

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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FILED

SEP 3 1 46 PM '93

OFFICE OF THE SECRETARY OF STATE
Effective Date
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: DCL&ER, Division of Environmental Protection TITLE NUMBER: 47

CITE AUTHORITY: § 20-5M-1 thru 6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____


TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 57

TITLE OF RULE BEING FILED AS AN EMERGENCY: Groundwater Quality Standard Variances

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional Sheets If Necessary) :

The effective date of the Water Resources Board's Groundwater Quality Standards (46 C.S.R. 12) is August 25, 1993. With the Groundwater Quality Standard Variances (47 C.S.R. 57) rule authorized through an Emergency Filing the State will be able to process permits with appropriate conditions relative to Groundwater Quality Standards (46 C.S.R. 12) for those facilities/activities requesting permits. Without the provisions of the Groundwater Quality Standard Variances (47 C.S.R. 57) in effect, as soon as possible following the effective date of the Groundwater Quality Standards (46 C.S.R. 12), the state will either have to stop processing permit applications or impose inappropriate (more restrictive) Groundwater Quality Standards in all permits processed pending legislative approval of 47 C.S.R. 57, for a period of roughly 9 months.



David C. Callaghan, Director
Division of Environmental Protection

5-60



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

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

September 2, 1993

David C. Callaghan
Director
Division of Environmental Protection
#10 McJunkin Road
Nitro, West Virginia 25143-2506

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 3 1 46 PM '93

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Re: Proposed Rule - Title 47, Series 57 - Groundwater Quality
Standard Variances

Dear Director Callaghan:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby
consent to the proposal of the rule 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\lab

cc: Dave Watkins

Call with

Decision on Questions

558-2108

t:\grndvar.rul

In compliance with W.Va. Code §29A-3-15(g), the Division of Environmental Protection is filing the proposed groundwater quality standard variance rule, Title 47, Series 57, with request that it be approved for promulgation as an emergency rule.

The reason the emergency rule is being requested has to do with the interplay of statutory sections enacted in the regular session of 1991 in the Groundwater Protection Act, W.Va. Code §20-5M-1 et seq. In particular, I would like to call your attention to the provisions of W.Va. Code §20-5M-4(a). By the requirements of this provision, the Water Resources Board was required to promulgate groundwater quality standards within one year from the effective date of the Act. (The Act was effective June of 1991.) The Board did promulgate the groundwater quality standards in compliance with the law. Those standards have been through the Legislative Rulemaking Review Committee and/or passed as approved rules in the last legislative session. The groundwater quality standards rule will go into effect August 25, 1993. When the groundwater standards rule becomes effective, the need on the part of some entities for the groundwater variance rule will be immediate and acute. What will happen, as of the effective date of the standards, is that any activity or facility which is in a position of currently exceeding the groundwater quality standard will be subject to enforcement of the standards in any permitting action.

The allowance for a variance from groundwater quality standards appears in the Groundwater Protection Act at W. Va. Code §20-5M-5(1). This provision allows for a variance for activities or classes of activities which cannot be conducted in compliance with this section and the standards. However, those variances must be approved by the legislature and will not be available for at least one and one-half years. In order to avoid subjecting those homeowners and businesses to unnecessary expense and inconvenience until their variances are granted, the rule contemplates a temporary variance from the groundwater quality standards.

In effect, what this groundwater variance rule will accomplish is it will allow a grace period for compliance with the groundwater quality standards rule from the time of its emergency promulgation until one of two things happen: Either (1) the facility or activity makes necessary adjustments to allow it to be in compliance with groundwater quality standards, or (2) if it cannot comply, it will have the opportunity to make application for a variance as set forth in this rule. It is for this reason that we have proposed that the rule be promulgated as an emergency rule.

