



STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

1205 Greenbrier Street
Charleston, West Virginia 25311
(304) 348-4002

March 28, 1986

FILED
1986 MAR 28 PM 5:07
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The Honorable Ken Hechler
Secretary of State
State Capitol Bldg. # 1 - Room 157-K
Charleston, West Virginia 25305

Re: Filing of Emergency Rule
West Virginia Code § Chapter 20,
Article 5 and 5A; Series I,
Water Quality Standards; Section
7.2.d.2.i.A

Dear Mr. Secretary:

The West Virginia State Water Resources Board herewith submits for filing as an Emergency Rule the Board's approved Legislative Rule, Series I, Water Quality Standards; Section 7.2.d.2.i.A.

Attached please find one copy of the Emergency Rule; the statement of Facts and Circumstances, and notice of the approval and adoption of the emergency rule by the Board. The public hearing requirement, pursuant to W. Va. Code § 29A-3-1 et seq., was held on January 13, 1986.

Very truly yours,

John C. Ailes, Chairman
State Water Resources Board

JCA/rph

attachments

1. Emergency Rule
2. Facts & Circumstances
3. Notice of Approval by Board

NOTICE OF APPROVAL AND ADOPTION

BY: State Water Resources Board

EMERGENCY LEGISLATIVE RULE:

West Virginia Administrative Rule
State Water Resources Board
Chapter 20-5A (1985)
Series I, Water Quality Standards

The attached amendment to the above titled Legislative rule constitutes the official emergency rule approved and adopted by the State Water Resources Board on the 13th day of January 1986 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.

Entered



John C. Ailes, Chairman

FILED
1985 MAR 28 PM 2:07
OFFICE OF THE SECRETARY OF STATE

FACTS AND CIRCUMSTANCES

W. Va. Code 20-5A-1 et seq. authorizes and directs the State Water Resources Board to promulgate rules and regulations establishing water quality standards and for implementing the National Pollutant Discharge Elimination System (NPDES) of the Federal Clean Water Act. On May 10, 1982, West Virginia received authority from EPA to operate the State NPDES permit program. In September 1983, the Board approved extensive revisions to the Series II (NPDES) administrative regulations and in March, 1984, the West Virginia Legislature authorized the Board to promulgate these regulations.

Many WV/NPDES permits involving major industrial and power generating facilities are in the process of being renewed at this time and it is imperative that the latest federal regulations be reflected in the West Virginia NPDES program to prevent any adverse impact on the social and economic well-being of the State, and to prevent environmental harm.

In summary, it is the board's opinion that there is sufficient justification (enumerated above) to support the filing of Series I, Section 7.2.d.2.i.A, as an emergency rule for the following reasons:

1. If this water quality standard revision is not implemented immediately there will be a delay in the issuance of Ohio Power Company's WV/NPDES permit which could subject them to civil and criminal actions. And, in the alternative, if Ohio Power is required to comply with the terms of a permit which does not contain this revision there is the distinct possibility that the company will cease operations.

2. EPA approved this site specific revision to the water quality standards for Connor Run.

EMERGENCY

WQS

Leg. Rule, 20-5 & 20-5A
Series I, Sec.

7.2.c.1 MC - Cheat River and all its tributaries
except those listed below:

7.2.c.1.i MCB - Blackwater River and all its
tributaries.

7.2.c.2 MW - West Fork River and all its tributaries.

7.2.c.3 MT - Tygart River and all its tributaries
except those listed below:

7.2.c.3.i MTB - Buckhannon River and all its
tributaries.

7.2.c.3.ii MTM - Middle Fork River and all its
tributaries.

7.2.c.4 MY - Youghigheny River and all its
tributaries to the West Virginia-Maryland State line.

7.2.c.5 Exception; to 7.2.c: Except that flow in the
main stem of the Monongahela River, as regulated by the Tygart
Reservoir, operated by the U. S. Army Corps of Engineers, is based
on a minimum flow of 345 cfs at Lock and Dam No. 8, river mile
point 90.8. This exception does not apply to tributaries of the
Monongahela River.

7.2.c.5.i Exception; to 7.2.c.4: Water Use Categories
D, and E are excluded from the tributaries of the Youghiogheny
River in West Virginia which flow into Maryland.

7.2.d O - Ohio River Basin. The Ohio River and all
its tributaries to the West Virginia-Ohio-Pennsylvania State lines
excluding the following major tributaries which are designated as
follows:

7.2.d.1 O1 - Ohio River - main stem. The main stem
of the Ohio River from the Ohio-Pennsylvania-West Virginia State
line to the Ohio-Kentucky-West Virginia State line.

7.2.d.2 O2 - Ohio River - tributaries. All
tributaries of the Ohio River excluding the following major
tributaries:

7.2.d.2.i Exceptions; to 7.2.d.2:

7.2.d.2.i.A Except the stretch of Conners Run (O-77-A) (a
tributary of Fish Creek), from its mouth to the discharge from
Conner Run impoundment, shall not have the Water Use Category A
and, may contain arsenic not to exceed 200 ug/l; selenium not to
exceed 62 ug/l; and, iron not to exceed 3.5 mg/l as a monthly
average and 7 mg/l as a daily maximum.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

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RICH O. HARTMAN
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DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

April 17, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Water Resources Board

RULE: Series 1 Requirements Governing Water Quality Standards;
Amendment to Section 7.2.d.2.i.A.

