

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

RECEIVED  
1992 SEP 18 PM 1:31  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Department of Commerce, Labor & Environmental  
AGENCY: Resources - State Water Resources Board TITLE NUMBER: 46

CITE AUTHORITY WV Code § 20-5A

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: National Discharge Elimination System  
Program (NPDES)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_  
\_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Frances E Hunter

12.60

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 46 CFR Series 2 - National Pollutant Discharge Elimination System (NPDES)

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Department of Commerce, Labor and Environmental Resources, State Water Resources Board

Address: 1260 Greenbrier Street, Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations		N O N E.			
Equipment					
Other					

2. Explanation of Above Estimates:

3. Objectives of These Rules:

The proposed amendments to existing rules are intended to effectuate compliance with present federal regulations, under which the state's program has been delegated.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: Loss of federal matching funds could occur if the state program continues failure to comply with federal regulations.

B. 1. Economic Impact on Political Subdivisions:

2. Economic Impact on Specific Industries: All publicly owned treatment works would be required to obtain permits from the distant federal government.

3. Economic Impact on Specific Groups of Citizens: Potential loss of State program would bring about a more expensive permitting program conducted by the federal government, to the operator of publicly owned treatment works.

C. Economic Impact on Citizens/Public at Large: Loss of State program would increase expense to all affected National Pollutant discharge Elimination System permit applicants ;as a result of having to obtain permits from the more distant federal government. Certain federal funds allotted to the state to operate its program would be lost.

Date:

June 8, 1992

Signature of Agency Head or Authorized Representative

Francis P. Heuter

*West  
Virginia*

DEPARTMENT OF COMMERCE,  
LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY

State Capitol

Charleston, West Virginia 25305

304/348-3255

March 19, 1992

Ms. Fran Hunter  
State Water Resources Board  
1260 Greenbrier Street  
Charleston, West Virginia 25305

**RE: National Pollutant Discharge Elimination System (NPDES) Rules**

Dear Fran:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
John M. Ranson  
Cabinet Secretary

JMR/TJG:cjb

B:R&MEMO2.RUL

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Delia Caldwell OF

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,  
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,  
PUBLISHED IN THE CITY OF CHARLESTON, KANAWHA COUNTY,  
WEST VIRGINIA, DO SOLEMNLY SWEAR THAT THE ANNEXED  
NOTICE OF: AMENDMENTS TO TIT. 46

WAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES  
LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF THE  
COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA,  
ON THE

4TH DAY OF JULY , 1992 .

DATES PUBLISHED:

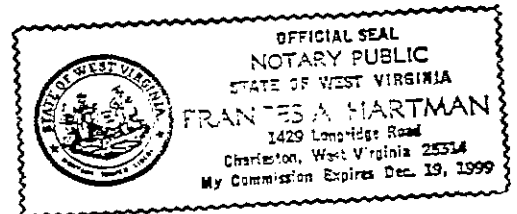
07/03/92 GAZETTE 07/03/92 DAILY MAIL

SUBSCRIBED AND SWORN TO BEFORE ME THIS

6TH DAY OF JULY , 1992 .

Frances A. Hartman  
NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE \$ 43.80



NOTICE OF CHANGE  
IN PUBLIC  
HEARING DATE

The public hearing before the State Water Resources Board scheduled for 7:00 p.m. in Conference Room C located at the State Capitol Complex Bldg. 7 has been changed from July 23, 1992 to August 3, 1992 - same time. The subject of the public hearing in accordance with applicable State and Federal requirements is as follows:

Proposed changes/amendments and corrections to Title 46 Legislative Rules - National Pollutant Discharge Elimination System (NPDES) rules - Series 2; and

Proposed changes/amendments and corrections to Title 46 Legislative Rules - National Pollutant Discharge Elimination System (NPDES) rules - Series 2; and

Proposed Title 46 Legislative Rules - Requirements Governing Groundwater Standards - Series 12.

People wishing to make comments on the proposed rules 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 received until August 7, 1992.

Copies of the proposed rules may be obtained by contacting the Board Office at 1615 Washington Street East, Charleston, WV 25311 (304) 558-4002.

(92277)

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Debra L. Williams OF

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER

THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,

PUBLISHED IN THE CITY OF CHARLESTON, KANAWHA COUNTY,

WEST VIRGINIA, DO SOLEMNLY SWEAR THAT THE ANNEXED

NOTICE OF PUBLIC HEARING

WAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES

LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF TH

COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA,

ON THE

13TH DAY OF JUNE , 1992 .