It may be useful for your office to know that this rule has been drafted by a subcommittee of the Groundwater Coordination Committee established under §20-5M-7, which is comprised of representatives from affected agencies, as well as environmentalists and the regulated industry. By and large, this variance rule has been supported and accepted by all of those participating in its drafting. The rule has also been through a public hearing and comment periods. One of the concerns of the many commentators was that the agency should file the rule as emergency to allow those sources affected by the rule ample time to comply with the new groundwater quality standards. By filing the rule as emergency those sources affected by the new groundwater quality standards would have an avenue of appeal that would otherwise not be available. In addition, with the filing date set at December 31, 1993 for letters of intent the agency as well as the legislature would have an idea of the universe of sources that are interested in a variance. By knowing this up front prior to rulemaking meaningful and constructive decisions can be made to the final version of the rule. By and large, this variance rule has been supported and accepted by all of those participating in its drafting. I hope you will give this filing your consideration and, if there are any questions about the need for the emergency promulgation, please don't hesitate to call the office of Ann A. Spaner, Deputy Director of the Division of Environmental Protection.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Groundwater Quality Standard Variances, 47 C.S.R. 57

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Environmental Protection, Office of Water Resources

Address: 1201 Greenbrier Street, Charleston, West Virginia 25311-1088

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$N.A.		N.A.	N.A.	N.A.
Personal Services	\$				
Current Expenses	\$				
Repairs & Alterations	\$				
Equipment	\$				
Other	\$				

2. Explanation of above estimates: All costs related to the implementation of this rule have been provided for through the Groundwater Protection Act Fee Schedule, 47 C.S.R. 55.

3. Objectives of this rule: Provide a means of relief from existing groundwater quality standards/preventative action limits where appropriate.

4. Explanation of Overall Economic Impact of Proposed Rule.

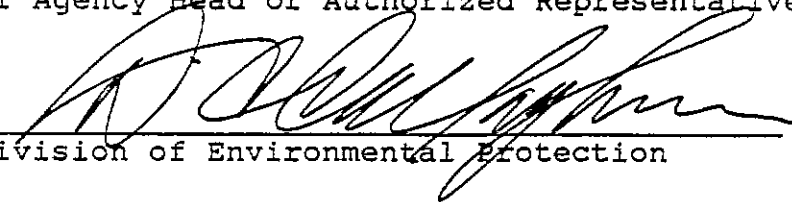
A. Economic Impact on State Government. None, see item #2 above.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. Any person ~~sources~~ with a potential for causing groundwater contamination, when desiring a variance, will expend ~~monies~~ to scientifically justify the need for the variance.

C. Economic Impact on Citizens/ Public at Large. None.

Date:

Signature of Agency Head or Authorized Representative



Director, Division of Environmental Protection

**STATEMENT OF
FACTS AND CIRCUMSTANCES
CONSTITUTING THE EMERGENCY**

for

Groundwater Quality Standard Variances, 47 C.S.R. 57

In compliance with W.Va. Code §29A-3-15(g), the Division of Environmental Protection is filing the proposed groundwater quality standard variance rule, Title 47, Series 57, with request that it be approved for promulgation as an emergency rule.

The reason the emergency rule is being requested has to do with the interplay of statutory sections enacted in the regular session of 1991 in the Groundwater Protection Act, W.Va. Code §20-5M-1 et seq. In particular, I would like to call your attention to the provisions of W.Va. Code §20-5M-4(a). By the requirements of this provision, the Water Resources Board was required to promulgate groundwater quality standards within one year from the effective date of the Act. (The Act was effective June of 1991.) The Board did promulgate the groundwater quality standards in compliance with the law. Those standards have been through the Legislative Rulemaking Review Committee and/or passed as approved rules in the last legislative session. The groundwater quality standards rule will go into effect August 25, 1993. When the groundwater standards rule becomes effective, the need on the part of some entities for the groundwater variance rule will be immediate and acute. What will happen, as of the effective date of the standards, is that any activity or facility which is in a position of currently exceeding the groundwater quality standard will be subject to enforcement of the standards in any permitting action.

The allowance for a variance from groundwater quality standards appears in the Groundwater Protection Act at W. Va. Code §20-5M-5(l). This provision allows for a variance for activities or classes of activities which cannot be conducted in compliance with this section and the standards. However, those variances must be approved by the legislature and will not be available for at least one and one-half years. In order to avoid subjecting those homeowners and businesses to unnecessary expense and inconvenience until their variances are granted, the rule contemplates a temporary variance from the groundwater quality standards.