DATE FILED AS AN EMERGENCY RULE: March 28, 1986

DECISION NO. 1-86

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

SECRETARY OF STATE
OFFICE OF THE SECRETARY OF STATE

1986 APR 18 AM 8 45

FILED

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
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RICHARD S. STEPHENSON
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OFFICE OF THE SECRETARY OF STATE

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DECISION

Emergency Rule Decision
(ERD 1-86)

AGENCY: State Water Resources Board
RULE: Series 1 Requirements Governing Water Quality Standards; Amendment to Section 7.2.d.2.i.A.
DATE FILED AS AN EMERGENCY RULE: March 28, 1986

- par. 1 The State Water Resources Board has filed as an emergency rule an amendment to their Series 1 rule titled Requirements Governing Water Quality Standards. The amendment is to Section 7, "West Virginia Waters"; subsection 7.2.d.2.i.A. which establishes the water quality standards for Conner Run, a tributary of Fish Creek, located in Marshall County.
- par. 2 The amendment allows an increase in the permissible iron content of the Conner Run stream from its mouth to its discharge into the Conner Run impoundment. This amendment is the result of an application for a revision to Series 1 by the Ohio Power Company for its Mitchell Plant located near Moundsville, West Virginia. Conner Run is a small creek through which the Mitchell Plant fly ash pond discharge is routed.
- par. 3 SB 434, passed March 8, 1986, in effect from passage, amended Chapter 29A, Article 3 by adding a new section, 15a, requiring the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the

circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The State Water Resources Board has filed this emergency rule with supporting documents with the Secretary of State on March 28, 1986 and with the LRMRC prior to the issuance of this decision. It is, therefore, the determination of the Secretary of State that the State Water Resource Board has complied with the procedural requirements of WV Code 29A-3-15.

par. 8 (B) Statutory Authority: WV Code 20-5A-1 states:

§20-5A-1. Declaration of policy.

It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.

WV Code 20-5A-3(b) (2). General powers and duties of chief and board with respect to pollution states in part:

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of Chapter twenty-nine-A [§29A-1-1 et seq.] of this Code, (A) implementing and making effective the declaration of policy contained in section one [§20-5A-1] of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; (C) establishing standards of quality for the waters of the State under such conditions as the board may prescribe for the prevention, control and abatement of pollution; and (D) to facilitate the State's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended.

WV Code 20-5A-3a(a) states:

§20-5A-3a. Standards of water quality and effluent limitations.

(a) In order to carry out the purposes of this article, the board shall promulgate rules and regulations setting standards of water quality and effluent limitations to be applicable to the waters of this State, which standards of quality and effluent limitations shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present

and prospective future uses of such water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.

- par. 9 It is clear that under the above statutory provisions the State Water Resources Board is required to not only establish water quality standards, but to do so in light of often conflicting uses.
- par. 10 It is the determination of the State Water Resources Board that the amendment to Series 1 does not alter the designated uses previously adopted for Conner Run. (See attached Information Sheet - C. Designated Uses)
- par. 11 The Secretary of State, under its authority in WV Code 29A-3-15a, will not substitute its judgment for that of the WRB's technical expertise in carrying out its mandated responsibility to balance the various uses to which West Virginia's rivers and streams are designated.
- par. 12 It is likewise not the responsibility of the Secretary of State to declare if the WRB's proposal is of value in carrying out the Water Pollution Control Act.
- par. 13 It is the responsibility of the Secretary of State to determine if the agency has exceeded its statutory authority with the proposal filed as an emergency rule.
- par. 14 It is the determination of the Secretary of State that the State Water Resources Board has not exceeded its statutory authority by amending its Series 1 Water Quality Standards rule.
- par. 15 (C) Emergency: WV Code 25A-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. 16 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. 17 The State Water Resources Board claims that this proposal is to "prevent substantial harm to the public interest."

- par. 18 The circumstances and facts as presented by the State Water Resources Board as follows:
- A. Previous iron content standard for Conner Run was 1.5 mg/l total.
 - B. Ohio Power could not meet this standard without substantial outlays of capital (\$30 million expressed by Ohio Power) or cessation of operation.
 - C. Ohio Power is under state and federal pollution permits which would be violated by discharge above the 1.5 mg/l standard.
 - D. Such violation would open Ohio Power to state and federal civil penalties for non-compliance with permit conditions.
 - E. Capital expenditures needed to comply would require application to increase and pass along service rates to the public.
 - F. Cessation of operation would result in personnel layoffs grievously impacting the local economy.
- par. 19 There exists no specific judicial review of nor legislative guidance for the terms or conditions creating "substantial harm" or elucidating the range of "public interest." Should the harm exist statewide to be substantial or merely encompass one area? The Secretary of State concludes that "harm" to one area of the state would result in a substantial ripple throughout.
- par. 20 It is also concluded that the economic health of any area of West Virginia is of "interest" to the public and to the Secretary of State.
- par. 21 It is also important that the State Water Resources Board has conducted a public hearing on the proposal and the Secretary of State is disinclined to hold an additional hearing on a proposal without a clear need to solicit additional information, which could only be gained at a public hearing.
- par. 22 The Secretary of State determines that the State Water Resources Board has demonstrated the need to make effective this proposal in order to prevent substantial harm to the public interest.
- par. 23 It is the decision of the Secretary of State that this proposal by the State Water Resources Board is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the State Water Resource Board; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should not be disapproved.

par. 24

This decision shall be cited as Emergency Rule Decision 1-86 or ERD 1-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Water Resources Board, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

Entered April 18, 1986

PROCEDURAL REGULATION FOR REVISION OF WATER QUALITY
STANDARDS

Information Sheet

A. Applicant's Name: Ohio Power Company
P. O. Box 400
Canton, Ohio 44701

Facility: Mitchell Plant
Fly Ash Pond (Outfall 004)
(Near Moundsville, W. Va.)

B. Water Body Proposed For Revision

Name: Conner Run

Stream Code: (O-77-A)

Brief Description: Conner Run is a small creek through which the Mitchell Plant fly ash pond discharge is routed. The pond was formed by impounding a portion of the hollow drained by Conner Run. The majority of flow (93%) consists of the pond's discharge.

Conner Run has a rather steep upstream gradient (above the pond) compared with a much flatter, uniform gradient near the mouth where it empties into Fish Creek (O-77), a tributary of the Ohio River (O1). The stream is approximately one half foot to one foot in depth and about six feet wide downstream of the fly ash pond. *Also see attached map including location of existing discharge point(s).