DATES PUBLISHED:

06/12/92 GAZETTE 06/12/92 DAILY MAIL

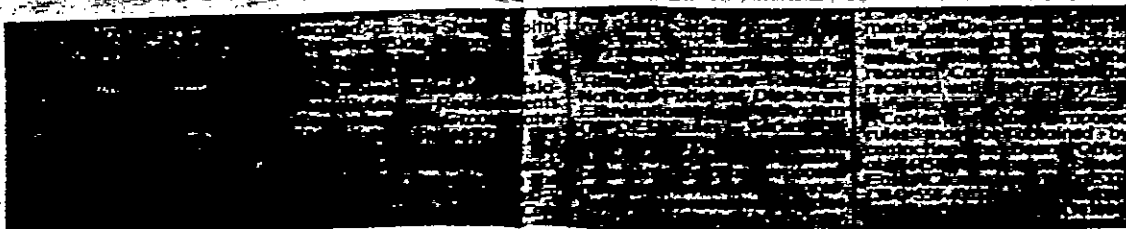
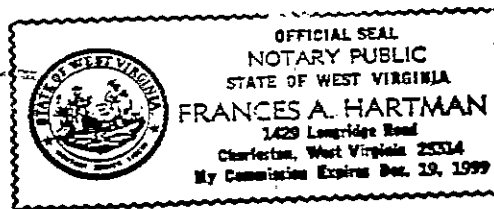
SUBSCRIBED AND SWORN TO BEFORE ME THIS

15TH DAY OF JUNE , 1992 .

Francis A. Hartman

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE \$ 43.80



**STATEMENT OF ROBERT L. FOSTER  
ON BEHALF OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED CHANGES TO NPDES REGULATIONS**

My name is Robert L. Foster and I am here today on behalf of the West Virginia Manufacturers Association regarding the Board's proposed changes to the National Pollutant Discharge Elimination System Regulations relating to publicly owned treatment works or POTWS. As a preliminary matter, the WVMA believes that the Board should take a new look at the changes it has made to Series 2 and decide whether it wishes to incorporate by reference those federal regulations which apply to POTWs and, if so, should do so as clearly as possible. If that is not what the Board intends to do, it should revise current regulations to eliminate the references to the federal POTW regulations.

Both sections 14.1 and 15 of Series 2, appear to incorporate by reference the POTW regulations found at 40 C.F.R. Part 403, but this assumption is called into question by the fact that Section 14.1.a identifies specific types of prohibited discharges which are also found in 40 C.F.R. §403.5(b). If the Board intended to incorporate by reference the provisions of Part 403, there is no need to restate specific prohibitions from that federal rule in the state rule. If, on the other hand, the Board does wish to incorporate by reference the provisions of Part 403, the Board should revise Section 14 so that it identifies the types of facilities to which the Part 403 regulations apply, and by adding definitions necessary for the state program. For example, the Board would need to identify the "Approval Authority" and the "Control Authority."

The WVMA encourages the Board to withdraw this proposed rule and resubmit a rule that more clearly indicates its intention with regard to POTW regulation.

INTER-OFFICE MEMORANDUM

DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF WATER RESOURCES

TO: Dr. David Samuel, Chairman  
State Water Resources Board

FROM: Jerry L. Ray, <sup>John</sup> Assistant Chief  
Permits

RE: Title 46, Series 2, NPDES Rules; Proposed Changes

DATE: July 30, 1992

This is to advise of this agency's support of your proposed amendments to the above referenced rules in order to bring the Pretreatment Program in line with federal requirements.

As we understand, the opening of these rules for comments is limited to the proposed amendments for the Pretreatment Program. Therefore, we will provide no other comments at this time.

At the appropriate time in the future, we will provide input to the Board where amendments are required for stormwater, toxic controls and some other general areas where experience has demonstrated the need for changes in some procedural portions of the rules.