In effect, what this groundwater variance rule will accomplish is it will allow a grace period for compliance with the groundwater quality standards rule from the time of its emergency promulgation until one of two things happen: Either (1) the facility or activity makes necessary adjustments to allow it to be in compliance with groundwater quality standards, or (2) if it cannot comply, it will have the opportunity to make application for a variance as set forth in this rule. It is for this reason that we have proposed that the rule be promulgated as an emergency rule.

It may be useful for your office to know that this rule has been drafted by a subcommittee

of the Groundwater Coordination Committee established under §20-5M-7, which is comprised of representatives from affected agencies, as well as environmentalists and the regulated industry. By and large, this variance rule has been supported and accepted by all of those participating in its drafting. The rule has also been through a public hearing and comment periods. One of the concerns of the many commentators was that the agency should file the rule as emergency to allow those sources affected by the rule ample time to comply with the new groundwater quality standards. By filing the rule as emergency those sources affected by the new groundwater quality standards would have an avenue of appeal that would otherwise not be available. In addition, with the filing date set at December 31, 1993 for letters of intent the agency as well as the legislature would have an idea of the universe of sources that are interested in a variance. By knowing this up front prior to rulemaking meaningful and constructive decisions can be made to the final version of the rule. By and large, this variance rule has been supported and accepted by all of those participating in its drafting. I hope you will give this filing your consideration and, if there are any questions about the need for the emergency promulgation, please don't hesitate to call the office of Ann A. Spaner, Deputy Director of the Division of Environmental Protection.

Date: August 20, 1993
To: Legislative Rule-Making Review Committee
From: Department of Commerce Labor and Environmental Resources, Division of Environmental Protection

Emergency Rule Title: Groundwater Quality Standard Variances

1. Date of filing: 8/16/93
2. Statutory authority for promulgating the emergency rule: §20-5M-1 thru 6
3. Date of filing the proposed legislative rule: 8/16/93
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule: Entirely new rule
5. Has the same or similar emergency rule previously been filed and expired: No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare:
7. If the emergency rule was promulgated in order to comply with a time limit established by the code or federal statute or regulation, cite the code provision, federal statute or regulation and time limit established therein: N.A.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest:
In compliance with W. Va. Code §29A-3-15(g), the Division of Environmental Protection is filing the proposed groundwater quality standard variance rule, Title 47, Series 57, with request that it be approved for promulgation as an emergency rule.

The reason the emergency rule is being requested has to do with the interplay of statutory sections enacted in the regular session of 1991 in the Groundwater Protection Act, W. Va. Code §20-5M-1 et seq. In particular, I would like to call your attention to the provisions of W. Va. Code §20-5M-4(a). By the requirements of this provision, the Water Resources Board was required to promulgate groundwater quality standards within one year from the effective date of the Act. (The Act was effective June of 1991.) The Board did promulgate the groundwater quality standards in compliance with the law. Those standards have been through the Legislative Rulemaking Review Committee and/or passed as approved rules in the last legislative session. The groundwater quality standards rule will go into effect August 25, 1993. When the groundwater standards rule becomes effective, the need on the part of some entities for the groundwater variance rule will be immediate and acute.

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The allowance for a variance from groundwater quality standards appears in the Groundwater Protection Act at W. Va. Code §20-5M-5(1). This provision allows for a variance for activities or classes of activities which cannot be conducted in compliance with this section and the standards. However, those variances must be approved by the legislature and will not be available for at least one and one-half years. In order to avoid subjecting those homeowners and businesses to unnecessary expense and inconvenience until their variances are granted, the rule contemplates a temporary variance from the groundwater quality standards.

