

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150

CITE AUTHORITY: WV Code 24-1-1, 24-1-7, 24-2-1, 24-2-7

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: SERIES 20

TITLE OF RULE BEING FILED AS AN EMERGENCY: Use and Consumption
of Water by the Inhabitatants and all Users, Regardless of
Class of Service, During Times of Emergency and Periods
of Temporary Inadequacy of Supply of Available Water

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:

SEE ATTACHED

Use Additional Sheets If Necessary.

Fred C. Thompson

Public Service Commission Of West Virginia



Michael D. Greer
Chairman

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201 Brooks Street, P.O. Box 8
Charleston, West Virginia 25323
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE

RULE TITLE: Rules and Regulations for the Use and Consumption of Water by the Inhabitants and all Users, Regardless of Class of Service, During Times of Emergency and Periods of Temporary Inadequacy of Supply of Available Water.

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

The State of West Virginia is presently experiencing a water supply problem due to the lack of rain. This water shortage is currently causing operational problems for several water utilities and has already disrupted orderly water service to the public. Certainly, if the drought persists, the problem will be only aggravated and more wide-spread throughout the State. On July 7, 1988, the Governor of the State made a written request that the Secretary of the Department of Agriculture issue a drought disaster declaration for the State of West Virginia.

On July 5, 1988, the Commission received a petition from the City of Weirton (Case No. 88-424-W-PC) for consent to invoke an emergency water ordinance. On July 6, 1988, the Commission received a petition from the City of Richwood (Case No. 88-427-W-PC) for enactment of an emergency water conservation measure. In addition, the Secretary's Office has received informal calls from Copperston PSD and the City of Vienna concerning measures they could implement to respond to water shortage problems.

Additionally, the Customer Relations Division of the Public Service Commission has received numerous informal inquiries during the past week from both utilities and

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customers concerning various problems relating to water supply problems.

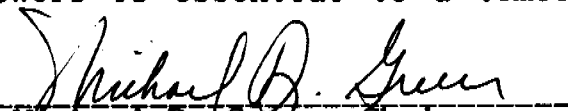
Instead of attempting to deal with the existing problem on a piece-meal basis, the Commission believes that a rulemaking proceeding is appropriate. The rulemaking proceeding shall set forth general guidelines which may be followed by water utilities. At this point, the use of the guidelines would be voluntary on the part of the utility and the decision to implement the same would be made by the utility.

Under normal rulemaking procedures, the Commission is required to allow, at a minimum, a 30-day comment period following promulgation of proposed rules. West Virginia Code §24-3-7. A final rule is not effective until 60 days after final Commission approval. West Virginia Code §24-1-7. Therefore, at a minimum, a period of 90 days must lapse before a Commission rule can become effective until normal rulemaking procedures.

West Virginia Code §24A-3-15 gives the Public Service Commission authority to promulgate emergency rules which are effective upon the filing of such rules, with a statement of facts and circumstances constituting the emergency, in the State Register. An emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. West Virginia Code §29A-3-15(g).

The Commission is of the opinion that it is reasonable and necessary to promulgate the rules attached hereto as emergency rules in order to respond to the existing water supply problems as well as future water supply problems. The use of emergency rulemaking powers is essential to a timely response to the problems.

Date: July 8, 1988



Michael D. Greer, Chairman

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WEST VIRGINIA EMERGENCY LEGISLATIVE RULES
PUBLIC SERVICE COMMISSION
CHAPTER 24-1
SERIES XX

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RULES AND REGULATIONS FOR
THE USE AND CONSUMPTION OF WATER BY THE
INHABITANTS AND ALL USERS, REGARDLESS OF CLASS
OF SERVICE, DURING TIMES OF EMERGENCY AND PERIODS
OF TEMPORARY INADEQUACY OF SUPPLY OF AVAILABLE WATER

1.0 GENERAL

- 1.1 Scope - This emergency legislative rule establishes the rules and regulations for the use and consumption of water by the inhabitants and all users, regardless of class of service, during times of emergency and periods of temporary inadequacy of supply of available water.
- 1.2 Authority - West Virginia Code Chapter 24-1-1, 24-1-7, 24-2-1, and 24-2-7.
- 1.3 Filing Date - July 8, 1988
- 1.4 Effective Date - July 8, 1988

2.0 LOCAL WATER RATIONING PLAN

2.1 General

That upon any water utility declaring that there is a temporary shortage of water, and that it is necessary for the health and welfare of the utility's customers to restrict the consumption and use of the existing water supply, the utility shall, upon the giving of public notice, restrict the use of said water supply to human consumption and sanitary purposes as noted in the Local Water Rationing Plan.

