

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED
Jul 12 2 45 PM '99
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

BUREAU OF ENVIRONMENT/DIVISION OF ENVIRONMENTAL PROTECTION
AGENCY: OFFICE OF WATER RESOURCES TITLE NUMBER: 47

CITE AUTHORITY: 22-1-6(d)(6)

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW _____

AMENDMENT TO AN EXISTING RULE: YES , NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5A

TITLE OF RULE BEING AMENDED: "State Certification of Activities
Requiring Federal Licenses and Permits"

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS February 15, 1999


Authorized Signature

\$4.60



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

January 5, 1999

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

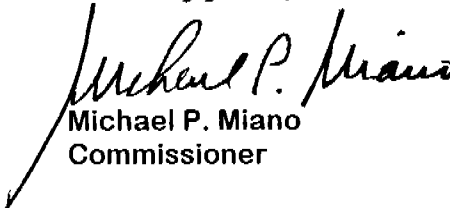
**RE: 47CSR5A - "State Certification of Activities Requiring
Federal Licenses and Permits"**

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as Notice of Agency Adoption of a Procedural Rule Exempt from Legislative Review.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Barb Taylor
Lyle Bennett
Carrie Chambers

FILED

TITLE 47
PROCEDURAL RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

JAN 12 2 45 PM '99

OFFICE OF THE SECRETARY OF STATE

SERIES 5A
STATE CERTIFICATION
OF ACTIVITIES REQUIRING FEDERAL LICENSES AND PERMITS RULE

§47-5A-1. General.

1.1. Scope. -- The purpose of this procedural rule is to carry out the procedural responsibilities placed upon the state by Section 401 of the Federal Clean Water Act, 33 U.S.C. §1341. Section 401 of the Clean Water Act requires that any applicant for a federal license or permit to conduct an activity which will or may discharge into waters of the United States (as defined in the Clean Water Act) must present the federal authority with a certification from the appropriate state agency. Federal permits and licenses issued by the federal government requiring certification include permits issued by the United States Army Corps of Engineers under Section 404 of the Clean Water Act, 33 U.S.C. §1344 and licenses issued by the Federal Energy Regulatory Commission under the Federal Power Act, 16 U.S.C. §1791 et. seq.

In issuing such a certification, the state must establish procedures for public notice of all applications for certification, and to the extent it deems appropriate, procedures for public hearing in connection with specific application. See 1980 Report and Opinion of Attorney General, p. 191 (February 11, 1980). This rule establishes such procedures for public notice and public hearings, as well as other procedures.

This rule also interprets the scope of the state's certification.

1.2. Authority. -- WV Code §22-1-6(d)(6)

1.3. Filing Date. -- January 12, 1999.

1.4. Effective Date. -- February 15, 1999.

§47-5A-2. Definitions.

When used in this rule, the following terms are defined as follows:

2.1. "Certification" means certification as required under Section 401 of the Federal Clean Water Act 33 U.S.C. §1341.

2.2. "Director" means the director of the Division of Environmental Protection, or his designee.

2.3. "Division" means the Division of Environmental Protection.

§47-5A-3. Scope and Effect of Certification: Notification of Director.

3.1. Scope of Certification.

3.1.a. Section 401 of the Federal Clean Water Act requires that any applicant for a permit or license from the federal government to conduct an activity which may discharge into the waters of the United States must present the federal agency with a certification from the state wherein the discharge originates that such activity will comply with specified sections of federal

law and with any other appropriate requirement of state law. When issuing certification, the Division may consider the proposed activity's impact on water resources, fish and wildlife, recreation, critical habitats, wetlands, and other natural resources under the director's jurisdiction.

3.1.b. The state may grant, grant with condition, deny, or waive state certification.

3.2. Effect of Certification.

-- Certification and any conditions required by the certification shall become a condition on any federal license or permit. If the state denies certification, then the federal license or permit shall not be granted. 33 U.S.C. §1341(a)(1).

3.3. Notification of Director for Certification of Activities Which May Affect Waters of West Virginia.

3.3.a. Whenever a discharge originating in one state may affect the quality of water in another state, Section 401(a)(2) of the Clean Water Act requires that, upon receipt of a certification application and certification, the federal licensing or permitting agency must notify the Administrator of the United States Environmental Protection Agency. The Administrator must, within thirty (30) days of the notice of application, notify the state whose water quality will be affected. Such state may comment on the discharge's impact on water quality of that state.

