



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

ARCH A. MOORE, JR.
Governor

RONALD R. POTESTA
Director

ROBERT K. PARSONS
Deputy Director


December 30, 1986

NOTICE OF AGENCY APPROVAL

RULE TITLE: WV/NPDES Program for Coal Mines and Preparation
Plants, and the Refuse and Waste Therefrom

RULE TYPE: Legislative

The attached rule constitutes the official rule adopted
by the West Virginia Department of Natural Resources on
the 24th day of December 1986 and filed with the West
Virginia Secretary of State.



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 Approved Rules (WV/NPDES,
Series 30) by the Department of
Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of approved amendments to the legislative rules of the Department of Natural Resources. Please note that these rules were originally proposed as Series 7. The compilation of Department regulations (Title 47) has since been renumbered; Series 7 became Series 30 and has been so renumbered in this filing.

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

Sincerely,

Ron Potesta
Ronald R. Potesta
Director

RRP/jh

Enclosures

cc: Legislative Rule-Making Review Committee

DEC 30 1986
FILED

FISCAL NOTE FOR PROPOSED RULES

FILED
 1986 OCT 30 PM 1:50
 DEPARTMENT OF NATURAL RESOURCES

Rule Title: WV/NPDES Regulations

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

DATE: December 30, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

EMERGENCY RULE TITLE: WV/NPDES Regulations

1. Date of filing: December 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.

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 regulation and time limit established therein.

NOT APPLICABLE

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). 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

PROGRAM: WV/NPDES (Coal Mining Facilities)

REGULATIONS: Department of Natural Resources, Series 30, WV/NPDES Regulations

AUTHORITY: Chapter 20, Article 1, Section 7(30) of the West Virginia Code

ACTION: Approved Rules

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

SUMMARY: The Department is approving an amendment to its WV/NPDES regulations related to coal mining facilities (Series 30) to include a conflict of interest provision (Section 1.9) conforming to the language used in 40 C.F.R. 123.25(c). The same amendment was adopted and filed on an emergency basis on December 30, 1986.

SUPPLEMENTAL INFORMATION: Today's rulemaking approves the adoption of federal conflict of interest provisions related to state assumption of primacy over the administration of federal NPDES regulations. The WV/NPDES program for 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). 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 1 of Series 30 to add conflict of interest provisions in conformance with 40 C.F.R. 123.25(c).

The Department filed proposed conflict of interest rules on October 30, 1986. A public hearing on the proposed rules was held on December 9, 1986 in Charleston and comments were received through December 12, 1986. No one except Department personnel attended the public hearing and no comments were received concerning the proposed rules.

The Department is today approving these rules as proposed with three non-substantive revisions.

First, since the time of proposed rule filing, the Secretary of State's compilation of the Department's rules (Title 47) has been renumbered. Under the new numbering format, former Series 7 concerning the WV/NPDES coal facilities program became Series 30 and has been so renumbered in this filing. Second, the regulations in this Series were once Section 10 of a larger body of legislative rules concerning mine reclamation. Mine reclamation activities are now regulated under West Virginia Administrative Regulations, Department of Energy, Series 2; however, the use of the Section 10 designation was continued in the Department of Natural Resources regulations. Today's filing revises both the language and the numbering of the Department's emergency rules of October 30, 1986 to eliminate the confusing use of the defunct Section 10 designation.

The final change in the October 30 filing has been made so that the Department's rule will more closely parallel federal conflict of interest provisions. The language used to describe the activities which might be impacted by a conflict of interest has been revised for increased clarity. The proposed rule filed on October 30, 1986 read as follows:

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. (emphasis added)

Today's approved rule reads as follows:

The Director or his authorized representative who has or shares authority to approve all or portions of permits, either in the first instance or as modified and reissued, 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. (emphasis added)

Section 1. GENERAL

1.1 Scope and Purpose. ~~This section establishes~~ These regulations establish 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.

1.2 Authority. ~~The regulations in this section~~ These regulations are promulgated under the authority of West Virginia Code Chapter 20, Article 1, Section 7(30).

1.3 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.~~ These regulations became effective upon April 24, 1986, unless otherwise noted in the text of these regulations.

1.4 Filing Date. ~~The regulations in this section were filed in the Office of the Secretary of State on the 24th day of April 1986.~~ These regulations were filed on April 24, 1986.

1.5 Applicability. ~~The regulations in this section~~ These regulations shall apply to all coal mines, preparation plants, and refuse and waste therefrom, as defined ~~in this section upon the effective date in Section 1.3 of these regulations~~ herein. These regulations also establish a transition program for those pending Article 5A/NPDES applications for which a draft permit has been prepared.

1.6 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.

1.7 Incorporation by Reference. Whenever federal statutes or regulations are incorporated ~~into this section~~ into these regulations, the reference is to the statute or regulation in effect on the effective date specified in Section 1.3 of these regulations.

1.8 Promulgation History. 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 W.Va. Code §20-6-43 has been given by the Administrator of the United States Environmental Protection Agency. The effective date of these regulations as repromulgated pursuant to Legislative authorization (1986 Legislative Session; SB 434) was April 24, 1986.

1.9 Conflict of Interest. (Effective May 1, 1987). The Director or his authorized representative who has or shares authority to approve all or portions of permits, either in the first instance or as modified and reissued, 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.

1.9.1 For the purposes of this paragraph:

1.9.1.a "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.

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

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

1.9.1.d 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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