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It may be useful for your office to know that this rule has been drafted by a subcommittee of the Groundwater Coordination Committee established under §20-5M-7, which is comprised of representatives from affected agencies, as well as environmentalists and the regulated industry. By and large, this variance rule has been supported and accepted by all of those participating in its drafting. The rule has also been through a public hearing and comment periods. One of the concerns of the many commentators was that the agency should file the rule as emergency to allow those sources affected by the rule ample time to comply with the new groundwater quality standards. By filing the rule as emergency those sources affected by the new groundwater quality standards would have an avenue of appeal that would otherwise not be available. In addition, with the filing date set at December 31, 1993 for letters of intent the agency as well as the legislature would have an idea of the universe of sources that are interested in a variance. By knowing this up front prior to rulemaking meaningful and constructive decisions can be made to the final version of the rule. By and large, this variance rule has been supported and accepted by all of those participating in its drafting. I hope you will give this filing your consideration and, if there are any questions about the need for the emergency promulgation, please don't hesitate to call the office of Ann A. Spaner, Deputy Director of the Division of Environmental Protection.

FILED

TITLE 47
DIVISION OF NATURAL RESOURCES
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

SEP 2 1 47 PM '93

SERIES 57
GROUNDWATER QUALITY STANDARD VARIANCES
(EMERGENCY RULE)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§47-57-1. General.

1.1. Scope -- This legislative rule establishes criteria for variances and deviations from the requirements of W.Va. Code, §20-5M-1 et seq. that would otherwise obligate sources to assure compliance with existing quality, groundwater quality standards of the state Water Resources Board and preventative action limits imposed by groundwater regulatory agencies.

1.2. Authority -- W.Va. Code, §20-5M-1 through 6.

1.3. Filing Date --

1.4. Effective Date --

§47-57-2. Definitions.

The definitions set forth in W.Va. Code, §20-5M-3 shall apply to this series along with the following definitions unless the context clearly indicates otherwise.

2.1. "Act" means the West Virginia Groundwater Protection Act, W.Va. Code §20-5M-1 et seq.

2.2. "Agency" means any branch, section, division, department or unit of the state, county or local government, however designated or constituted, which has the authority pursuant to W.Va. Code §20-5M-1 et seq. to regulate facilities or activities which have the potential for adversely impacting groundwater.

2.3. "Agency action" means the issuance, renewal or denial of any permit, license or other required agency approval, or any terms or conditions thereof, or any order or other directive issued by the division of environmental protection, division of health, department of agriculture or any other agency of the state or a political subdivision to the extent that such action relates directly to the implementation, administration or

enforcement of the Act.

2.4. "Class of sources" means a group of sources which engage in similar types of activities and release, or have the potential to release, similar types of pollutants to the groundwater.

2.5. "Constituent" means any chemical, or biological substance found in groundwater due to either natural or man-made conditions.

2.6. "Deviation" means an action of the Director relieving a single source or class of sources, for one or more specific constituents, of the requirement to maintain and protect groundwater at existing quality, where existing quality is better than that required to maintain and protect applicable groundwater quality standards.

2.7. "Director" means the Director of the Division of Environmental Protection of the Department of Commerce, Labor and Environmental Resources.

2.8. "Existing quality limits" means the existing quality of groundwater that is better than groundwater quality standards and which must be maintained and protected pursuant to section 5(e) of the Act.

2.9. "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

2.10. "Groundwater quality standards" means the standards of purity and quality for groundwater of the state promulgated by the State Water Resources Board pursuant to section 4 of the Act.

2.11. "Preventative action limit" means a numerical value expressing the concentration of a substance in groundwater that, if exceeded, shall cause action to be taken to assure that standards of purity and quality of groundwater are not violated.

2.12. "Release" means any act or omission that results in the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of materials or contaminants in a manner that has caused or is reasonably likely to cause the entry of a constituent to groundwater.

2.13. "Source" means any facility or activity which has caused a release or is reasonably likely to cause a release.

2.14. "Variance" means a legislative rule modifying groundwater quality standards or preventative action limits, or both, for a source or class of sources, for one or more specific constituents.

§47-57-3. Statutory Exemptions.

3.1. The requirements of subsections 5(e), 5(f) and 5(g) of the Act related to groundwater quality standards, preventative action limits or existing quality limits shall not apply to coal extraction and earth disturbing activities directly involved in coal extraction that are subject to either or both Article 3, Chapter 22A of the W.Va. Code or Article 5A, Chapter 20 of the W.Va. Code. All other provisions of the Act are applicable to such exempt activities.

