



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

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

Re: Refiling of Emergency Rules  
(WV/NPDES Regulations, Series 30) 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 promulgated on an emergency basis. Today's filing amends the emergency rules adopted by the Department and filed with your office on October 30, 1986. Please note that, since the time of that filing, the compilation of Department regulations (Title 47) has been renumbered. The October 30 emergency rule was filed as Series 7; Series 7 became Series 30 and has been so renumbered in this filing. The Department understands that today's filing does not initiate a resetting of the emergency rule effective period under W. Va. Code §29A-3-15 and that the effective date of these emergency rules remains October 30, 1986.

If you have any questions concerning this filing, 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

FILED

DEC 30

1986

Legislative Rule-Making Review Committee

DEC 30 1986

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FILED



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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). 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

DATE: December <sup>30</sup>~~24~~, 1986

TO: LEGISLATIVE RULEMAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

LEGISLATIVE RULE TITLE: WV/NPDES Regulations

1. Authorizing statute(s) citation:

West Virginia Code Chapter 20, Article 1, Section 7

2. a. Date filed in State Register with Notice of Hearing:

October 30, 1986

b. What other notice, including advertising, did you give of the public hearing?

An official Department News Release was sent to all West Virginia newspapers and radio and television stations.

c. Date(s) of hearing(s): December 9, 1986

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received  X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:

<sup>30</sup>  
December 24, 1986

f. Name and phone number of agency person to contact for additional information:

Mr. Jeffrey E. Herrold  
Director's Office of Regulatory Affairs  
348-2761

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

NOT APPLICABLE

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing: \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

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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: Refiling of Emergency Rules

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

SUMMARY: The Department is adopting and refiling on an emergency  
basis an amendment to its WV/NPDES regulations related to coal  
mining facilities (Series 30) to include a conflict of interest  
provision as a new Section 1.9 that conforms to the language used  
in 40 C.F.R. 123.25(c). A similar amendment was adopted and filed  
on an emergency basis on October 30, 1986. The effective date of  
these regulations remains October 30, 1986.

SUPPLEMENTAL INFORMATION: Today's rulemaking entails amending  
rules relating to the adoption of federal conflict of interest  
provisions concerning state 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 emergency rule amended by today's refiling was originally filed on October 30, 1986. Today's refiling is necessary to correct three minor problems that exist in the previously filed emergency rules. First, since the time of 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 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 was made so that the Department's rule will more closely parallel the federal conflict of interest provisions. The language used to describe who is affected by the conflict of interest provision has been revised for increased clarity. This clarification parallels the federal provision more closely. The emergency 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 refiled emergency 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. 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. These regulations are promulgated under the authority of West Virginia Code Chapter 20, Article 1, Section 7(30).

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

1.4 Filing Date. These regulations were filed on April 24, 1986.

1.5 Applicability. These regulations shall apply to all coal mines, preparation plants, and refuse and waste therefrom, as defined 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 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. Reserved.

1.9 Conflict of Interest. (Effective October 30, 1986). 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

WV Administrative Regulations  
Department of Natural Resources  
Series 30

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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