3.3.b. In order to assure that the Division receives notification in a timely manner, without regard to the obligations of the United States Environmental Protection Agency, notification shall be given to the director by the applicant within thirty (30)

days after submission of a complete certification application to the appropriate agency in the state wherein the discharge originates, whenever the quality of West Virginia waters are, or will be, impacted by the activity.

3.3.c. After the permit or license is issued by the federal authority, the applicant shall send a copy of the federal license or permit, including any state certification issued by the state agency from the state in which the discharge originates.

§47-5A-4. Applications.

4.1. General. -- Any applicant for certification, except for activities covered by section 9 of this rule, must present a complete application to the Division. The Division may require additional information, at the request of the director, to assess the impact which such activities will have on the natural resources under the director's jurisdiction.

4.2. Corps of Engineers Permits. -- The application to the Division for certification of activities requiring Section 404 permits issued by the United States Army Corps of Engineers, except for activities covered by section 9 of this rule, shall be the Public Notice issued by the Corps of Engineers which describes the activity, notifies the general public of the application for the Section 404 permit and state certification and of the public's right to submit comments and requests for public hearing. The applicant need not submit a copy of the public notice if the Division has received a copy of the public notice from the Corps of Engineers. If further information is required for project assessment, the Division may request it from either the applicant or the Corps.

4.3. Federal Energy Regulatory Commission Licenses.

4.3.a. The application to the Division for certification of an activity requiring a license from the Federal Energy Regulatory Commission (FERC) shall be a letter to the director requesting certification, completed form Appendix A, the license application, document submitted to and accepted by FERC under 18 C.F.R. §4.1-4.202, the Order from FERC accepting the application and a certificate of publication from the newspaper publishing the Class II legal advertisement (Appendix B) required by subsection 6.2. of this rule.

4.3.b. If the project application is altered or modified during the FERC licensing process prior to FERC's final decision, the applicant shall inform the Division of such changes. The Division may review such alterations or modifications and, if the changes are deemed significant by the director, the Division may require a new application for certification. The Division will have ninety (90) days to review such changes or until the end of the year review period, (see subsection 5.1 of this rule) whichever is longer, to determine whether to require a new application or to alter its original certification decision. If the Division requires a new application because of a significant application modification, then the Division will have six (6) months to issue its certification decision from the date of submission of the application.

4.4 Activities Requiring More Than One Certification.

4.4.a. Whenever an activity requires more than one certification because two (2) or more licenses or permits are required from the federal

government, the applicant must apply for certification for both federal authorizations.

4.4.b. If the Division desires, it may reissue the certification for the first federal authorization or certify, certify with conditions, waive, or deny the additional certification. If changes to the activity or planned activity have occurred and were not previously reviewed by the Division, the director may withdraw his previous certification.

4.5. Other Activities Requiring Certification. -- Applicants for other activities, except those covered by section 9 of this rule, requiring certification shall submit information to the Division explaining the activity and its environmental impact of the natural resources under the director's jurisdiction.

§47-5A-5. Procedures for Certification Issuance.

5.1. Action Within One (1) Year. -- Upon receipt of a completed application, the Division will act upon the request for certification within one (1) year or such certification may be deemed as being waived.

5.2. Basis for Decision. -- Any certification decision will be based on compliance with Sections 301, 302, 303, 306 and 307 of the Clean Water Act and on any other appropriate requirement of state law. Such appropriate requirements of state law include the factors enumerated in subsection 3.1 -- Scope of Certification.

5.3. Distribution of Certification Decision. -- Copies of the proposed certification decision will be sent to the applicant and all persons who commented or attended

the public hearing.

5.4. Dismissal or Denial of Federal Application Meets Need for Certification. -- If an application for a federal license or permit is dismissed, denied, or otherwise rendered void, then the certification is no longer needed and any state certification proceeding or action is rendered moot and unnecessary. Any applicant for an activity needing a state certification, which was rendered moot and unnecessary, must renew its application for certification, and the full time period of subsection 5.1 of this rule is available for review upon resubmission of a complete application.

