



STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

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May 4, 1983

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obsolete enc. note
04/17/83 4/1983
to Oct 29, 1983

The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, WV 25305

Dear Mr. Secretary:

Pursuant to the Director's authority under Chapter 20-5E-6(a) relating to the overall responsibility for promulgating regulations under Chapter 20-5E and based upon the Director's position as to the Board's jurisdiction and authority under Chapter 20-5E, at an open meeting held on April 20, 1983, a motion was duly made, seconded and unanimously adopted that the Board withdraw its entire Series VII Regulations and its participation in the joint promulgation of Sections 8, 10, 11 and 12 of Series XV, the Director's Regulations, with the understanding that Series XV remains in effect, as the Director's Regulations re: the Hazardous Waste Management Regulations.

A new Series VII is hereby being filed by the Water Resources Board as Emergency Regulations as authorized by Chapter 29A-3-15 and Chapter 20-5A along with the prescribed State Register Filing Form and a statement of facts and circumstances constituting the emergency. This regulation becomes effective upon filing. These are the Groundwater Protection Standards.

I hereby certify that the enclosed are true and accurate copies of the official regulations adopted by the State Water Resources Board on April 20, 1983.

Respectfully submitted,

John C. Ailes
John C. Ailes, Chairman
State Water Resources Board

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

THIS DATE May 4, 1983

Administrative Law Division

JCA/feh

enclosures

c The Honorable John D. Rockefeller, IV

Legislative Rule Making Review Committee (15 copies)



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, John C. Ailes, Chairman,
Title or Position

State Water Resources Board, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- (x) rules and regulations; or
- () other - specify ().

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

THIS DATE May 4, 1983
Administrative Law Division

This filing pertains to Emergency Regulations.

Chapter 20 & 29A
Article 5A & 5E
Series WRB VII
Section _____
Page No. _____

- () proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

May 4, 1983
Date Submitted

John C. Ailes
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE WATER RESOURCES BOARD

Chapter 20

Articles 5A and 5E
Series VII
(1983)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE May 4, 1983
Administrative Law Division

GROUNDWATER PROTECTION STANDARD

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Section 1. Groundwater Protection Standard

1.01 Scope and Purpose.

The purpose of these regulations is to provide a standard of protection for groundwater which shall apply to hazardous waste management facilities. The term "hazardous waste management facility" as used in this section shall have the same meaning as that term is defined under Section 2, Series XV, Department of Natural Resources, Administrative Regulations.

1.02 Authority.

These regulations are promulgated under the authority of the West Virginia Code Chapter 20, Articles 5E and 5A.

1.03 Effective Date.

These regulations will become effective upon filing in the Office of the Secretary of State.

1.04 Filing Date.

These regulations were filed in the Office of the Secretary of State on May 4, 1983.

1.05 Certification.

These regulations are certified authentic by the Chairman of the State Water Resources Board.

1.06 Groundwater Protection Standard.

The owner or operator must comply with conditions specified in the permit that are designed to ensure that hazardous constituents under Section 8.13.04, Series XV, Department of Natural Resources Administrative

Regulations, entering the groundwater from a regulated unit do not exceed the background concentrations of those constituents in the groundwater in the uppermost aquifer underlying the waste management area at or beyond the point of compliance under Section 8.13.05, Series XV, Department of Natural Resources Administrative Regulations, during the compliance period under Section 8.13.06, Series XV, Department of Natural Resources Administrative Regulations. These background concentrations will be determined as described under Section 8.13.08(b), Series XV, Department of Natural Resources Administrative Regulations. When determining compliance with the groundwater standard, the statistical tests and procedures outlined in Sections 8.13.08(c) and 8.13.08(d) of Series XV, Department of Natural Resources Administrative Regulations, shall be applied.

DATE May 4, 1983
Administrative Law Division

JUSTIFICATION OF EMERGENCY

West Virginia Code §20-5E-6 requires the Director of the Department of Natural Resources to promulgate regulations within six months of the effective date of the Act [July 9, 1981].

West Virginia Code §20-5E-7(i) also requires the Board to promulgate regulations within six months of the effective date of the article.

These sections indicate clearly that the legislature intended that performance standards for all facilities, including disposal facilities be developed by January, 1982. Further, included in such performance standards are groundwater monitoring and compliance requirements.