3.2. The Act is not applicable to groundwater within areas of geologic formations which are site specific to the production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to Chapter 22B of the W.Va. Code nor to the injection zones of Class II or III wells permitted pursuant to the statutes and regulations governing the underground injection control program. All groundwater outside such areas shall remain subject to the Act. An agency has the right to require the submission of data with respect to the nature of such exempt activities.

3.3. The Director has the authority to modify the requirements of subsection 5(g) of the Act with respect to non-coal mining activities subject to Article 4, Chapter 22A of the W.Va. Code. Such modification shall assure protection of human health and the environment. Those agencies regulating such activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities other than the Act.

§47-57-4. Contamination in Excess of Groundwater Quality Standards.

4.1. Except for any source or class of sources which has been granted a variance for the particular contaminant at issue, any person who owns or operates a source subject to the Act which has caused, in whole or in part, the concentration of any constituent to exceed any applicable groundwater quality standard subject to the Act, must cease further release of that contaminant and must make every reasonable effort to identify, remove or mitigate the source of such contamination and strive where practical to reduce the level of contamination over time to support drinking water use of such groundwater.

4.2. Sources which are operating in full compliance with and pursuant to an agreement, administrative order, permit, or other authorization of an agency requiring remedial action to be undertaken to address groundwater contamination shall be deemed to be in compliance with W.Va. Code §20-5M-4(b).

§47-57-5. Deviation from Existing Quality.

5.1. Application -- Any person may apply to the Director to obtain a deviation from an agency action taken, or to be taken, to assure that a single source or class of sources maintain and protect groundwater at existing quality, where the existing quality is better than that required to maintain and protect applicable groundwater quality standards. Such petition may be independently filed or may be made in conjunction with other matters pending before the Director. If such other matters require public notice, then the request for a deviation shall be clearly identified in such notice.

5.2. Contents -- An application for a deviation must contain:

5.2.1. name, mailing address and phone number of the person requesting the deviation and the name of the individual to be contacted regarding the application;

5.2.2. a description of the source or class of sources and constituents for which the deviation is being requested and, in the case of a request for a class of sources, a description of how such sources are substantially similar and the geographic area to be covered by such class;

5.2.3. a description of the area for which the deviation is proposed, including an analysis of the geology and hydrology of the area;

5.2.4. a report of the existing groundwater quality and uses in the area to be affected by the deviation, including, but not limited to the levels of constituents for which the deviation is being requested;

5.2.5. a list of other sources which may be expected to contaminate in the area for which the deviation is requested;

5.2.6. a statement describing why the measures necessary to preserve existing quality are not technically feasible or economically practical; and

5.2.7. a statement describing why a change in groundwater quality is

justified based upon economic or societal objectives.

5.3. Director Action -- The Director may grant or deny a deviation for a specific site, activity or facility or for a class of activities or facilities which have impacts which are substantially similar and exist in a defined geographic area. The Director's reasons for granting or denying such a deviation shall be set forth in writing. To insure that applicable groundwater quality standards are not violated, the Director shall evaluate the cumulative impacts of all facilities and activities on the groundwater resources in question prior to granting any such a deviation and shall include such evaluation in this written report.

5.4. Terms and Conditions -- The Director shall have the exclusive authority to determine the terms and conditions to be applicable to the Director's decision to grant a deviation and the Director shall have the exclusive authority to determine the terms and conditions of such a deviation. The groundwater regulatory agency shall take such alternative action as may be necessary to assure that the facilities and activities which are subject to the deviation maintain and protect applicable groundwater quality standards. In maintaining and protecting such groundwater quality standards, such agency shall establish preventative action limits which, once reached, shall require action to control a source of contamination to assure that such standards are not exceeded.

5.5. Notice -- The Director or Chief of the Office of Water Resources of the Division of Environmental Protection of the Department of Commerce and Labor and Environmental Resources shall provide notice of any decisions to approve an application for a deviation to the applicant and to any person that has submitted a written request for such information to such Director or Chief.

§47-57-6. Variance From Groundwater Quality Standards and Preventative Action Limits.