JR/at

RECEIVED  
AUG 03 1992  
WATER RESOURCES BOARD

**COMMENTS OF WEST VIRGINIA MANUFACTURERS  
ASSOCIATION REGARDING PROPOSED  
AMENDMENTS TO THE NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM REGULATIONS  
TITLE 46 SERIES 2**

**SUBMITTED ON BEHALF OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION**

**AUGUST 7, 1992**

**Prepared By**

**ROBINSON & McELWEE  
600 United Center  
P. O. Box 1791  
Charleston, WV 25326  
(304) 344-5800**

**RECEIVED**

**AUG 07 1992**

**WATER RESOURCES BOARD**

**COMMENTS OF WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED AMENDMENTS TO THE NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM REGULATIONS  
TITLE 46 SERIES 2**

**I. INTRODUCTION**

The West Virginia Manufacturers Association (WVMA) is a nonprofit organization comprised of approximately 250 West Virginia manufacturing companies and ancillary businesses with a vital interest in the state's regulation of industrial activities in West Virginia. The WVMA comments on all rules which could affect its members' operations in an attempt to help develop fair and equitable environmental regulation in West Virginia. The WVMA continues this constructive role by offering the following comments regarding amendments to the West Virginia Water Resources Board's National Pollutant Discharge Elimination System (NPDES) regulations pertaining to Publicly Owned Treatment Works (POTWs), proposed for inclusion in the Code of State Regulations at Title 46, Series 2.

**II. COMMENTS**

1. As a result of changes to W.Va. Code §20-5A-7(c), permits may now be renewed for up to 10 years. Section 3.5.b of Series 2 should be changed accordingly.

2. While the changes to Series 2 proposed by the Board may bring the state's regulation of POTWs up-to-date, the scope of the state rule remains unclear. Currently, Section 14.1 states that "all indirect discharges shall comply with the requirements of 307 of the Clean Water Act and the regulations thereunder." Section 15 provides that "the provisions of 40 C.F.R. Chapter 1, Subchapter N, Parts

400-460 as in effect July 1, 1985, are hereby incorporated by reference." Since the federal pretreatment regulations for indirect discharges are found in 40 C.F.R. Part 403, and are authorized in part by Section 307 of the Clean Water Act, it would appear that both Sections 14.1 and 15 incorporate that federal rule into Series 2. However, if that is the case, there is no need for repeating the list of prohibited discharges in Section 14.1.a of the state rule, since it would already be incorporated along with the prohibited discharges referred to in 40 C.F.R. §403.5(b). Similarly, Sections 14.4, 14.5 and 14.6 of Series 2 are apparently intended to incorporate some, but not all, of 40 C.F.R. Sections 403.8, 403.7 and 403.13, respectively. The end result is confusion as to whether all of Part 403 is adopted by reference, such that the individual references in Series 2 to specific provisions of Part 403 are unnecessary, or if Part 403 is only incorporated by reference to the extent that individual subsections of Section 14 refer to that Part.

If the Board wishes to incorporate by reference the POTW pretreatment program requirements of 40 C.F.R. Part 403, it should do so by expressly incorporating that Part into Section 14. At the same time, it should define terms in Part 403 in ways that are relevant to the state NPDES program. For example, such terms as "approval authority" and "control authority" should be defined. These changes would make it less likely that a gap in coverage would develop or that a POTW or industrial user would misunderstand what portions of the state rule or Part 403 apply to it.

3. The WVMA objects to the Board's failure to identify the costs associated with these amendments to the state NPDES program. While it may be

true that the expense of losing authority to administer the POTW program could result in loss of federal funds for the state, that savings is incurred only by imposing additional expenses on POTW users and POTWs themselves. Some estimate of the economic impact on political subdivision and specific industries should be provided.

### **III. CONCLUSION**

The WVMA appreciates this opportunity to offer comments on the Title 46, Series 2 rule governing POTWs and hopes that its suggestions will be given careful consideration.

Respectfully submitted this 7th day of August, 1992.

WEST VIRGINIA MANUFACTURERS ASSOCIATION

DATE: September 18, 1992

TO: Legislative Rule-Making Review Committee

FROM: Frances E. Hunter, Executive Secretary - State Water Resources Board

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1992 SEP 18 PM 1:34  
OFFICE OF WEST VIRGINIA  
LEGISLATIVE STATE

LEGISLATIVE RULE TITLE: National Pollutant Discharge Elimination System (NPDES)

1. Authorizing statute(s) citation WV Code § 20-5A.

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

June 8, 1992

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

Published in Charleston Newspapers June 12, and July 3, 1992;

On July 22, 1992 filed another notice that was published in the State Register July 24, 1992.

c. Date of hearing(s): August 3, 1992

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

Attached X No comments received                     

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

September 18, 1992

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

Frances E. Huntr - 558-4002

Libby M. Chatfield - 558-4002

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:

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.

