

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1989 JUL -3 AM 11:28
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department 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 attached sheets.

Use Additional Sheets If Necessary.



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1989 JUL -3 AM 11:28

DATE: July 3, 1989

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE OFFICE OF WEST VIRGINIA

FROM: West Virginia Department of Natural Resources

EMERGENCY RULE TITLE: Water Pollution Control Permit Fee Schedules

1. Emergency rule was filed on: July 3, 1989
2. Statutory authority for promulgating the emergency rule:
West Virginia Code, Chapter 20, Article 5A, Section 6a
3. Proposed legislative rule was filed on: July 3, 1989
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts new language.
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.

Enrolled House Bill 2677, passed on April 8, 1989, mandates the promulgation of rules by the Director of the Department of Natural Resources to establish a schedule of application fees and a schedule of annual permit fees for deposit in a special revenue fund designated the Water Quality Management Fund. That Fund is to be established in the State treasury on July 1, 1989. Furthermore, the effective date of the bill and its rule-making mandate is July 1, 1989.

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

As a result of state budget cuts and reduced funding from the U.S. Environmental Protection Agency, the Department's Water Pollution Control Act permitting program faces significant and immediate shortfalls in both staffing and program funding. The number of facilities applying for new or modified permits continues to increase and, unless these shortfalls are rectified at once, the program will be unable to accomplish its statutory responsibilities.

Due to these shortfalls, delays in actions necessary to protect the environment and promote economic development are occurring. A number of facilities cannot initiate new construction or install processes needed to prevent contamination of the State's waters due to the Department's inability to process their permit applications. New economic development may be thwarted in some instances as facility owners choose to locate in other states rather than wait for their permits to be processed in this state.

The Legislature addressed these problems through the enactment of House Bill 2677, which established fees to be collected in order to fund permit program activities. These fees were established in lieu of additional appropriations from general revenue funds. This emergency rule is necessary in order to prevent the negative environmental and economic consequences that have resulted and will continue to result from the shortfalls described above.

EMERGENCY RULE

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 26
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

FILED --
1989 JUL -3 4:11:28
OFFICE OF LEGISLATIVE COUNSEL

§47-26-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes schedules of permit application fees and a schedule of annual permit fees for state water pollution control permits and national pollutant discharge elimination system permits issued by the chief of the Division 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. -- July 3, 1989.

1.4. Effective Date. -- July 3, 1989.

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 3, 1989.

§47-26-2. Definitions.

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

2.2. "Applicant" means a "person" as defined in these regulations.

2.3. "Average Discharge Volume" means:

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

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

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

EMERGENCY RULE

2.4. "Chief" means the chief of the Division of Water Resources of the West Virginia Department of Natural Resources.

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

2.6. "Division" means the Division of Water Resources of the West Virginia Department of Natural Resources.

2.7. "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.

2.8. "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.

2.9. "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.

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

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

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

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

EMERGENCY RULE

2.14. "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.

2.15. "Other Wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, 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.

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

2.17. "Person" means:

2.17.1. 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;

2.17.2. The State of West Virginia;

2.17.3. Any governmental agency, including federal facilities;

2.17.4. 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;

2.17.5. Any partnership, trust, or estate;

2.17.6. Any person or individual;

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

2.17.8. Any legal entity whatsoever.

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

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

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2.20. "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.

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

2.22. "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.

2.23. "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.

2.24. "State Agency" means an agency of the executive, judicial, or legislative branch of the government of the State of West Virginia. The term "state agency" does not include county commissions, county boards of education, municipalities, public service districts, or sanitary districts.

2.25. "Toxic Chemical" means:

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

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

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

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

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

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

2.25.7. 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.

EMERGENCY RULE

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

3.1. Assessment of Permit Application Fees. Except as provided in Section 3.1.1 of these regulations, any person who applies for a State water pollution control permit or a national pollutant discharge elimination system permit from the chief must pay the appropriate permit application fee in accordance with the fee schedules established in Sections 4 through 6 of these regulations.

3.1.1. A state agency that applies for a permit is exempt from the payment of any permit application fee.

3.2. Assessment of Annual Permit Fees. Except as provided in Section 3.2.1 of these regulations, any person who holds a State water pollution control permit or a national pollutant discharge elimination system permit issued by the chief must pay an annual permit fee in accordance with the fee schedule established in Section 7 of these regulations.

3.2.1. A state agency that holds a permit is exempt from the payment of the annual permit fee.

3.3. Payment of Fees. All fees required under these regulations must be submitted to the Division by check or money order payable to the West Virginia Department of Natural Resources. Submitted fees are not refundable.