6.1. Application -- Upon petition by any person, the Director may identify a single source or class of sources which by their nature cannot be conducted or operated in compliance with the groundwater quality standards or preventative action limits, or both, established pursuant to the Act and may grant a variance for a single source or class of sources. In the case of a petition on behalf of a class of sources, the petition may be filed by any person. In the case of a petition on behalf of a single source, the petition may only be filed by the owner or operator of that source. Any person who petitions for such variance must give contemporaneous notice of the petition by Class I advertisement in a newspaper of general circulation in the area to be affected by the requested variance.

If the petitioner seeks a variance which would apply throughout the state, a Class I advertisement must be placed in a newspaper of state-wide circulation. Any advertisement must identify the name, address, and telephone number of the person requesting the variance, the area in which the variance would be effective (note: include a map if appropriate), and the source or class of sources for which the variance is requested and the constituents for which the variance is requested.

6.2. Contents -- An application for a variance from preventative action limits or groundwater quality standards, or both, must contain the following information:

6.2.1. name, mailing address, and phone number of the person requesting the variance, and the name of the individual to be contacted regarding the application;

6.2.2. a description of the source or class of sources and constituents for which the variance is being requested;

6.2.3. the levels of constituents for which the variance is being requested.

6.2.4. a description of the area for which the variance is proposed, including an analysis of the geology and hydrology of the area;

6.2.5. a description of current groundwater quality and uses in the area to be affected by the variance, and the predicted long-term effect of the variance on the groundwater quality and uses;

6.2.6. a list of other sources which may have an effect on groundwater quality in the area for which the variance is requested;

6.2.7. the alternate limits or standards and mitigation measures proposed by the applicant if the variance is granted, and any proposed variance conditions;

6.2.8. a statement describing why the source or class of sources by their nature cannot be altered or modified to avoid violating preventative action limits or water quality standards;

6.2.9. a statement of the nature and extent of the benefits of the proposed variance including, but not limited to, benefits associated with economics, employment opportunities, health and safety, and the environment;

6.2.10. a description of alternatives to the variance, and an explanation of why the benefits of the proposed action outweigh the benefits of each considered alternative course of action, including not granting a variance, and an explanation of why none of the considered alternatives is reasonable and prudent;

6.2.11. a statement explaining why the proposed action is more in the public interest than the protection of groundwater quality standards or preventative action limits; and

6.2.12. a certificate of publication.

6.3. Rulemaking -- If, after considering the variance petition for a single source or class of sources, the Director concludes that a variance is appropriate, in whole or in part, the Director shall initiate legislative rulemaking as provided in Article 3, Chapter 29A of the W.Va. Code. The proposed rule shall set forth:

6.3.1. a description of the single source or class of sources to be granted the variance and the constituents for which the variance is requested;

6.3.2. the geographical area for which the variance is allowed;

6.3.3. any appropriate terms and conditions; and

6.3.4. the Director's preliminary findings pursuant to subsection 6.7 with respect to which public comment is to be solicited.

6.4. The proposed rule shall be accompanied by a statement of the Director's grounds for proposing the variance. In addition to all other rulemaking requirements, the Director shall hold a public hearing, following 30 days notice, at which oral comments may be received from any interested person, and the Director must allow at least 10 days after such hearing for the submission of written comments. Notice of the public hearing shall also be filed with the state capitol press office. The Director shall issue a determination as to whether such a variance is or is not appropriate within 45 days of the close of the comment period and, if determined to be appropriate, shall take such further steps as may be appropriate to have the variance promulgated as a legislative rule.

6.5. Denials -- If the Director determines that a variance for a single source or class of sources shall not be allowed, he shall publish a denial decision stating the reasons for the denial and provide a copy of the denial decision to the petitioner along with a

notification of the petitioner's appeal rights by certified mail, and by regular mail to any other person who requests a copy of the denial decision. Notice of the denial decision shall also be published in the State Register.

6.6. Appeal -- Any person who is adversely affected by the Director's decision to deny a variance may appeal that decision to the Water Resources Board within 30 days of the date of publication of a denial decision in the State Register.

