



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

October 30, 1986

ARCH A. MOORE, JR.
Governor

FILED
1986 OCT 30 PM 1:54
SECRETARY OF STATE


RONALD R. POTESTA
Director
MICHAEL A. FOTOS
Deputy Director

NOTICE OF EMERGENCY RULE

RULE TITLE: WV/NPDES Regulations

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

The emergency rule is necessary in order to comply with the conflict of interest provisions of 40 C.F.R. 123.25(c)(1985). Failure to amend these legislative rules 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.



Ronald R. Potesta
Director



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

Re: Filing of Emergency Rules ³⁰
(WV/NPDES Regulations, Series ⁷) by
the Department of Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of amendments to the legislative rules of the Department of Natural Resources adopted and filed on an emergency basis.

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

FILED

DATE: October 30, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1986 OCT 30 PM 1:54

FROM: West Virginia Department of Natural Resources

SECRETARY OF STATE

EMERGENCY RULE TITLE: WV/NPDES Regulations

1. Date of filing: October 30, 1986
2. Statutory authority for promulgating the emergency rule:
West Virginia Code, Chapter 20, Article 1, Section 7
3. Date of filing of proposed legislative rule: October 30, 1986
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule amends the current legislative rule to conform to federal conflict of interest provisions.
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.
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 regulation and time limit established therein.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The emergency rule is necessary in order to comply with the conflict of interest provisions of 40 C.F.R. 123.25(c) (1985). Failure to amend the legislative rules to conform to federal conflict of interest provisions could result in a loss of State primacy over the administration of federal NPDES regulations related to coal mining.

PREAMBLE FOR AMENDMENTS TO LEGISLATIVE RULES
WV/NPDES REGULATIONS

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SECRETARY OF STATE

PROGRAM: WV/NPDES (Coal Mining Facilities)

REGULATIONS: Department of Natural Resources, WV/NPDES
Regulations (Series VII)
36

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

ACTION: Emergency Rules

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

SUMMARY: The Department is adopting on an emergency basis 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 filed today as a proposed rule. A public hearing on the proposed rule 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.

SUPPLEMENTAL INFORMATION: Today's emergency rulemaking adopts 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).

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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