



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

October 30, 1986

ARCH A. MOORE, JR.
Governor

RONALD R. POTESTA
Director

MICHAEL A. FOTOS
Deputy Director

NOTICE OF PUBLIC HEARING
OR COMMENT PERIOD ON A PROPOSED RULE
COMMENT PERIOD

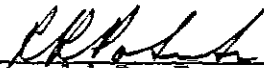
AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Legislative
RULE TITLE: WV/NPDES Regulations

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED
AND WILL END ON FRIDAY, DECEMBER 12, 1986 AT 5:00 P.M.

WRITTEN COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Department of Natural Resources, Room 842
1800 Washington Street East, Charleston, WV 25305
Attention: Mr. Jeffrey E. Herrold

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta
Director



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STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

SECRETARY OF STATE

ARCH A. MOORE, JR.
Governor

October 30, 1986

RONALD R. POTESTA
Director

MICHAEL A. FOTOS
Deputy Director

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

Re: Filing of Proposed Rules
(WV/NPDES Regulations, Series 7),
Notice of Public Hearing, and
Notice of Comment Period by the
Department of Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of proposed amendments to the legislative rules of the Department of Natural Resources, a Notice of Public Hearing, and a Notice of Comment Period for the proposed rule.

If you have any questions, please contact Mr. Jeffrey E. Herrold, Director's Office of Regulatory Affairs, at 348-2761.

Sincerely,

Ronald R. Potesta
Director

RRP/jhb

Enclosures

FISCAL NOTE FOR PROPOSED RULES

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Rule Title: WV/NPDES Regulations

OFFICE OF THE SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$

Personal Services

Current Expense

Repairs and Alterations No Impact

Equipment

Other

2. Explanation of Above Estimates: No impact

3. Objectives of These Rules:

The proposed rules will add a conflict of interest provision to the current legislative rules that is necessary in order to retain State primacy over the administration of NPDES regulations related to coal mining facilities.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: No impact

C. Economic Impact on Citizens/Public at Large: No impact

Date: October 30, 1986



Ronald R. Potesta
Director

PREAMBLE FOR AMENDMENTS TO LEGISLATIVE RULES
WV/NPDES REGULATIONS

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DEPARTMENT OF NATURAL RESOURCES
SECRETARY OF STATE

PROGRAM: WV/NPDES (Coal Mining Facilities)

REGULATIONS: Department of Natural Resources, WV/NPDES
Regulations (Series VII)

AUTHORITY: West Virginia Code, Chapter 20, Article 1, Section 7

ACTION: Proposed Rules and Request for Comments

TOPIC: New conflict of interest provision for the WV/NPDES
regulations related to coal mining facilities

DATES: A public hearing will be held on Tuesday, December 9, 1986
at 3:00 p.m. in the Director's Conference Room 674, 1800
Washington Street East, Charleston, West Virginia. Comments will
be received until 5:00 p.m. on Friday, December 12, 1986.

SUMMARY: The Department is proposing an amendment to its WV/NPDES
regulations (Series VII) to include a conflict of interest
provision conforming to the language used in 40 C.F.R.
123.23(c)(1985). The same amendment is being adopted and filed on
an emergency basis.

SUPPLEMENTAL INFORMATION: Today's rulemaking proposes adoption of
federal conflict of interest provisions related to state
assumption of primacy over the administration of federal NPDES
regulations. The WV/NPDES program related to coal mining
facilities currently subscribes to the conflict of interest
provisions contained in Section 20-6-40 of the West Virginia Code.
The language of this section of the Code does not contain a two-
year retroactive proviso, as is found in 40 C.F.R. 123.25(c)
(1985). Recently, the United States Environmental Protection
Agency (EPA) has changed its assessment of our conflict of
interest provisions. Where once considered acceptable, Section
20-6-40 provisions are now viewed by EPA as being deficient in the
absence of an adoption of the two-year retroactive proviso.

Failure to amend the Department's WV/NPDES regulations to conform
to the federal conflict of interest provisions could result in a
loss of State primacy over the administration of federal NPDES
regulations related to coal mining facilities. Today's rulemaking
remedies this deficiency by amending Section 10A of Series VII to

add conflict of interest provisions in conformance with 40 C.F.R.
123.25(c)(1985).

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Section 10A. GENERAL

10A.01 Scope and Purpose - This section establishes requirements implementing the powers, duties and responsibilities of Article five-a of Chapter 20 with respect to all coal mines, preparation plants and all refuse and waste therefrom in the state which are vested in the Director pursuant to W. Va. Code [20-6-43.

10A.02 Authority - The regulations in this section are promulgated by the Director under the authority of West Virginia Code Chapter 20, Article 1, Section 7(30).

10A.03 Effective Date - The regulations in this section originally become effective on the 30th day of May, 1985, that 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. The effective date of these regulations repromulgated pursuant to Legislative authorization (1986 Legislative Session; SB 434) is April 24, 1986.

10A.04 Filing Date - The regulations in this section were filed in the Office of the Secretary of State on the 24th day of April 1986.

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.

10A.06 Invalidity - If any provision of these regulations or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of these regulations.

10A.07 Incorporation by Reference - Whenever federal statutes or regulations are incorporated into this section, the reference is to the statute or regulation in effect on the effective date specified in 10A.03.

10A.08 Conflict of Interest - The Director or any employee of the Department with permit issuing authority shall not be a person who receives or has during the previous two (2) years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(a) For the purposes of this paragraph:

1. "Significant portion of income" means ten (10) percent or more of gross personal income for a calendar year, except that it means fifty (50) percent or more of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving that portion under retirement, pension, or similar arrangement.

2. "Permit holders or applicants for a permit" does not include any department or agency of the State.

3. "Income" includes retirement benefits, consultant fees, and stock dividends.

(b) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identify of the primary sources of income.

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