C. Designated Uses:

Existing: B (Aquatic Life), C (Water Contact Recreation), D (Agriculture & Wildlife), E (Industrial).

*NOTE - Certain existing designated uses may not actually apply in accordance with the Board's revised regulations (e.g. NO current stream use is known to meet the Category E definition and requirements, therefore this classification would not apply).

Proposed: No change.

D. Changes in Water Quality Criteria for Segment.

Based on current designated uses and standards.

Iron: Current = 1.5 mg/l total.
Proposed = not to exceed 3.5 mg/l
as a monthly average
and 7 mg/l as a daily
maximum.

E. Appropriateness of Revision. The Company has submitted a 53 page support document along with extensive field/survey data which may be reviewed at the Board's Office. This report goes into great detail to explain reasons for the request, impact to the company and local economy, the present ecology of Conner Run and the occurrence of different yet viable assemblages of organisms in the stream.

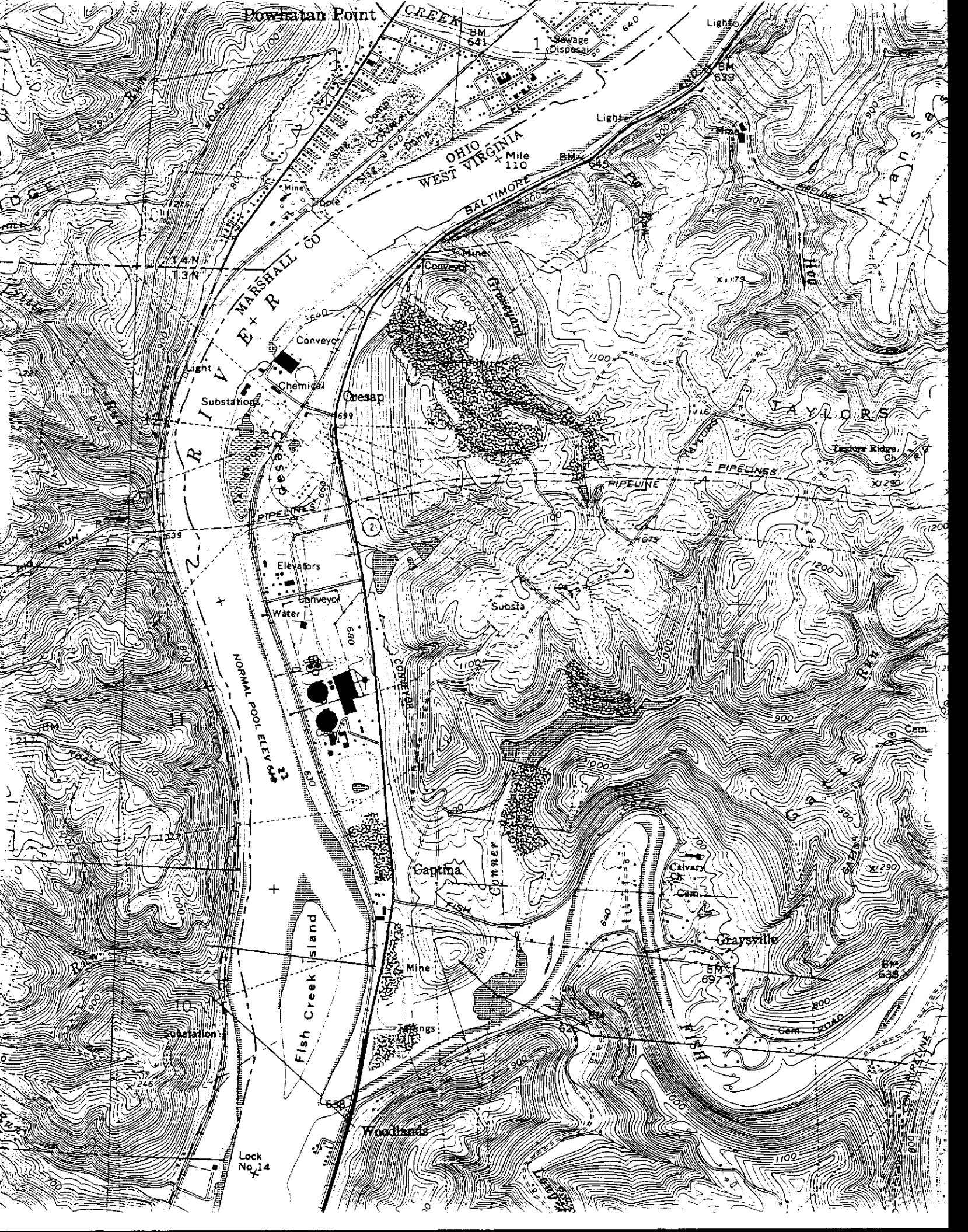
F. Summary of Implications of Revision. There should be no noticeable impact to the aquatic community of Conner Run, its present uses or future uses.

If revision were disallowed, unnecessary expenditure of capital and possible detrimental impact to the local economy would occur with no noticeable benefit to the environment.

G. The Chief's Recommendation. The Chief, having reviewed the support document and having conducted field studies, surveys, etc. of his own, concurs with the findings and has recommended that the Board grant Ohio Power's request.

H. Other Information Deemed Necessary.

Public comments.