Therefore, the promulgation of emergency regulations is proper inasmuch as such regulations are necessary to comply with a time limitation established by the Code. Further, the promulgation of all the regulations referred to above may also meet the test of "emergency" because of deadlines established by EPA regulations and when states must apply for either interims or full authorization.

EPA regulations [40 C.F.R. §123.122(c)(1)] require states to apply for all three components of Phase II interim authorization (components A, B, and C) by July 26, 1983. Component A covers storage of waste in containers, Component B covers incineration of wastes and Component C covers land disposal of wastes and groundwater monitoring. The July 26, 1983 deadline is also a commitment of the current State/EPA Agreement (SEA). If the emergency regulations are not established at this time, the state will not meet the regulatory and SEA deadlines.

And finally, these regulations meet the requirements of an "emergency" in that such regulations are necessary to prevent substantial harm to the public interest and for the immediate preservation of the public health, safety, and welfare. The legislature found in West Virginia Code §20-5E-2 that:

"(T)he public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound matter . . ." and that "the problem of managing hazardous wastes has become a matter of statewide concern."

The legislature declared further that the purpose of §20-5E was . . . "to protect the public health and safety, and the environment from the effect of the improper management of hazardous waste and to assure " . . . the safe and adequate management of hazardous waste within this state . . ." The lack of standards (beyond interim status standards) applicable to land disposal of hazardous waste allows those facilities to continue to operate without the requirements necessary to completely protect the public health and safety and the environment. The longer the period of time until compliance is reached and remedial or corrective action is pursued, the more dramatic and long lasting the impact of improper waste management.

Several facilities have already been identified as having contaminated the ground water through their management practices.

One site on the Ohio River which the state has already taken action against has highly contaminated the ground water with organic and inorganic substances some of which are identified as toxic or suspected carcinogens. A public supply well serving approximately 1500 people was also endangered from this site. The company was required to clean-up, remove, chemically fix and reclaim the area eliminating the sources of contamination while continuing ground water monitoring and pumping action to control migration and retrieve contaminates. The final clean-up cost is not available, however, the cost to date is in the range of 2.5 to 3 million dollars.

Another case involved leakage from underground raw product storage tanks. These tanks have added a suspected carcinogen, benzene, to the ground water. Because of a delay in detection and remedial action wide spread contamination of ground water has occurred.

A third case also on the Ohio River involved the storage and disposal of materials which caused the contamination of an alluvial aquifer with cyanide. The responsible company is required to collect and treat the ground water in an attempt to clean up the problem while removing the source of pollution.

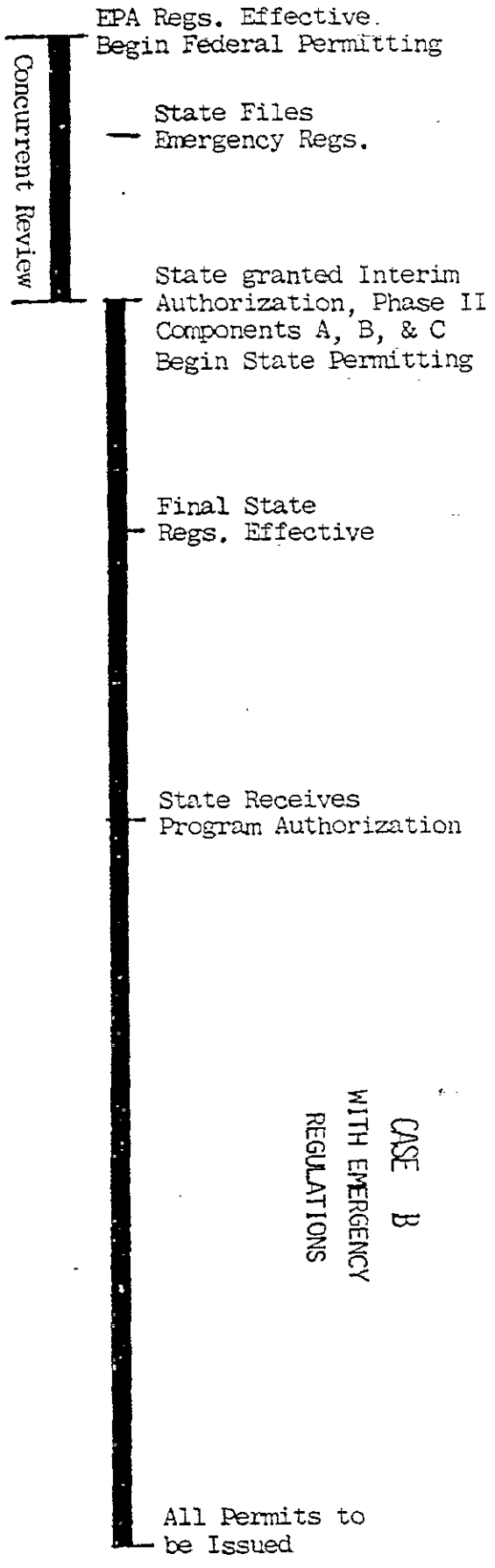
Additional studies have indicated numerous other ground water problems existing from production or disposal activities through out the alluvial aquifer systems along the Ohio River valley.

