

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1032 AUG 15 PM 3:12
DEPT. OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: State Water Resources Board TITLE NUMBER: 46

CITE AUTHORITY: §§ 20-5, 20-5A and 29A-3-15

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Requirements Governing Water
Quality Standards

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY:

TITLE OF RULE BEING FILED AS AN EMERGENCY:

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 ATTACHMENT)

Use Additional Sheets If Necessary.

Frances E Hechter

WRB
 Leg. Rule, 20-5 & 20-5A
 Series I, Appendix A

KN	"	Laurel Creek (Above Cotton Hill)
KN	Raleigh	Pinch Creek
KN	Monroe	Rich Creek
KN	"	Turkey Creek
KN	Fayette	Dunloup Creek (Downstream from Harvey Sewage Treatment Plant)
KN	Mercer	East River (Above Kelleysville)
KN	"	Pigeon Creek
KN	Monroe	Laurel Creek
KNG	Monroe	Kitchen Creek (Above Gap Mills)
KNG	Greenbrier	Culverson Creek
KNG	"	Milligan Creek
KNG	Greenbrier-Monroe	Second Creek (Rt. 219 Bridge to Nickell's Mill)
KNG	Greenbrier	North Fork Anthony Creek
KNG	"	Spring Creek
KNG	"	Anthony Creek (Above Big Draft)
KNG	Pocahontas	Watoga Lake
KNG	"	Beaver Creek
KNG	"	Knapp's Creek
KNG	"	Hills Creek
KNG	"	North Fork Deer Creek (Above Route 28/5)
KNG	"	Deer Creek
KNG	"	Sitlington Creek
KNG	"	Stoney Creek
KNG	"	Swago Creek
KNG	"	Buffalo Fork (Impoundment)
KNG	"	Seneca (Impoundment)
KNG	"	Greenbrier River (Above Hosterman)
KNG	"	West Fork Greenbrier River
KNG	"	Little River-East Fork
KNG	"	Little River-West Fork
KNG	"	East Fork, Greenbrier River (<u>above tannery reservoir</u>)
KNG	"	Five Mile Run
KNG	"	Mullenax Run
KNG	"	Abes Run
KNB	Mercer	Marsh Fork
KNB	"	Camp Creek
OG	Wyoming	Pinnacle Creek
BST	McDowell	Dry Fork (Above Canebrake)



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1988 AUG 15 PM 3:12

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STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

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Charleston, West Virginia 25311
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August 15, 1988

WILLIAM PLASS
21 Grandview Drive
Princeton, West Virginia

The Honorable Ken Hechler
Secretary of State
State Capitol Bldg. # 1 Room 157K
Charleston, West Virginia 25305

Re: Emergency Rule

Attn: Mr. Rich O. Hartman

Dear Mr. Secretary:

The State Water Resources Board, after duly complying with applicable W. Va. Administrative procedures, hereby submits for filing, pursuant to W. Va. Code 29A-3-15, the attached Emergency Rule.

Very truly yours,

Frances E. Hunter
Executive Secretary

attachments

- 1. Emergency Rule
- 2. Facts and Circumstances

Facts and Circumstances Constituting the Emergency

Following notice filed with the Secretary of State in the State Register, an emergency meeting of the Water Resources Board held at 9:00 A.M, August 15, 1988, of the Board heard testimony by officials of the Water Resources Division, Department of Natural Resources and by representatives of the Howes leather Company ("Howes") of Pocahontas County, West Virginia, concerning the effects of the present drought upon the operations of Howes, relative to the East Fork of the Greenbrier River from the location of Howes to the confluence of the East Fork with the Greenbrier River.

The witnesses jointly and severally presented uncontroverted evidence and stipulations of fact and petitioned the Board to promulgate this subject amendment to an existing Legislative rule in the form of an Emergency Rule.

The stipulations of fact and uncontroverted testimony of said witnesses are in substance as follows:

1. Appendix "A", Category "B-2" - Trout Waters, includes the East Fork of the Greenbrier River in Pocahontas County. Under Section 7.1, certain exceptions to Water Quality Standards do not apply to Trout Waters.
2. The present drought conditions have created an emergency involving the segment of the East Fork of the Greenbrier River from an impoundment operated by Howes Leather Company to the confluence of the East Fork with the Greenbrier River, in that the flow in that stream segment has been seriously reduced below normal conditions.
3. Howes has since 1986 years been permitted to discharge treated effluent into the subject stream segment, using "real time" water quality management.
4. Howes operates one impoundment for process water in its operations, and operates a second impoundment to hold its waste waters until such time as the East Fork contains sufficient flow that Water Quality Standards for Trout Waters can be met.
5. No self-sustaining trout population exists in the subject stream segment, but such trout populations do exist in certain portions of the East Fork upstream of Howes Leather Company, and are unaffected by this petition for emergency rule.
6. The towns of Bartow, Frank and Durbin, due to the present drought, have been forced to seek water supplies from the Howes water impoundment. Howes has cooperated and is furnishing said towns with its water.
7. Due to unusually low flow of the East Fork, and due to its furnishing water to the three said towns, the effluent from Howes

Facts & Circumstances
August 15, 1988

operation will be unable to meet permitted water quality standards for Trout Waters because the exception otherwise available under Section 7.2.f.9 does not apply.

8. Howes Leather Company is in imminent danger of being forced to shut down, without administrative relief, and its employees will be laid-off. Serious production losses will also occur.

9. No environmental harm will result to the East Fork or the Greenbrier River if the East Fork is lawfully recognized by the Board's rules as a Warm Water fishing stream instead of being erroneously classified as Trout Waters, and if Howes is permitted to continue to discharge its treated effluent into the East Fork.

10. Howes Leather Company currently employs 185 persons and is the largest year-round employer in Pocahontas County. A shut down or curtailment would have a serious economic and social impact on the welfare of local communities.

NOW THEREFORE, the Board finds as follows:

1. An emergency due to drought conditions exists in the subject region.

2. There are no self-sustaining trout populations within the segment of the East Fork of the Greenbrier River, and, accordingly, that segment has been classed as "Trout Waters" in error.

3. Series 1, Appendix "A" of the Board's rules is hereby amended as follows:

At the place in said Appendix "A" where the waters in Pocahontas County are listed, the words the "East Fork, Greenbrier River", shall be followed by the words "above the tannery (Howes Leather Company) reservoir."

Filed with the Secretary of state

this ~~15th~~ day of August, 1988.

BY Frances E. Hunter
State Water Resources Board