The utility is herein authorized to enforce a Water Rationing Plan by virtue of the declaration of a public water emergency proclamation by the utility.

2.2 Definitions

- (a) Special Emergency Area-the area or areas within which the utility has declared a state of drought and water shortage emergency.
- (b) Service Area-the territory and the customers serviced by the utility.
- (c) Emergency Service Area-the service areas of the water supply covered by this Local Water Rationing Plan.
- (d) Residential Customer-any customer who receives water service for a single or multi-family dwelling unit. The term residential customer does not include educational or other institutions, hotels, motels, or similar commercial establishments.
- (e) Non-Residential Customer-commercial, industrial, institutional, public and all other users with the exception of hospitals and health care facilities.
- (f) Service Interruption-the temporary suspension of water supply, or reduction of pressures below that required for adequate supply, to any customer, portion of a water supply system, or an entire system.
- (g) Excess Use-the usage of water by a water customer in excess of the water allotment provided under the Local Water Rationing plan for that customer, over any applicable period.
- (h) Water Customer-any person who is connected to and receives water services from a water supply system.

2.3 Purpose

This local Water Rationing plan is intended to establish measures for essential conservation of water resources, and to provide for equitable distribution of limited water supplies, in order to balance demand and limited available supplies and to assure that sufficient water is available to preserve public health and safety within the Emergency Service Area.

2.4 Scope

This Local Water Rationing plan shall apply to all water uses within the service area of all customers and entities served by the utility including uses by customers of wholesale customers of the utility.

2.5 Objective of the Plan

- (a) It is imperative that water customers within the Emergency Service Area achieve an immediate and further reduction in the water use in order to extend existing water supplies and, at the same time, assure that sufficient water is available to preserve the public health and sanitation, and provide fire protection service.
- (b) The Plan provides for equitable reductions in water usage, and for equal sacrifice on the part of each water customer. The success of this plan depends on the cooperation of all water customers in the emergency service area.

2.6 Measures to Implement the Water Rationing Plan

Each water supply purveyor within the Emergency Service Area will develop and adopt such implementing measures as are necessary and appropriate to assure compliance with requirements of this Local Water Rationing plan.

2.7 Prohibited Non-Essential Water Uses

The following water uses are declared non-essential and are prohibited within the Emergency Service Area:

- (a) Watering of outside shrubbery, trees, lawns, grass, plants or any other vegetation, except from a watering can or other container not exceeding three (3) gallon capacity. This limitation shall not apply to vegetable gardens, greenhouse or nursery stocks and newly established lawns or sod less than five (5) weeks old, which may be watered in the minimum amount required to preserve plant life before 8:00 a.m. or after 6:00 p.m.
- (b) The watering of golf course fairways.
- (c) The washing of automobiles, trucks, trailers or any other type of mobile equipment except in vehicle wash facilities operating with a water recycling system with a prominently displayed sign in public viewing so stating, or from a bucket or other container not exceeding three (3) gallons.
- (d) The washing of streets, driveways, parking lots, service station aprons, office buildings, exteriors of homes or apartments or other outdoor surfaces.