Dowhatan Point

OHIO
WEST VIRGINIA

Baltimore
Mile 110

Marshall Co

Taylor's Ridge

Normal Pool Elev 644

Fish Creek Island

Lock No. 14

Woodlands

Graysville

Captna

Suasta

Cresap

Substation

Elevators

Water

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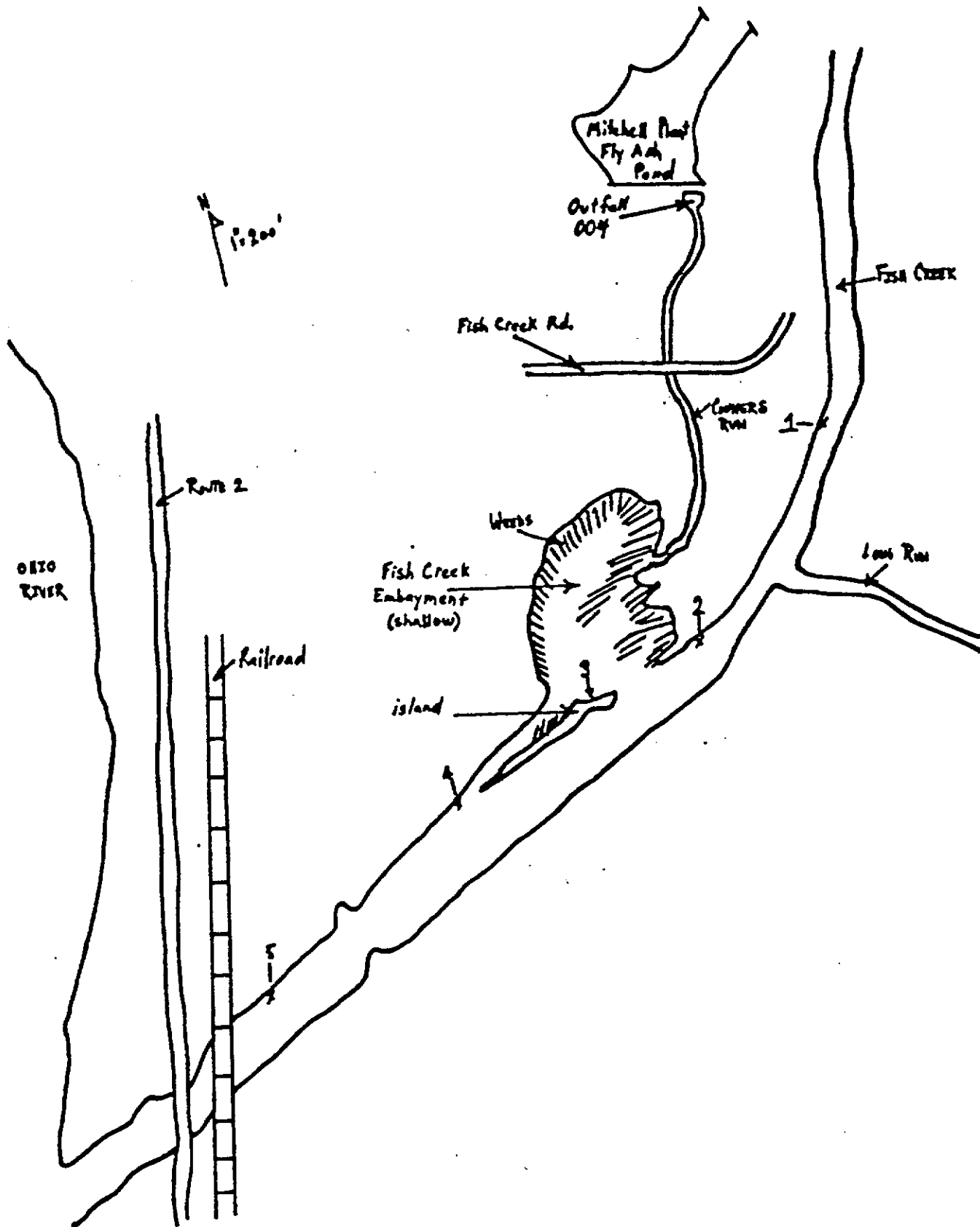


Figure 2. Location of Sampling Sites on Fish Creek and Conners Run During Macroinvertebrate Colonization Study, August 1985 Through September 1985. Replicate Hester-Dendy Biological Samplers Were Placed in Fish Creek (Sites 1-5); Water Samples Were Taken from Mitchell Plant NPDES Outfall 004 and Conners Run at Fish Creek Road.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE WATER RESOURCES BOARD

CHAPTER 20 - 5A
SERIES VI
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8-9-84
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 20
Article 5A

Series VI
(1984)

SUBJECT: **Procedural Regulations for the Revision of Water Quality Standards

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**Procedural Rule

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 20
Article 5A

Series VI
(1984)

PROCEDURAL REGULATIONS FOR THE REVISION OF WATER QUALITY STANDARDS

Section 1.00 General

1.01 Scope

The rules of procedure provided herein shall govern and apply to proceedings before the Board on the Revision of Water Quality Standards under Chapter 20-5A-1 et seq. of the West Virginia Code.

1.02 Authority

These rules are promulgated pursuant to the Authority of Chapter 29A-3-3 of the West Virginia Code and Chapter 20-5A-1, et seq. of the West Virginia Code.

1.03 Effective Date

These rules were adopted by the Board on August 6, 1984 and become effective on September 8, 1984.

1.04 Filing Date

These rules were filed in the Office of the Secretary of State on August 9, 1984.

Section 2.00 Revision of Water Quality Standards

2.01 Who May Revise a Water Quality Standard

The Board may revise a water quality standard upon the application of any person, including the Chief, or upon its own initiative.

2.02 Contents of Application

Any application for a revision of standards shall be filed in six (6) copies and shall contain the following:

(a) A U.S.G.S. 7.5 minute map showing those stream segments for which the standard is to be revised and showing existing and proposed discharge points.

(b) The existing and proposed designated uses for the stream segment(s) in question.

(c) The existing and proposed water quality criteria for the stream segment(s) in question.

(d) Existing uses and water quality data for the stream segment(s) in question. Where adequate data are unavailable, additional studies may be required by the Board.

(e) General land uses (e.g., mining, agricultural, recreation, residential, commercial, industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment(s) proposed to be revised.

(f) The existing and designated uses of the receiving waters into

which the segment in question discharges and the location where those downstream uses begin to occur.

(g) General physical characteristics of the stream segment including but not limited to width, depth, bottom composition and slope.

(h) The average amount of flow in the segment and the amount of flow at a designated control point.

(i) An assessment of aquatic life in the stream segment in question and in the adjacent upstream and downstream segments.