§47-5A-6. Public Notice.

6.1. Corps of Engineers Permits. -- The Division's procedure for issuing public notice for certification of a Corps of Engineers' permit may be either: (1) A public notice issued jointly with the U.S. Army Corps of Engineers, or (2) a public notice issued by the Division. Such notice will describe the activity, advise the public of the scope of certification, their rights to comment on the proposed activity and to request a public hearing, and will also inform the public to whom they should send their requests and comments. (Appendix B) If the Division issues the public notice, then the applicant will bear the cost.

6.2. Federal Energy Regulatory Commission Licenses. - The Division's procedure for issuing a public notice for certification of a FERC license shall be a Class II legal advertisement, (See WV Code §59-3-2(a)) published by the applicant in a newspaper of general circulation in the county in which the activity will take place and in a principle newspaper of

regional circulation in the area where the project is located. Such notice will describe the activity, advise the public of the scope of certification, their rights to comment on the proposed activity and to request a public hearing, and will also inform the public to whom they should send their requests and comments (Appendix B).

6.3. Public Notice for Other Activities Requiring Certification. -- Public notice for other activities requiring certification will be published as a Class I legal advertisement (See WV Code §59-3-2(a)) in the county where the proposed activity will take place. The applicant will bear the cost of such advertisement.

6.4. Submission of Comments to Applicant; Response. -- Any comments and information received by the Division may be forwarded to the applicant so that he may resolve disputes raised, rebut adverse comments and information, or supplement such comments and information. The Division will prepare a response to significant comments.

§47-5A-7. Public Hearings.

7.1. Purpose. -- The purpose of the public hearing is to afford persons and organizations the opportunity to present comments and information which will assist the Division in its decision-making process on application for certification.

7.2. Decision to Hold Public Hearing.

7.2.a. The decision to hold a public hearing lies within the discretion of the director. The director will evaluate all requests for a public hearing and make a decision based on such requests. Such requests should explain the need for the public

hearing and set forth the kind of information, material, or comments expected to be given at the hearing. The director may also hold a public hearing without request.

7.2.b. When a public hearing is called by the director, he shall send a written notice to all parties receiving the public notice and shall publish a Class I legal advertisement (See WV Code §59-3-2(a) in a newspaper in the county where the activity is located or proposed. Such hearing notice shall be sent at least thirty (30) days prior to the hearing date and shall include all pertinent information including location, date and time. The applicant shall bear the cost of publishing any notice.

7.3. Conduct of Public Hearing.

7.3.a. If the public hearing is held, it may be conducted by a hearing officer who shall be appointed by the director.

7.3.b. The public hearing will be conducted in an orderly fashion. Anyone having comments and information may present them to the hearing officer subject to reasonable time limitations. If such information and comments are lengthy, the Division encourages the submission of written testimony with attached documents. The oral presentation should summarize the written testimony.

§47-5A-8. Appeal of Certification.

8.1. Standing for Requesting and Appeal Hearing; Requests; Decision.

8.1.a. Any person whose property, interest in property, or other constitutionally protected interests, under West Virginia State Constitution Article 3,

Section 10, are directly affected by the Division's proposed certification or certification denial, except for those activities covered by section 9 of this rule, may request a hearing within fifteen (15) days after notification of such proposed certification decision.

8.1.b. A person described under subdivision 8.1.a. shall make such a request to the director. The request for hearing shall identify the interest directly affected and set forth the manner in which the person is aggrieved or adversely affected.

8.1.c. The director shall decide whether to hold such hearing.

8.2. Appeal Hearing.

8.2.a. If the request for a hearing is granted, the director, or his designated appointee acting as a hearing examiner, will hold the hearing within sixty (60) days. All hearings will normally be held in Charleston at a place specified by the director. The director, however, may hold the hearing at another location or time.

8.2.b. The parties to the proceeding shall be the aggrieved person, who shall be known as the appellant and the Division of Environmental Protection which shall be the appellee.

8.2.c. In conducting the hearing, the director or his designated appointee acting as a hearing examiner, shall follow the procedures contained in the WV Code §29A-5-1 entitled "Contested Cases." Both parties may be represented by counsel.