- (e) The serving of water in restaurants, clubs or eating places unless specifically requested by the individual.
- (f) Ornamental water use, including but not limited to fountains, artificial waterfalls, and reflecting pools.
- (g) The use of water for flushing sewers or hydrants by municipalities or any public or private individual or entity except as deemed necessary and approved in the interest of public health or safety by the utility.
- (h) The use of fire hydrants by fire companies for testing fire apparatus and for fire department drills except as deemed necessary in the interest of public safety and specifically approved by the municipal governing body.
- (i) The use of fire hydrants by municipal road, departments, contractors and all others, except as necessary for fire fighting or protection purposes.
- (j) The filling of swimming or watering pools requiring more than five (5) gallons of water, or the refilling of swimming or wading pools which were drained after the effective date of the order, except that pools may be filled to a level two feet below normal, or as necessary to protect the structure from hydrostatic damage, as to pools constructed or contracted for on or after the date of the final order.

2.8 Recourse

Any person aggrieved by a decision relating to these rules rendered by a public utility may file a complaint with the Public Service Commission.

2.9 Penalties

Any person who violates the provisions of this plan, who fails to carry out duties and responsibilities imposed by this plan, or who impedes or interferes with any action undertaken or ordered pursuant to this plan, shall be subject to the following penalties:

- (1) For the first excess use, a warning of possible discontinuation of service shall be issued to the customer by the utility.

- (2) For the second or subsequent excess use, the water supplier may interrupt or shut off service to the customer pursuant to Rule 4.08 as fraudulent use.
- (3) For the second or subsequent excess use, the utility may add a surcharge of 10% to the end users monthly bill for the month of the infraction, which surcharge shall be held by the utility in a separate bank account pending disposition as directed by the Public Service Commission.

2.10 Effective Period

This plan shall remain in effect until terminated by action of the utility declaring an end to the emergency condition or until terminated by order of the Public Service Commission, whichever comes first.

2.11 Effective Date

This plan shall take effect immediately upon adoption by the utility.

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 8th day of July, 1988.

GENERAL ORDER NO.

IN THE MATTER OF Rules and Regulations
for the Government of Water Utilities.

Proceeding on the Commission's Own Motion.

COMMISSION ORDER PROMULGATING EMERGENCY RULES

The State of West Virginia is presently experiencing a water supply problem due to the lack of rain. This water shortage is currently causing operational problems for several water utilities and has already disrupted orderly water service to the public. Certainly, if the drought persists, the problem will be only aggravated and more wide-spread throughout the State. On July 7, 1988, the Governor of the State made a written request that the Secretary of the Department of Agriculture issue a drought disaster declaration for the State of West Virginia.

On July 5, 1988, the Commission received a petition from the City of Weirton (Case No. 88-424-W-PC) for consent to invoke an emergency water ordinance. On July 6, 1988, the Commission received a petition from the City of Richwood (Case No. 88-427-W-PC) for enactment of an emergency water conservation measure. In addition, the Secretary's Office has received informal calls from Copperston PSD and the City of Vienna concerning measures they could implement to respond to water shortage problems.

Additionally, the Customer Relations Division of the Public Service Commission has received numerous informal inquiries during the past week from both utilities and customers concerning various problems relating to water supply.

Instead of attempting to deal with the existing problem on a piece-meal basis, the Commission believes that a rulemaking proceeding is appropriate. The rulemaking proceeding shall set forth general guidelines which may be followed by water utilities. At this point, the use of the guidelines would be voluntary on the part of the utility and the decision to implement the same would be made by the utility.

Under normal rulemaking procedures, the Commission is required to allow, at a minimum, a 30-day comment period following promulgation of proposed rules. West Virginia Code §24-3-7. A final rule is not effective until 60 days after final Commission approval. West Virginia Code §24-1-7. Therefore, at a minimum, a period of 90 days must lapse before a Commission rule can become effective under normal rulemaking procedures.

West Virginia Code §29A-3-15 gives the Public Service Commission authority to promulgate emergency rules which are effective upon the filing of such rules, with a statement of facts and circumstances constituting the emergency, in the State Register. An emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. West Virginia Code §29A-3-15(g).

The Commission is of the opinion that it is reasonable and necessary to promulgate the rules attached hereto as emergency rules in order to respond to the existing water supply problems as well as

future water supply problems. The use of emergency rulemaking powers is essential to a timely response to the problems.

The Commission will initiate regular rulemaking procedures to promulgate final rules and give notice of the public comment period soon after the filing of these emergency rules.