(j) In addition, for establishing a less restrictive use, information must be supplied as follows:

(i) An explanation of the irretrievable person-induced or natural conditions which preclude attainment of a higher use designation; or

(ii) An assessment of the adverse social and economic impacts of additional controls beyond the effluent limitations required pursuant to Section 301(b)(2)(A) and (B) of the Federal Act.

(k) The Board may require any additional information or data it deems necessary to make a decision.

(l) Alphanumeric Code if known.

2.03 Board Review

The Board shall review any application prepared and submitted pursuant to the above and the recommendation of the Chief and then, shall decide

whether to tentatively approve the requested revision to the standards. The recommendation of the Chief shall be based upon all available information.

2.04 Decision on Application

If the Board decides to tentatively approve a revision, including one on its own initiative, it shall prepare or cause to be prepared an information sheet containing at least the following where applicable:

- (a) The name and address of the applicant.
- (b) The name and sketch or description of the waters proposed for revision of standards, including the location of existing and proposed discharge points and the Alphanumeric designation.
- (c) The existing and proposed designated use(s).
- (d) The proposed changes in water quality criteria for the segment(s) based on the proposed designated use(s).
- (e) A brief abstract of the supportive documentation which demonstrates that the revision is appropriate.
- (f) A summary of the implications of such designation for the community and other users or potential users of the waters in question.
- (g) The Chief's recommendations and any relevant Division reports, etc.
- (h) Any other information deemed necessary.

2.05 Proposal of Revision

In proposing said revision(s), the Board shall follow the applicable

procedures in Chapter 29A-3-1, et seq., with the following added for clarification:

(a) In addition to filing notice of the proposed rule(s) in the State Register, the Board shall publish notice of a public hearing on the proposed rule(s) as a Class I legal advertisement in a publication area determined by the Board.

(b) The said notice of public hearing shall include the following information:

- (i) Time and location of hearing;
- (ii) Hearing agenda;
- (iii) Notification of the availability of an information sheet as required under Section 2.04; and
- (iv) The location where reports, documents, and data pertaining to the hearing agenda are available for public inspection.

(c) Any such notice of public hearing shall also be mailed to any person who has filed with the Board a request for notices of proposed rules revising water quality standards. Such notices shall also be mailed to affected downstream States and Federal, State and interstate agencies which may be affected by the proposed revision(s).

(d) The Board shall cause to be prepared a transcript of any public hearing held pursuant to these rules and shall make such transcript available for public inspection.

2.06 Multiple Applications

In consideration of limited time and resources, the Board may, within its discretion, consider several applications for revised standards at one time and may defer all such considerations to its triennial review required under Section 303 of the Federal Act.

PROMULGATION HISTORY

The proposed procedural regulation for the revision of water quality standards was filed with the Secretary of State on June 29, 1981 with an effective date of July 29, 1981.

The Board then went to public notice on October 28, 1982 with a combined procedural regulation for the revision of water quality standards and petitions for rule making under Chapter 20, Articles 5A and 5E and adopted the combined regulations designated Series VI on the 20th day of January 1983, with an effective date of February 19, 1983.

On June 14, 1984 the Board filed in the Office of the Secretary of State proposed changes/additions/amendments/deletions to these regulations with the comment period closing July 14, 1984. In this proposed regulation all reference to Petitions for Rule Making under Chapter 20, Article 5E had been deleted as the Board no longer has this authority (reference Memorandum to Members of the State Water Resources Board dated March 10, 1983 from David C. Callaghan, Director - Department of Natural Resources).

On August 6, 1984 by proper motion and vote the Board adopted the proposed changes to Series VI Administrative Regulations and they were duly filed with the Secretary of State on August 9, 1984 with an effective date of September 8, 1984.

FISCAL NOTE

The proposed changes/additions/amendments/deletions to Series VI of the Administrative Regulations of the State Water Resources Board are not expected to require any additional fiscal impact on the public or the State.



Ohio Power
Conner Run

STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

1206 Greenbrier Street
Charleston, West Virginia 25311
(304) 348-4002

STAFF
FRANCES E. HUNTER
Executive Secretary

PAUL L. HILL, JR., PH.D.
Technical Assistant

ROBERT K. PARSONS
ASSISTANT ATTORNEY GENERAL
Legal Advisor

OFFICE LOCATION
1260 Greenbrier Street

December 4, 1985

JOHN C. AILES
P.O. Box 1036
Romney, West Virginia
DR. DAVID E. SAMUEL
Box 16 Rt. 6
Morgantown, West Virginia
ROBERT B. SCOTT
601 David Avenue
Elkins, West Virginia
DR. ALLEN HAMNER
3 Lincoln Way
Buckhannon, West Virginia
WILLIAM PLASS
21 Grandview Drive
Princeton, West Virginia

Dolores Messer, Legal Ad. Dept.
Charleston Newspapers
1201 Virginia Street, East
Charleston, W. Va. 25301

Dear Ms. Messer:


Please run the attached Public Notice in the Legal Advertising section of the Charleston Gazette and the Charleston Daily Mail - release date is December 9, 1985.

Send the affidavit of publication and the original invoice to the above address.

Thank you for your cooperation.

Very truly yours,

STATE WATER RESOURCES BOARD


Frances E. Hunter
Executive Secretary

attachment

NOTICE OF PUBLIC HEARING ON REVISION (VARIANCE) OF WATER QUALITY STANDARDS

Public Notice Date: December 9, 1985

The West Virginia State Water Resources Board will hold a public hearing on the Ohio Power Company's, Mitchell Plant, near Moundsville, W. Va. request for revision of water quality standards to Conner Run tributary of the Ohio River.

The hearing will be held on January 13, 1986 at 9:00 a. m. in conference room located at 1260 Greenbrier Street, Charleston, W. Va.

People wishing to make comments on the above are invited to be present or represented at the hearing. Although oral statements will be accepted, written statements are encouraged for the accuracy of the record. Comments will be accepted until January 13, 1986.