8.2.d. Parties may seek discovery and may make various motions as outlined in the West Virginia Rules of Civil Procedure, Rules 7-16 and 26-37, which rules

shall generally apply.

8.2.e. After the hearing the director shall decide the issues presented and shall notify the parties of such decision.

§47-5A-9. Certification of Corps of Engineers General Permits on State, Regional, or Nationwide Basis.

9.1. General Permits on State, Regional or Nationwide Basis.

9.1.a. In carrying out the Section 404 dredge or fill permitting program, the Corps of Engineers may issue general permits on a state, regional or nationwide basis. See 33 U.S.C. §1344(e). Activities covered by such general permits do not require individual application to the Corps of Engineers for a Section 404 permit. Any such general permit must be for a category of activities which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

9.1.b. Corps of Engineers general permits require state certification. The state may certify in accordance with subsections 3.1 and 3.2 of this rule.

9.2. Procedures for Certification of Corps of Engineers General Permits.

9.2.a. Public Notice. -- When the Corps of Engineers proposes to issue a general permit, it requests certification from the state. Public notice of the request for certification and the director's proposed certification decision may be either: (1) a public notice issued jointly with the U.S. Army Corps

of Engineers; or (2) a public notice issued by the Division.

Such public notice will describe the category of activities included in the general permit, advise the public of the scope of certification, their rights to comment on the proposed certification decision, and to request a public hearing. Such notice will also inform the public to whom they should send their requests and comments.

9.2.b. Public Hearings. -- Comments and requests for public hearings will be evaluated by the director pursuant to section 7 of this rule. Public hearings will be publicly noticed and conducted in accordance with section 7 of this rule.

9.3. Appeal of Certification of Corps of Engineers General Permits.

9.3.a. Notice. -- Prior to conducting any activity authorized by a Corps of Engineers general permit, any such authorized person shall publish a Class I legal advertisement in a qualified newspaper in the county where the activity will take place. Such notice shall describe the activity, advise the public of the scope of the granted certification, their rights to comment on the proposed activity, and to request an appeal hearing. Such notice will also inform the public to whom they should send their comments and requests and conform to Appendix C. The applicant must forward a certificate of publication of this notice to the director prior to conducting any activity authorized by a Corps of Engineers nationwide permit.

9.3.b. Appeal of State Certification.

9.3.b.1. Any person whose property, interest in

property, or other constitutionally protected interest under West Virginia State Constitution Article 3, Section 10, are directly affected by the Division's certification of any individual activity authorized by a certified Corps of Engineers' general permit may request an appeal hearing within fifteen (15) days after publication of the notice described in subdivision 9.3.a of this rule.

9.3.b.2. A person described under paragraph 9.3.b.1 shall make such request to the director. The request for hearing shall identify the interest directly affected and set forth the manner in which it is aggrieved or adversely affected.

9.3.b.3. The director shall decide whether to hold such hearing and will conduct the hearing in accordance with subdivisions 8.2.a through 8.2.d.

9.3.b.4. The director shall examine the issues presented and notify the parties of his decision to either uphold, modify or withdraw certification for the individual activity.

§47-5A-10. Enforcement of Certification Provisions.

10.1. General. -- The Clean Water Act provides that any certification condition becomes a term or condition of any federal license or permit. 33 U.S.C. §1341 (d). Certification conditions, therefore, are subject to the enforcement mechanisms available for enforcing the terms or conditions of the federal license or permit to which they attach. In addition, other enforcement mechanisms under the WV Code may be available. See e.g., WV Code §22-1-3(a), §22-11-24, and §22-11-25.

NOTE - Appendix A-C is omitted and is available in the Secretary of State's office or the Division of Environmental Protection's Office of Water Resources.

STATE OF WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION

State 401 Certification Request
for Hydroelectric Projects

APPLICANT _____

CONSULTING AGENCY _____

FERC PROJECT NUMBER _____

NAME AND LOCATION OF PROJECT _____

ACCEPTANCE DATE OF LICENSE APPLICATION BY FERC _____

The West Virginia Division of Environmental Protection (WVDEP) will consider and evaluate a request for State 401 Certification, as required by the Federal Clean Water Act, at such time as the following are received:

1. Letter of request for State 401 Certification;
2. Three (3) copies of the FERC license application;
3. FERC Order of Acceptance of License Application for Filing; and
4. A certification of publication from the newspaper in the county wherein the discharge originates publishing a Class II legal advertisement

(Attachment I).