FINDINGS OF FACT

1. The Commission finds that the State of West Virginia is experiencing water supply problems which are currently causing operational problems for utilities and disrupting service to customers.

2. The normal rulemaking procedures require at a minimum 90 days before proposed rules can become effective and, therefore, does not constitute a timely response to the emergency.

3. In order to adequately address the problem, the Commission must use its emergency rulemaking powers which will provide prompt guidelines for utilities to follow, if necessary, in implementing conservation measures.

4. If the Commission were to proceed on an individual case basis for the approval of individual water conservation plans, such a process would result in undue delay and would be an inadequate response.

5. The promulgation of this rule is necessary for the immediate preservation of the public peace, health, safety or welfare.

CONCLUSIONS OF LAW

1. The Commission has the authority and duty to regulate the practices and services of the public utilities to ensure fair and prompt regulation of public utilities in the interest of the using and

consuming public and to provide the availability of adequate, economical, and reliable utility services throughout the State. West Virginia Code §24-1-1(a)(1) and (2).

2. The Commission has the authority to promulgate emergency rules. West Virginia Code §29A-3-15 and §24-1-7.

3. Normal rulemaking procedures require a minimum of a 90 day waiting period before the effective date of the rule. Whereas, an emergency rule is effective on the date of filing. West Virginia Code §29A-3-15, §29A-3-7, and §24-1-7.

4. An emergency exists within the meaning of West Virginia Code §29A-3-15(g) when an emergency rule is required for the immediate preservation of the public peace, health, safety, or welfare.

ORDER

IT IS, THEREFORE, ORDERED that:

1. The rules attached hereto shall be, and hereby are, adopted as emergency rules;

2. The Executive Secretary of the Commission file a copy of the proposed rule attached hereto in the State Register in the Office of the Secretary of State with notice of the emergency rule, all attached hereto as required by West Virginia Code §29A-3-15; and

3. Each utility that elects to implement the Local Water Rationing Plan shall provide written notice of the effective date of such implementation to the Executive Secretary.

4. The Executive Secretary serve copies of this Order, together with all attachments, on all water utilities in the State of West

Virginia, and the Consumer Advocate of the Public Service Commission.

A TRUE COPY

TESTE:


Pamela J. Hicks
Acting Secretary



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

August 11, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

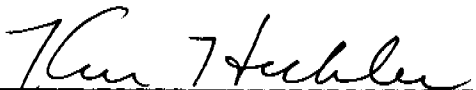
AGENCY: Public Service Commission

RULE: New Rule, Series 2D, Use and Consumption of Water by the Inhabitants and all Users, Regardless of Class of Service, During Times of Emergency and Periods of Temporary Inadequacy of Supply of Available Water.

DATE FILED AS AN EMERGENCY RULE: July 8, 1988

DECISION NO. 11-88

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.


KEN HECHLER
Secretary of State

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par. 6 The PSC has filed this emergency rule with supporting documents with the Secretary of State on July 8, 1988 and with the LRMRC on August 16, 1988.

par. 7 It is the determination of the Secretary of State that the PSC 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 §24-1-7 reads in part:

§24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.

The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter.

par. 9 WV Code 24-2-1 reads in part:

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services: . . .supplying water. . .

par. 10 It is the determination of the Secretary of State that the PSC has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) 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. 12 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. 13 The facts and circumstances as presented by the PSC are as follows:

The State of West Virginia is presently experiencing a water supply problem due to the lack of rain. This water shortage is currently causing operational problems for several water utilities and has already disrupted orderly water service to the public. Certainly, if the drought persists, the problem will be only aggravated and more wide-spread throughout the

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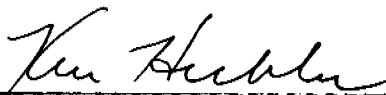
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The Commission is of the opinion that it is reasonable and necessary to promulgate the rules attached hereto as emergency rules in order to respond to the existing water supply problems as well as future water supply problems. The use of emergency rulemaking powers is essential to a timely response to the problems.

par. 14 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 15 This decision shall be cited as Emergency Rule Decision 11-88 or ERD 11-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the PSC, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

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