Copies of the Information Sheet prepared by the Board on this request may be reviewed at the Department of Natural Resources' District Offices in Fairmont, W. Va. or may be obtained by contacting the State Water Resources Board at 1205 Greenbrier Street, Charleston, W. Va. 25311 or by calling area code 304-348-4002.



WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 20-5 and 20-5A

Series I
1983

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 4-11-84
Administrative Law Division

Subject: Requirements Governing Water Quality Standards

The State Water Resources Board and the Chief, Division of Water Resources, West Virginia Department of Natural Resources, under Chapter 20, Article 5, and Article 5A, Code of West Virginia, have been vested with the power and authority to determine whether any person, firm, municipality or corporation is polluting any of the waters of the State of West Virginia and to prevent, control, eliminate or reduce such pollution. In making such determination, due consideration shall be given to the public policy of the State of West Virginia, as expressed in the Code (Chapter 20-5A-1).

The Board is also charged with responsibility for promulgating rules and regulations establishing water quality standards and effluent limitations as applicable for the protection of the waters of the State.

These regulations establish general water use categories and water quality criteria applicable to the waters of the State. Water quality criteria project concentrations of water constituents which, if not exceeded, will protect the waters of the State for specific uses. These water quality criteria may form the basis for determining effluent limitations.

The water quality criteria contained herein are not to be interpreted as representing all constituents which affect water quality.

*Effective April 15, 1984 to ~~Jan. 6, 1986~~
April 27, 1985*

Section 1. General

1.01 Scope - These regulations establish requirements governing the discharge or deposit of sewage, industrial wastes and other wastes into the waters of the State and establish water quality standards for the waters of the State.

1.02 Authority - These regulations are promulgated under authority of West Virginia Code (Chapter 20, Article 5A, Section 3).

1.03 Filing Date - These regulations were filed in the Office of the Secretary of State on April 11, 1984.

1.04 Effective Date - These regulations become effective April 15, 1984.

1.05 These regulations are certified authentic by the Executive Secretary of the State Water Resources Board.

7.51 Ohio River Basin - Main Stem - 0

The main stem of the Ohio River from the Ohio-Pennsylvania-West Virginia State line to the Ohio-Kentucky-West Virginia State line.

Exceptions:

No exceptions specified.

7.52 Ohio River Basin - Tributaries - LK, LKH, LKW, LKS and OMI

All tributaries to the Ohio River, excluding the Big Sandy, Guyandotte and Kanawha Rivers.

Exceptions:

(a) Except the stretch of Conners Run (O-77-A) (a tributary of Fish Creek), from its mouth to the discharge from Conners Run impoundment, shall not have the use B1; therefore may contain arsenic not to exceed 200 ug/l and selenium not to exceed 62 ug/l.

(b) Except the stretch of Harmon Creek (a tributary of the Ohio River) from its mouth to a point 2.2 miles upstream shall be exempt from the specific criteria limitation for temperature.

EMERGENCY
WRB
Leg. Rule, 20-5A
Series II, Sec. 7.5.2

FILED
1985 APR 22 PM 2:53

7.5.1 Ohio River Basin - Main Stem - O

The main stem of the Ohio River from the Ohio-Pennsylvania-West Virginia State line to the Ohio-Kentucky-West Virginia State line.

Exceptions:

No exceptions specified.

7.5.2 Ohio River Basin - Tributaries - LK, LKH, LKW, LKS and OMi

All tributaries to the Ohio River, excluding the Big Sandy, Guyandotte and Kanawha Rivers.

Exceptions:

(a) Except the stretch of Conners Run (O-77-A) (a tributary of Fish Creek), from its mouth to the discharge from Conners Run impoundment, shall not have the use B1; therefore may contain arsenic not to exceed 200 ug/l and selenium not to exceed 62 ug/l.

(b) Except the stretch of Harmon Creek (a tributary of the Ohio River) from its mouth to a point 2.2 miles upstream shall be exempt from the specific criteria limitation for temperature.

(c) Except in the stretch of Cow Creek (O-55) from its mouth to a point approximately 2,300 feet upstream, the water use category B-1 shall not apply.

Effective Apr 22, 1985 to Jan 5, 1986

EMERGENCY

WQS

Leg. Rule, 20-5 & 20-5A

Series I, Sec. 7.2.c.1

7.2.c.1 MC - Cheat River and all its tributaries except those listed below:

7.2.c.1.i MCB - Blackwater River and all its tributaries.

7.2.c.2 MW - West Fork River and all its tributaries.

7.2.c.3 MT - Tygart River and all its tributaries except those listed below:

7.2.c.3.i MTB - Buckhannon River and all its tributaries.

7.2.c.3.ii MTM - Middle Fork River and all its tributaries.

7.2.c.4 MY - Youghigheny River and all its tributaries to the West Virginia-Maryland State line.

7.2.c.5 Exception; to 7.2.c: Except that flow in the main stem of the Monongahela River, as regulated by the Tygart Reservoir, operated by the U. S. Army Corps of Engineers, is based on a minimum flow of 345 cfs at Lock and Dam No. 8, river mile point 90.8. This exception does not apply to tributaries of the Monongahela River.

7.2.c.5.i Exception; to 7.2.c.4: Water Use Categories D, and E are excluded from the tributaries of the Youghiogheny River in West Virginia which flow into Maryland.

7.2.d O - Ohio River Basin. The Ohio River and all its tributaries to the West Virginia-Ohio-Pennsylvania State lines excluding the following major tributaries which are designated as follows:

7.2.d.1 O1 - Ohio River - main stem. The main stem of the Ohio River from the Ohio-Pennsylvania-West Virginia State line to the Ohio-Kentucky-West Virginia State line.

7.2.d.2 O2 - Ohio River - tributaries. All tributaries of the Ohio River excluding the following major tributaries:

7.2.d.2.i Exceptions; to 7.2.d.2:

7.2.d.2.i.A Except the stretch of Conners Run (O-77-A) (a tributary of Fish Creek), shall not have the Water Use Category A; therefore may contain arsenic not to exceed 200 ug/l and selenium not to exceed 62 ug/l.