N/A

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b. Date of hearing: N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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1992 SEP 18 PM 1:35

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

RATIONALE

LEGISLATIVE RULES GOVERNING THE STATE NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM (NPDES) SYSTEM

These legislative rules have been promulgated to implement a federally mandated Pretreatment Program under the Federal Clean Water Act. The State must, at a minimum, have authority to implement and enforce all provisions of the federal regulations. The federal regulations have been revised twice since the promulgation of the State regulations. Because the federal revisions have not been incorporated into the State regulations, the enforcement authority of the State agency (Office of Water Resources) has been determined by the U. S. Environmental Protection Agency ("EPA") to be inadequate. Further, the EPA, following its recent audit of the State program, requested the Office of Water Resources to revise the subject regulations.

Following is a summary of responses directed to the proposed amendments which were received by the Water Resources Board during the public comment period for these rules, which closed on August 7, 1992.

Comment

One comment received requested a change to Section 3.5.b. of Series 2. This section is not part of the Pretreatment Program, and therefore was not considered in the amendments herein.

Comment

One commentor suggested that a strict incorporation by reference of the federal rules would be more consistent and indicated that the format of Section 14 was confusing.

The rule maintains the existing format of Section 14 in an effort to minimize proposed changes. That section incorporates by reference the federal regulations, and also reiterates various important provisions of those regulations. It also includes regulations not found in the federal regulations [i.e. Sections 14.2. and 14.3. requirements relative to State implementation of the program in Publicly Owned Treatment Works ("POTW's") without approved programs.] Those "state" regulations are retained in this revision. The commentor referred to Section 15. of the State rules as the basis for the statement that the Section 403 of the federal regulations are already incorporated. While Section 15. does state that CFR Chapter 1 Subchapter N, Parts 400-460 in effect on July 1, 1985 are hereby incorporated by reference. It is clear that the intent of Section 15. was to incorporate "Federal Effluent Limitations Guidelines and Standards" and not program regulations such as 403. Further, the State would lack enforcement authority for regulations promulgated after July 1, 1985. Both revisions to 40 CFR 403 occurred after that date.

Comment

One commentor requested that definitions of terms used in Section 403 of the federal statute be included in the State regulations. The Board believes that because the federal rules are incorporated by

Rationale (Cont'd)

reference, the definitions included in those regulations would be applicable when viewing those regulations. Including the definition of terms in State regulations when they are not used therein is unnecessary and inappropriate.

Board Action

The Board adodpts the Legislative rule as proposed.

PROPOSED

Title 46 - Series 2

WEST VIRGINIA LEGISLATIVE RULES

STATE WATER RESOURCES BOARD

1992

RULES GOVERNING THE STATE NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM  
(NPDES) PROGRAM

Department of Commerce, Labor & Environmental Resources  
STATE WATER RESOURCES BOARD  
1615 Washington Street, East  
Charleston, West Virginia 25311-2126  
(304) 558-4002

Note: New language underscored, old language deleted.

SENATE BILL NO. 176

(By Senator Manchin)

1           [Introduced March 1, 1993; referred to the  
2           Committee on Natural Resources; and then to  
3           the Committee on the Judiciary.]  
4  
5  
6  
7  
8  
9

10 A BILL to amend and reenact section ten, article three, chapter  
11       sixty-four of the code of West Virginia, one thousand nine  
12       hundred thirty-one, as amended, relating to authorizing the  
13       water resources board to promulgate legislative rules  
14       relating to the national pollutant discharge elimination  
15       system (NPDES).

16 Be it enacted by the Legislature of West Virginia:

17       That section ten, article three, chapter sixty-four of the  
18       code of West Virginia, one thousand nine hundred thirty-one, as  
19       amended, be amended and reenacted, to read as follows:

20 **ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND**  
21       **ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

22 §64-3-10. Water resources board.

23       (a) The legislative rules filed in the state register on the  
24       sixth day of January, one thousand nine hundred eighty-three,

1 relating to the state water resources board (underground  
2 injection control program), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 fifteenth day of November, one thousand nine hundred  
5 eighty-three, relating to the state water resources board  
6 (special regulations), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 third day of August, one thousand nine hundred eighty-three,  
9 relating to the state water resources board (groundwater  
10 protection standards), are authorized.