The lack of emergency regulations will not only cause harm to the public health, safety, and environment, there will also be substantial harm to the public interest due to duplicative permitting requirements.

If the state has equivalent standards, then permitting activities can be aligned with the EPA. This will allow for joint review and issuance of both the state and federal permits at the same time and will eliminate the need for an owner/operator to obtain a second permit when state standards are established at a later date. Also, any state permit issued prior to state authorization (or interim authorization for that particular activity), unless jointly issued with and identical to the federal permit, will be invalid at the time of authorization requiring the permit to be reissued. Thus, a facility could be subject to three permitting processes (see Figure I, Case A).

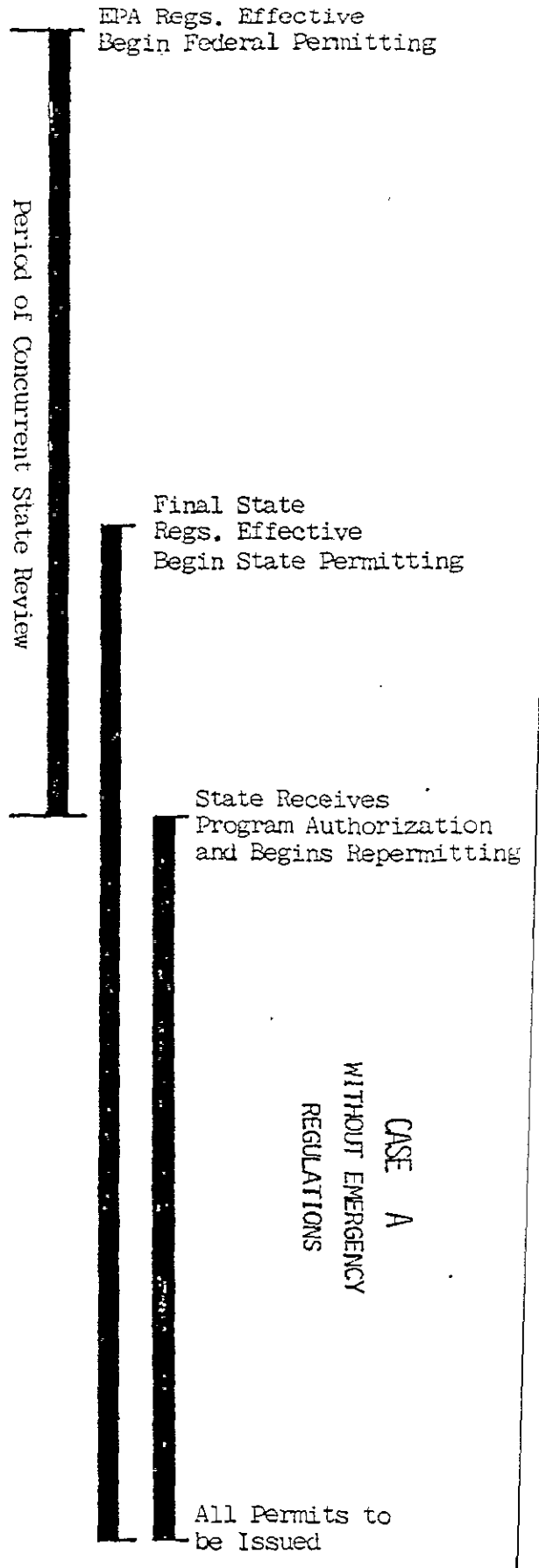
Another reason which supports the necessity of emergency regulations is that the State's regulatory deadline for permitting will not be met. The West Virginia Administrative Regulations covering Hazardous Waste Management, Section 11.02.04(b) requires the issuance of all hazardous waste management facility permits within five (5) years of the effective date of such regulations. The effective date of the regulations was April, 1982. Therefore, a year has already elapsed with no substantial permitting activity. If emergency regulations are not established at this time, an additional year will pass before standards can be enacted and permits issued for land disposal, treatment, and storage (surface impoundments) facilities. The problem becomes more