Effective Jan 6, 1986 to March

page 12

27, 1986

20-5 & 20-5A

20-5A-1

20-5A-3(a)

EPA approved the revision

Ohio exposed to criminal & civil fines from
date to

30 million for upgrade which would be passed
on to customers

Northwestern Ohio areas

No impact on Fish Creek

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

April 6, 1987

NOTICE OF THE EXPIRATION OF EMERGENCY RULES

THE EMERGENCY RULES LISTED BELOW FILED BY THE WEST VIRGINIA WATER RESOURCES BOARD ON JANUARY 6, 1986 WILL EXPIRE ON APRIL 6, 1987. THE FIFTEEN MONTHS ALLOWED UNDER CHAPTER 29A-3-15 FOR AN EMERGENCY RULE TO BE EFFECTIVE EXPIRES ON THIS DATE.

THE FOLLOWING WATER RESOURCES EMERGENCY RULES HAVE EXPIRED.

1. Series 1, Water Quality Standards-Filed January 6, 1986, Emergency amendment filed March 28, 1986.
2. Series 2, NPDES Rules-Filed January 6, 1986
3. Series 3, Special Rules-Filed January 6, 1986
4. Series 9, Underground Injection Control-Filed January 6, 1986

THE 1987 LEGISLATURE IN S.B. 748 HAS AUTHORIZED THE ABOVE RULES BUT S. B. 748 WILL NOT BECOME EFFECTIVE UNTIL JUNE 12, 1987. UNTIL SUCH TIME THE PRIOR RULES OF THE WATER RESOURCES BOARD FOR SERIES 1, 2, 3 AND 9 RETURN AS EFFECTIVE RULES.

A handwritten signature in cursive script, appearing to read "Rich O. Hartman".

Rich O. Hartman, Director
Administrative Law Division

SECRETARY OF STATE
1987 APR - 5 AM 10:28
FILED



* E M E R A M E N D *

WATER RESOURCES BOARD

FILED

1985 APR 22 PM 2:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF APPROVAL AND ADOPTION

BY: State Water Resources Board

EMERGENCY LEGISLATIVE RULE:

West Virginia Administrative Regulations
State Water Resources Board
Chapter 20-5 and 20-5A (1983)
Series I, Water Quality Standards

The attached amendments to the above titled Legislative rule constitutes the official emergency rule approved and adopted by the State Water Resources Board on the 16th day of April 1985 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.

Entered



John C. Ailes



FILED

STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

1205 Greenbrier Street
Charleston, West Virginia 25311
(304) 348-4002

1985 APR 22 PM 2:51

STAFF
FRANCES E. HUNTER
Executive Secretary

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE PAUL L. HILL, JR., PH.D.
Technical Assistant

ROBERT K. PARSONS
ASSISTANT ATTORNEY GENERAL
Legal Advisor

OFFICE LOCATION
1260 Greenbrier Street

- JOHN C. AILES
P.O. Box 1036
Romney, West Virginia
- DR. DAVID E. SAMUEL
Box 16 Rt. 6
Morgantown, West Virginia
- ROBERT B. SCOTT
601 David Avenue
Elkins, West Virginia
- DR. ALLEN HAMNER
3 Lincoln Way
Buckhannon, West Virginia
- WILLIAM PLASS
21 Grandview Drive
Princeton, West Virginia

April 22, 1985

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

Re: Emergency Rules

Attn: Mr. Rich O. Hartman

Dear Sir:

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 Rules.

Very truly yours,

Frances E. Hunter
Executive Secretary

3 attachments

1. Emergency Rules
2. Facts and Circumstances
3. Notice of Approval by Board

EMERGENCY
WRB
Leg. Rule, 20-5A
Series I, Sec. 7.5.2

FILED

1985 APR 22 PM 2:51

FACTS AND CIRCUMSTANCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

W. Va. Code 20-5 and 20-5A et seq. authorize the State Water Resources Board to promulgate rules and regulations and to establish water quality standards to protect the State's surface waters. The Board has established approved Procedural regulations to provide procedures for the revision of water quality standards on a case by case basis. These procedures require as a minimum, compliance with public notice and opportunity to comment on proposed revisions in addition to affirmative recommendations from applicable State agencies such as the Water Resources Division of the Department of Natural Resources and when necessary the State Health Department.

Emergency rule amendment to Series I, Section 7.5.2 of the Board's Administrative Regulations:

7.5.2

...

- (c) Except in the stretch of Cow Creek (O-55) from its mouth to a point approximately 2,300 feet upstream, the water use category B-1 shall not apply.

This emergency rule is an addition to Series I, Section 7.5.2 and was requested by the American Cyanamid Company, Pleasants County, W. Va. as a result of a Consent Degree in the Civil Action No. 83-0259C in the U. S. District Court for the Northern District of West Virginia regarding an action by the United States of America and the State of West Virginia (Department of Natural Resources) vs American Cyanamid Company.

Specifically, this Consent Degree, entered into by all parties, required American Cyanamid to obtain a water quality revision for that certain small portion of Cow Creek to delete the use category of B-1 by July 13, 1985.

After having duly complied with all laws and regulations, the State Water Resources Board has approved and adopted this emergency rule amendment to the water quality standards and further declares an emergency does exist pursuant to W. Va. Code 29A-3-15(e) in that it is necessary to promulgate said emergency rule for the immediate preservation of public peace, health, safety and welfare and is necessary to comply with a Federal Court ordered time limitation in the above referenced Consent Degree. This emergency rule was also necessary to prevent substantial harm to the public interest.

Any delay in implementing this emergency rule would find American Cyanamid in contempt of court and would also cause an

adverse impact on the environment and the social and economic well-being of the community.