The WVDEP has twelve (12) months in which to act upon the State 401 Certification request commencing from the date of receipt of all of the above items.

For your information and guidance, enclosed is a copy of the WVDEP State 401 Certification regulations.

TO THE APPLICANT:

() Your completed request for State 401 Certification has been received by the WVDEP-Office of Water Resources. The initiation of the 12-month review period is effective _____.

() Your request for State 401 Certification is incomplete and will not be considered until the following is received:

1. _____.

2. _____.

Director, WV Division of Environmental Protection

By:

Chief, Office of Water Resources

cc: Federal Energy Regulatory Commission

NOTICE

Publication Date:

Expiration Date: (30 Days After Date of Initial
Publication)

TO WHOM IT MAY CONCERN:

State Certification, as required by Section 401 of the Clean Water Act, has been requested of the West Virginia Division of Environmental Protection (WVDEP) for:

(Name of Project)

(Name of Applicant)

SCOPE OF CERTIFICATION: Pursuant to Section 401 of the Federal Clean Water Act, the State may, either certify, certify with conditions, deny or waive certification that the proposed activity will comply with Sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act and other appropriate requirements of State law. When issuing certification, the WVDEP may consider the proposed activity's impact on water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources under its jurisdiction. Procedural and interpretive regulations governing the scope of the Division's certification, public comment, hearings and appeals are in Title 47, Series A.

DESCRIPTION OF THE ACTIVITY: (Give a description which describes the activity and indicates the river or stream to be affected.)

PROJECT LOCATION: (Provide milepoint on the river or stream and nearest post office.)

INFORMATION AVAILABLE: The license application is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

WV Division of Environmental Protection
Office of Water Resources
Regulatory Review Program, Room 78
1201 Greenbrier Street
Charleston, West Virginia 25311-1088

Or

WVDEP District Office (provide address)

COMMENTS: Comments and information relating to Section 401 certification for this activity are hereby solicited. Such information on the activity's impact will be considered if postmarked prior to the expiration date of this notice. The need for a public hearing will be determined based on an evaluation of specific request for such hearing. All comments and information should be mailed to:

Regulatory Review Program
WVDEP-Office of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311-1088

Comments and information postmarked later than the expiration date may not be considered.

NOTICE OF PROPOSED ACTIVITY IN NAVIGABLE WATERS

I (The), _____
(Name of individual organization or company)

propose to conduct the activity described below for which a U.S. Army Corps of Engineers' nationwide permit has been issued. Certification, as required by Section 401 of the Clean Water Act, has been request of the West Virginia Division of Environmental Protection (WVDEP). Under the terms of the Division's certification, I(WE), _____ am(are) to provide this Class I legal advertisement thirty (30) days before conducting the proposed activity. Any person who may be adversely affected or aggrieved by the Division's certification authorizing this activity with fifteen (15) days after publication of this notice.

PROJECT LOCATION: (Give location of proposed activity, including milepoint and name of the river or stream, nearest post office and street address, if appropriate.)

GENERAL/NATIONWIDE PERMIT AUTHORIZATION: This activity is authorized by the U.S. Army Corps of Engineers's General/Nationwide Permit No. ____ which covers

_____.

(Provide the description of your General/Nationwide permit authorization as stated in the Corps of Engineers's regulations 33 CFR 330.5.)

SCOPE OF CONDITIONS OF CERTIFICATION: Pursuant to Section of the Federal Clean Water, the State may certify with conditions that the above described activity will comply with Sections 301, 302, 303 and 307 of the Federal Clean Water Act and other appropriate requirements of State law. When issuing certification, the WVDEP considers the impact on water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources under its jurisdiction from the category of activities authorized by the general/nationwide permit. The permit has conditioned its certification by requiring this notice among other conditions:

REQUESTS FOR HEARINGS: Any person adversely affected or aggrieved by the Division's certification authorizing this activity may request hearing appealing the Division's certification with fifteen (15) days after publication of this notice pursuant to Title 47, Series 5A, Code of State Regulations. Such request for hearing shall identify the requesting party's interest and the manner in which the interest is aggrieved or adversely affected. Such request shall be sent to:

Chief, Office of Water Resources
WV Division of Environmental Protection
1201 Greenbrier Street
Charleston, West Virginia 25311-1088
ATTN: Regulatory Review Program

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

47CSR5A - "State Certification of Activities Requiring Federal Licenses and Permits"

Comment Period Ended January 5, 1999. One written comment was received. That comment, along with response, are attached. There were no amendments made as a result of this comment.