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

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 must 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 Division will notify the applicant of the accuracy of his calculation. If the applicant's calculation is incorrect, the Division will advise him of the correct amount to be submitted as the permit application fee.

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

EMERGENCY RULE

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

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).

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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.

§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 6.5 of these regulations, all permit modification application fees shall be calculated through the use of the following formula: the permit modification application fee

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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).

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 Minor Modifications. Except as provided in Sections 6.2 through 6.4 of these regulations, the permit modification application fee shall be fifty dollars (\$50) for an application seeking a minor modification where no discharge volume is involved.

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§47-26-7. Annual Permit Fees.

7.1. Fee Calculation. Except as provided in Sections 7.2 through 7.4 of these regulations, all annual permit fees shall be calculated through the use of Table D of these regulations.

7.2. Publicly-Owned Treatment Works. The annual permit application fee for a POTW that operates a collection system only shall be seven hundred fifty dollars (\$750).

7.3. Closed System Facilities.

7.3.1. 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).

7.3.2. 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).

7.4. 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: In order to determine the average discharge volume for stormwater runoff, see 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	5.0
Secondary Industry Category	3.0
Minor POTWs	2.0
Facility covered under a General Permit	0.9
All other facilities and activities	1.0

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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

Schedule of Annual Permit Fees

Average Discharge Volume (gallons per day)	Annual Permit Fee
less than 1,001	\$50
1,001 to 10,000	\$200
10,001 to 50,000	\$500
50,001 to 100,000	\$1,500
100,001 to 250,000	\$2,000
greater than 250,000	\$2,500

EMERGENCY RULE

APPENDIX A

Calculation of the Average
Discharge Volume for Stormwater Runoff

The following formula may 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.

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

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

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
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 Aug. 14, 1989
ADMINISTRATIVE LAW DIVISION

August 14, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Natural Resources

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

DATE FILED AS AN EMERGENCY RULE: July 3, 1989

DECISION NO. 15-89

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, reading "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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FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Aug. 14, 1989
ADMINISTRATIVE LAW DIVISION

WILLIAM H. HARRINGTON
Chief of Staff

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Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION EMERGENCY RULE DECISION
(ERD 15-89)

AGENCY: Department of Natural Resources
RULE: New Rule, Series 26, Water Pollution Control Permit
Fee Schedule

FILED AS AN EMERGENCY RULE: July 3, 1989

- par. 1 The Department of Natural Resources (DNR) has filed a new rule, Series 26, as an emergency.
- 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 Fire Commission (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 DNR has filed this emergency rule with supporting documents with the Secretary of State on July 3, 1989 and with the LRMRC on July 3, 1989.

par. 7 It is the determination of the Secretary of State that 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:

§20-5A-6a. A special revenue fund designated the "Water Quality Management Fund" shall be established in the state treasury on the first day of July, one thousand nine hundred eighty-nine.

par. 9 §20-5A-6a further states:

(c) The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a 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 chapter twenty-nine-a 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. . . .

par. 10 WV Code states in §5F-2-1(b)(13):

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of commerce, labor and environmental resources:

(13) Department of natural resources and natural resources commission provided for in article one, chapter twenty of this code.

par. 11 §5F-2-2(a)(11) further states:

(11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter, such promulgation to be in accordance with the provisions of chapter twenty-nine-a of this code.

par. 12 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 13 (C) Emergency: WV Code 29A-3-15(q) 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. 14 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. 15 The facts and circumstances as presented by the DNR are as follows:

As a result of state budget cuts and reduced funding from the U.S. Environmental Protection Agency, the Department's Water Pollution Control Act permitting program faces significant and immediate shortfalls in both staffing and program funding. The number of facilities applying for new or modified permits continues to increase and, unless these shortfalls are rectified at once, the program will be unable to accomplish its statutory responsibilities.

Due to these shortfalls, delays in actions necessary to protect the environment and promote economic development are occurring. A number of facilities cannot initiate new construction or install processes needed to prevent contamination of the State's waters due to the Department's inability to process their permit applications. New economic development may be thwarted in some instances as facility owners choose to locate in other states rather than wait for their permits to be processed in this state.

The Legislature addressed these problems through the enactment of House Bill 2677, which established fees to be collected in order to fund permit program activities. These fees were established in lieu of additional appropriations from general revenue funds. This emergency rule is necessary in order to prevent the negative environmental and economic consequences that have resulted and will continue to result from the shortfalls described above.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 15 This decision shall be cited as Emergency Rule Decision 15-89 or ERD 15-89 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 Commission.



KEN HECHLER
SECRETARY OF STATE

Entered _____