FILED

1985 APR 22 PM 2:51

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
STATE WATER RESOURCES BOARD
CHAPTER 20-5 & 20-5A
SERIES I

Title: Requirements Governing Water Quality Standards

Section 1. General

1.1 Scope - These regulations establish requirements governing the discharge or deposit of sewage, industrial wastes and other wastes into the waters of the State and establish water quality standards for the waters of the State.

1.2 Authority - W. Va. Code 20-5, 20-5A and 29A-3-15.

1.3 Filing Date - April 22, 1985.

1.4 Effective Date - April 22, 1985.

EMERGENCY

WRB

Leg. Rule, 20-5 & 20-5A
Series I, Sec. 7.3.1

FILED

1985 APR 22 PM 2:51

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

7.3.1 Bluestone River, Bluestone Lake, East River,
New River, Gauley River and Greenbrier River
Basins - KNB, KN, KN-60, KNG, KG, KGC and KGW

Both the Bluestone and Greenbrier Rivers and all their tributaries from the Virginia-West Virginia State line to their individual confluence with the New River; the East River and all its tributaries arising in Virginia flowing into West Virginia and returning to Virginia, and portions thereof within the boundary of the State of West Virginia; the New River, including all tributaries in addition to those already mentioned from the Virginia-West Virginia State line to its confluence with the Gauley River; the Gauley River and all its tributaries including the Cranberry and Williams Rivers from their source to the confluence with the New River.

Exceptions:

(a) Water Use Categories B2 and D are deleted in Bluestone Lake and temperature rise shall be limited to no more than 3°F above natural not to exceed 81°F at any time during the months of May through November and not to exceed 73°F at any time during December through April in Bluestone Lake.

(b) Except the stretch of Laurel Creek (KN-5) (a tributary of the New River) from the confluence of Dempsey Branch and Laurel Creek to a point 1.7 miles below, where the specific criterion for iron shall be 3.0 mg/l total iron, and from that point to the confluence of Laurel Creek and the New River, the specific criterion for iron shall be 1.0 mg/l total iron.

EMERGENCY

WRB

Leg. Rule, 20-5A

Series II, Sec. 7.5.2

7.5.1 Ohio River Basin - Main Stem - 0

The main stem of the Ohio River from the Ohio-Pennsylvania-West Virginia State line to the Ohio-Kentucky-West Virginia State line.

Exceptions:

No exceptions specified.

7.5.2 Ohio River Basin - Tributaries - LK, LKH, LKW, LKS and OMi

All tributaries to the Ohio River, excluding the Big Sandy, Guyandotte and Kanawha Rivers.

Exceptions:

(a) Except the stretch of Conners Run (O-77-A) (a tributary of Fish Creek), from its mouth to the discharge from Conners Run impoundment, shall not have the use B1; therefore may contain arsenic not to exceed 200 ug/l and selenium not to exceed 62 ug/l.

(b) Except the stretch of Harmon Creek (a tributary of the Ohio River) from its mouth to a point 2.2 miles upstream shall be exempt from the specific criteria limitation for temperature.

(c) Except in the stretch of Cow Creek (O-55) from its mouth to a point approximately 2,300 feet upstream, the water use category B-1 shall not apply.

EMERGENCY

WRB

Leg. Rule, 20-5A

Series I, Sec. 7.3.1

Emergency rule amendment to Series I, Section 7.3.1 of the Board's Administrative Regulations:

7.3.1

...

- (b) Except the stretch of Laurel Creek (KN-5) (a tributary of the New River) from the confluence of Dempsey Branch and Laurel Creek to a point 1.7 miles below, where the specific criterion for iron shall be 3.0 mg/l total iron, and from that point to the confluence Laurel Creek and the New River, the specific criterion for iron shall be 1.0 mg/l total iron.

This emergency rule is an addition to Series I, Section 7.3.1 and was requested by The New River Company, Fayette County, W. Va. as a result of a Consent Order, in Civil Action No. C-78-1124, in the Circuit Court of Fayette County, W. Va. in an action brought by the State of West Virginia (Department of Natural Resources vs The New River Company).

Specifically this Consent Order required New River to file a request for a revision of certain water quality standards for a small portion of Laurel Creek and within 60 days after notice of approval of such request The New River Company must perform such tasks as apply for a water pollution control permit which governs the treatment required of the water from the Lochgelly Mine Complex situated to discharge into Laurel Creek. Said treatment facility must be completed within six months from issuance of the permit.

After having duly complied with all laws and regulations, the State Water Resources Board has approved and adopted this emergency rule amendment to the water quality standards and further declares an emergency does exist pursuant to W. Va. Code 29A-3-15(e) in that it is necessary to promulgate said emergency rule for the immediate preservation of public peace, health, safety and welfare and is necessary to comply with a court ordered time limitation in the above referenced Consent Order. This emergency rule was also necessary to prevent substantial harm to the public interest.

Any delay in implementing this emergency rule would find The New River Company in contempt of court and would also cause an adverse impact on the environment and the social and economic well-being of the community.

ATTACHMENT

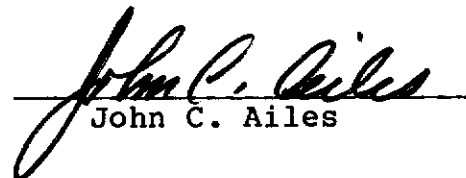
The amendments below to Series I, Section 7.31 and Section 7.52 of the West Virginia Administrative Regulations of the State Water Resources Board constitutes the emergency rules approved and adopted by the State Water Resources Board on April 16, 1985.

7.52

- (c) Except in the stretch of Cow Creek (O-55) from its mouth to a point approximately 2,300 feet upstream, the water use category B-1 shall not apply.

7.31

- (b) Except the stretch of Laurel Creek (KN-5) (a tributary of the New River) from the confluence of Dempsey Branch and Laurel Creek to a point 1.7 miles below, where the specific criterion for iron shall be 3.0 mg/l total iron, and from that point to the confluence of Laurel Creek and the New River, the specific criterion for iron shall be 1.0 mg/l total iron.


John C. Ailes