

Average Discharge Volume (gallons per day)	Annual Permit Fee
less than 1,001	\$50
1,001 to 2,500	\$125
2,501 to 5,000	\$250
5,001 to 10,000	\$500
10,001 to 15,000	\$750
15,001 to 50,000	\$1,000
greater than 50,000	\$2,500

EMERGENCY RULE

APPENDIX A

Calculation of the Average  
Discharge Volume for Stormwater Runoff

The following formula shall be used to determine the average discharge volume for stormwater runoff:

$$\begin{array}{l} \text{Average Discharge Volume} \\ \text{for Stormwater Runoff} \\ \text{(gallons per day)} \end{array} = \frac{\text{Annual Stormwater Runoff Volume}}{366 \text{ days per year}}$$

where Annual Stormwater Runoff Volume (gallons) =

$$\begin{array}{l} \text{Annual} \\ \text{Rainfall} \\ \text{(ft/yr)} \end{array} \times \begin{array}{l} \text{Drainage} \\ \text{Area} \\ \text{(ft-sq)} \end{array} \times \begin{array}{l} 7.48 \\ \text{gallons} \\ \text{per ft-cu} \end{array} \times \text{Runoff Coefficient}$$

where the Runoff Coefficient shall be  
0.90 for areas covered by concrete or asphalt  
and 0.25 for areas covered by vegetation.

Note: An alternative method of stormwater runoff calculation may be substituted for this formula upon approval from the chief.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE July 13, 1990  
ADM. DIVISION

July 13, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: New Rule, Series 26; Water Pollution Control Permit Fee Schedules

DATE FILED AS AN EMERGENCY RULE: June 1, 1990

NO. 14-90

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

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(Plus all the volunteer  
help we can get)

DECISION                      EMERGENCY RULE DECISION  
(ERD 14-90)

AGENCY: West Virginia Department of Commerce, Labor and  
Environmental Resources, Division of Natural Resources  
RULE: Amendments, Series 26, Water Pollution Control Permit  
Fee Schedules

FILED AS AN EMERGENCY RULE: June 1, 1990

- par. 1 The Division of Natural Resources (DNR) has filed emergency amendments to the above rule by repealing and replacing it.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The DNR has filed this emergency rule with supporting documents with the Secretary of State on June 1, 1990, and with the LRMRC on June 1, 1990.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §20-5A-6a reads in part:

*§20-5A-6a(c) The director shall promulgate rules in accordance with the provisions of §29A-1-1 et seq of this code, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. . .*

*(d) The director shall promulgate rules in accordance with the provisions of §29A of this code, to establish a schedule of annual permit fees which shall be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article. Each person holding such a permit shall pay the prescribed annual permit fee to the department pursuant to the rules and regulations promulgated hereunder. Such schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of such categories or permits to degrade the waters of the state: Provided, That no annual permit fee may exceed two thousand five hundred dollars. Any such permit issued pursuant to this article shall be void when the annual permit fee is more than one hundred eighty days past due pursuant to the rules promulgated hereunder.*

par. 9 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DNR are as follows:

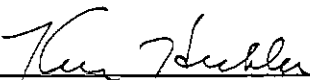
This emergency rule repeals and replaces a nearly identical rule that was approved by the Legislature during the 1990 Regular Session. In approving that rule, the Legislature amended the schedule of annual permit fees proposed by the

agency in order to ease a perceived financial burden imposed upon small public service districts and municipalities. In amending this schedule to establish fees based upon number of customers, rather than upon volume of discharge as originally proposed by the agency, the Legislature inadvertently raised the minimum fee from \$50 to \$250. As a result, both public and private sewage treatment facilities that serve fewer than 1,000 customers are to be assessed this higher annual fee.

The economic impact on a sewage system serving only a very few customers is apparent. The higher fee can be a detriment to the attraction of new commercial enterprises and the construction of new housing units. In order to prevent substantial harm to the public interest that will result from lost economic development opportunities, this emergency rule subdivides the permit fee structure for facilities serving fewer than 1,000 customers into three smaller categories, with a minimum annual permit fee of \$50 for the smallest facility. For the same reason, this rule also lowers the annual permit fees for those facilities, especially water treatment works, that discharge relatively small amounts of industrial or other wastes. By these fee reductions, no facility will pay a fee higher than originally proposed by the agency and many facilities will pay less, thereby reducing economic hardship as was intended by the Legislature.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency. for the "immediate preservation of public peace, health, safety or welfare".

par. 14 This decision shall be cited as Emergency Rule Decision 14-90 or ERD 14-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Natural Resources, the Attorney General and the Legislative Rule Making Review Committee.

  
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KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE July 13, 1990  
ADMINISTRATIVE LAW DIVISION