American Electric Power
1 Riverside Plaza
Columbus, OH 43215-2373
614 223 1000



Mr. Lyle Bennett
West Virginia Division of Environmental Protection
Office of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311

December 21, 1998

Re: **State Certification of Activities Requiring Federal Licenses and Permits (47CSR5A)**

Dear Mr. Bennett,

American Electric Power (AEP) is very interested in the Office of Water Resources (OWR) proposed amendments outlining its responsibilities in carrying out the procedural requirements placed upon the state by Section 401 of the Clean Water Act (33 U.S.C. §1341). AEP, and many of our industrial and commercial customers, periodically seek Section 404 and/or Section 10 permitting from the US Army Corps of Engineers, and the subsequent Section 401 water quality certification from the OWR, for a variety of activities. Thus, the provisions outlined in these procedural rules translate directly into requirements that either we, or many of our current and future customers must satisfy. We also consider it essential that these procedural rules be protective of the waters of the state, while not being overprotective, to the point where economic development opportunities are unnecessarily curtailed. For this reason, we are pleased that the proposed changes to 47CSR5A do not appear to place additional restrictions on the regulated community.

Aside from the proposed procedural changes to 47CSR5A, AEP also understands that in the near future the OWR will begin the process of reviewing and outlining recommended regional conditions for the 401 certification of individual Nationwide Permits authorized under the US Army Corps of Engineers Nationwide permit program. AEP is also very interested in this process, particularly those conditions the OWR contemplates for Nationwide Permit 12: Utility Lines.

AEP asks that the OWR eliminate and/or avoid placing burdensome 401 regional conditions on activities of a minor nature that are authorized under the Corps of Engineers Nationwide Permit program. These actions will help relieve the burden of filing for and securing individual 401 certification for certain activities that we and the Corps of Engineers believe result in minimal adverse environmental effects, individually or cumulatively. This reasonable approach to certification will also help the OWR focus its limited resources on those activities that truly merit coverage through the individual 401 certification process.

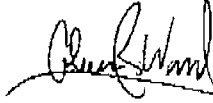
AEP: America's Energy Partner™

Mr. Lyle Bennett
December 21, 1998
Page 2

AEP looks forward to the OWR's careful review and consideration of these comments and we would be happy to meet with you to discuss the issues we have raised in greater detail.

Should you have any questions or require additional information, please contact Mike Brown at (614) 223-1286.

Sincerely,



Alan R. Wood, P. E.
Manager, Water Quality Section

JMB/ARW

**DIVISION OF ENVIRONMENTAL PROTECTION**1201 Greenbrier Street
Charleston, WV 25311-1088CECIL H. UNDERWOOD
GOVERNORMICHAEL P. MIANO
DIRECTOR

January 5, 1999

Alan R. Wood, P.E.
Manager, Water Quality Section
American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215-2373

Dear Mr. Wood:

Thank you for your letter of December 21, 1998 concerning State Certification of Activities Requiring Federal Licenses and Permits (47CSR5A). We are pleased that you found the revisions to these rules to your satisfaction.

In regard to Nationwide Permit No. 12, the new nationwide permits are not presently scheduled until March, 1999. I would suggest that you contact the U.S. Army Corps of Engineers to seek information on these permits and their conditions. Until such time, we will be following the old Nationwide Permit No. 12 and its conditions and this probably will not seriously change.

Thank you again for your favorable response to 47CSR5A. If we can be of further assistance, please advise.

Sincerely,

OFFICE OF WATER RESOURCES

A handwritten signature in cursive script, reading "Lyle B. Bennett".

Lyle B. Bennett, Environmental
Resources Program Manager

LBB/sas