JAN 83
APR 83
SEPT 83
APR 84
JAN 85
JAN 87



CASE B
WITH EMERGENCY
REGULATIONS

JAN 83
APR 84
JAN 85
APR 87



CASE A
WITHOUT EMERGENCY
REGULATIONS

complex when one considers the repermitting activities described above. The state must commit resources to review of the facility application at the time federal action is taken and also when the state subsequently permits or repermits the facility. It is doubtful that the State regulatory deadline of April, 1987 can be met under these conditions.

Emergency rules are also necessary to generate revenues for the continuation of the State's current program. The State Hazardous Waste Management Act provides for a Hazardous Waste Management Fund to be supplied with revenues from permit application fees and fines and penalties. The fund to be used for offsetting the cost of administrating the state hazardous waste management program.

The Division is currently using the fund to provide part of its matching requirement of over \$200,000 annually against the federal grant. The Division will not be able to maintain its current program if these revenues are not forthcoming. This essentially means that there will be no administration and enforcement of the State's Hazardous Waste Management Act, which will substantially harm the public interest.

There are many factors which control the rate of Part B application requests and also the type of operating unit we can permit. First, all of our permitting activities are either controlled by the rate of Part B application call-in or by the capacity of EPA for overview of state application review. EPA will not fund permitting activities by the State, if the resultant permit will not quality as a "RCRA permit". A RCRA permit would be a permit issued by a state authorized to issued permits for that activity or a state permit issued jointly with the EPA permit with equivalent (identical) provisions.

The state could issue permits independently of EPA if it could exceed its match requirements for the federal grant and therefore make available state revenue for state program activities. Considering the current state fiscal crisis this does not seem likely.

EPA plans on shifting its permit priorities to facilities that require ground water monitoring. Three to four disposal facility permit applications will be requested this year. EPA will restrict their call in of storage and treatment applications to the original twenty that were requested in FY '82. The State is essentially limited to the same until it is authorized for a portion (interim authorization) or all (full authorization) of the federal program.

The second factor that must be considered is the scope of coverage of the state's regulations. Currently the state has regulations in place governing the storage and treatment of hazardous wastes. However, the issuance of permits is limited to storage and treatment in containers and/or tanks because there are no ground water monitoring regulations in-place which are requisites for storage and treatment surface impoundments. Also, the State must adopt financial requirements before any permits can be issued.

Figure II describes the effects of regulation development on revenues generated and program scope.

In summary, the following reasons exist which support the issuance of emergency regulations:

- 1) The rules are necessary to comply with the six months time limitation established in West Virginia Code §26-5E;
- 2) The rules are necessary to comply with EPA's regulatory time limitation of July 26, 1983;
- 3) The rules are necessary in light of the Legislature's findings that the improper management of hazardous wastes threatens public health, safety and the environment;
- 4) The continued operation of hazardous waste facilities without the regulations in place presently threatens public health, safety and the environment and substantially harms the public interest;
- 5) The rules are necessary to allow state matching monies against the federal grant and to allow the current state program to continue; without the current program, the public interest is substantially harmed and public health, safety and environment threatened.
- 6) The rules are necessary to prevent duplication in permitting requirements, which will substantially harm the public interest;
- 7) The rules are necessary to enable the State to permit all facilities within five years, a requirement of the State regulations which reflects the immediate nature of the Hazardous Waste Program.

FIGURE 11

PERCENTAGE OF TOTAL
FACILITIES SUBJECT
TO PERMITTING

SCOPE OF PERMITTING

ESTIMATED FY '84 REVENUES

(Based on projected
rate of permit review)

REGULATORY ACTION NEEDED

Storage and Treatment
in Tanks and Containers

\$30,000

Promulgate Financial
Regulations

81%

Storage and Treatment
in Surface Impoundments
and Waste Piles

\$60,000

Promulgate Financial
Regulations and Ground
Water Regulations

Total \$90,000
Accumulated

Disposal Facilities

\$60,000

Promulgate Financial,
Ground Water and facility
standards for landfills,
land farms and surface
impoundments.

- landfills
- land farms
- surface impoundments

Total \$150,000
Accumulated

9%