11 (d) The legislative rules filed in the state register on the  
12 fifteenth day of November, one thousand nine hundred  
13 eighty-three, relating to the state water resources board (state  
14 national pollutant discharge elimination system (NPDES) program),  
15 are authorized.

16 (e) The Legislature hereby authorizes and directs the state  
17 water resources board to promulgate rules relating to water  
18 quality standards in exact conformity with the rules relating to  
19 water quality standards tendered to the secretary of state on the  
20 seventh day of March, one thousand nine hundred eighty-four, by  
21 the executive secretary of the state water resources board, to be  
22 received and filed for inclusion in the state register by the  
23 secretary of state.

24 (f) The legislative rules filed in the state register on the  
25 seventeenth day of October, one thousand nine hundred

1 eighty-five, and modified by the state water resources board to  
2 meet the objections of the legislative rule-making review  
3 committee and refiled in the state register on the twenty-fourth  
4 day of February, one thousand nine hundred eighty-seven, relating  
5 to the state water resources board (special regulations), are  
6 authorized.

7 (g) The legislative rules filed in the state register on the  
8 seventh day of January, one thousand nine hundred eighty-five,  
9 modified by the water resources board to meet the objections of  
10 the legislative rule-making review committee and refiled in the  
11 state register on the thirteenth day of February, one thousand  
12 nine hundred eighty-five, relating to the water resources board  
13 (water quality standards), are authorized.

14 (h) The legislative rules filed in the state register on the  
15 seventeenth day of October, one thousand nine hundred  
16 eighty-five, modified by the state water resources board to meet  
17 the objections of the legislative rule-making review committee  
18 and refiled in the state register on the eighth day of January,  
19 one thousand nine hundred eighty-seven, and further modified by  
20 the state water resources board to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the twenty-fourth day of February, one thousand nine  
23 hundred eighty-seven, relating to the state water resources board  
24 (water quality standards), are authorized.

1       (i) The legislative rules filed in the state register on the  
2 seventeenth day of October, one thousand nine hundred  
3 eighty-five, modified by the state water resources board to meet  
4 the objections of the legislative rule-making review committee  
5 and refiled in the state register on the eighth day of January,  
6 one thousand nine hundred eighty-seven, and further modified by  
7 the state water resources board to meet the objections of the  
8 legislative rule-making review committee and refiled in the state  
9 register on the twenty-fourth day of February, one thousand nine  
10 hundred eighty-seven, relating to the state water resources board  
11 (state national pollutant discharge elimination system (NPDES)  
12 program), are authorized.

13       (j) The legislative rules filed in the state register on the  
14 seventeenth day of October, one thousand nine hundred  
15 eighty-five, and modified by the state water resources board to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the twenty-fourth  
18 day of February, one thousand nine hundred eighty-seven, relating  
19 to the state water resources board (underground injection control  
20 program), are authorized.

21       (k) The legislative rules filed in the state register on the  
22 seventeenth day of October, one thousand nine hundred  
23 eighty-five, and modified by the state water resources board to  
24 meet the objections of the legislative rule-making review  
25 committee and refiled in the state register on the twenty-fourth

1 day of February, one thousand nine hundred eighty-seven, relating  
2 to the state water resources board (special regulations), are  
3 authorized.

4 (l) The legislative rules filed in the state register on the  
5 thirtieth day of June, one thousand nine hundred eighty-seven,  
6 relating to the water resources board (water quality standards),  
7 are authorized.

8 (m) The legislative rules filed in the state register on the  
9 fourteenth day of October, one thousand nine hundred  
10 eighty-eight, relating to the water resources board (water  
11 quality standards), are authorized.

12 (n) The legislative rules filed in the state register on the  
13 twenty-seventh day of August, one thousand nine hundred ninety,  
14 relating to the water resources board (requirements governing  
15 water quality standards), are authorized.

16 (o) The legislative rules filed in the state register on the  
17 eighteenth day of September, one thousand nine hundred ninety-  
18 two, relating to the water resources board (national pollutant  
19 discharge elimination system (NPDES)), are authorized.

20

21 NOTE: The purpose of this bill is to authorize the Water  
22 Resources Board to promulgate legislative rules relating to the  
23 National Pollutant Discharge Elimination System (NPDES).

24

25 Strike-throughs indicate language that would be stricken from  
26 the present law, and underscoring indicates new language that  
27 would be added.