6.7. Variance Criteria -- The Director shall promulgate rulemaking for a variance for a single source or class of sources, if the Director finds that:

6.7.1. a single source or class of sources by their very nature cannot be conducted in compliance with the requirements of W.Va. Code §20-5M-5(g).

6.7.2. the benefits of granting the variance outweigh the benefits of complying with the preventative action limits, or groundwater quality standards, or both;

6.7.3. the variance is more in the public interest than the protection of groundwater quality standards or preventative action limits; and

6.7.4. there is no reasonable and prudent alternative to the variance.

6.8. The Director's findings pursuant to the foregoing subsection shall include a statement of basis in support of each finding.

6.9. Terms and Conditions -- The Director may propose the variance through the initiation of rulemaking upon such reasonable terms or conditions as may be necessary to protect human health and the environment, to satisfy all requirements of the Act (other than compliance with groundwater quality standards or preventative action limits, or both as specified in the variance), and to minimize adverse impact to groundwater consistent with granting the variance. Such terms and conditions shall include, where the Director deems it to be appropriate, alternative groundwater water standards, alternative preventative action limits, monitoring and reporting requirements, and enforcement provisions. To the extent that such terms and conditions include alternative groundwater quality standards, the Director shall consult with the Water Resources Board in establishing such alternative standards.

6.10. Initial Variance -- All sources shall be granted a waiver of the requirements to comply with all groundwater quality standards and preventative action limits until

January 1, 1994. Any source, whether single or class, which has filed with the Director on or before December 31, 1993, a statement declaring an intent to make application for a variance shall be granted a waiver of the requirements to comply for only those groundwater quality standards and preventative action limits, specific to the variance application, until July 1, 1995. The letter of intent shall include, but not be limited to, identification of the constituent(s) for which a variance is requested, a statement of the nature of the activity requesting the variance, and the geographical area to be affected, by the variance, if granted. Notwithstanding any other provisions of this subsection, such sources may be subject to such other standards or conditions as may be established by an agency to protect human health and the environment and to satisfy all requirements of the Act other than compliance with groundwater quality standards or preventative action limits, or both as specified in the variance. Any waiver granted pursuant to this subsection would be extinguished upon the issuance of a denial from the Director for a variance, or a groundwater quality standard or preventative action limit, or both as specified in the variance application.

6.11. Variance From New Standards -- All sources shall be granted a waiver from the requirements to comply with any groundwater quality standards and associated preventative action limits not in effect on August 30, 1993, until six months following the effective date of such standards and associated preventative action limits. Any source, whether single or class, which has filed with the Director, within six months following the effective date of such standards and associated preventative action limits, a statement declaring an intent to make application for a variance shall be deemed in compliance with all such water standards and preventative action limits as specified in the letter of intent for an additional 18 months. The letter of intent shall include, but not be limited to, identification of the constituent(s) for which a variance is requested, a statement of the nature of the activity requesting the variance, and the geographical area to be affected, by the variance, if granted. Notwithstanding any other provisions of this subsection, such sources may be subject to such other standards or conditions as may be established by an agency to protect human health and the environment and to satisfy all requirements of the Act other than compliance with groundwater quality standards and associated or preventative action limits, or both as specified in the variance. Any waiver granted pursuant to this subsection would be extinguished upon the issuance of a denial from the Director for a variance, or a groundwater quality standard or preventative action limit, or both as specified in the variance application.

6.12. Periodic Review -- No less frequently than every five years the Director shall review all prior decisions granting deviations and variances to determine their continued consistency with this series. Should the Director determine that any

modification of such a decision is appropriate, the Director shall initiate rulemaking pursuant to Article 3, Chapter 29A of the West Virginia Code.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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(Plus all the volunteer
help we can get)

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

October 7, 1993

Dave Watkins
1201 Greenbrier Street
Charleston, WV 25311-1088

Dear Dave:

Thank you for talking so extensively with me on the phone and coming to our office to discuss Series 57, Groundwater Quality Standards Variances being approved as an emergency rule.

The West Virginia Code §29A-3-15(g) states:

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.

In granting variances this rule will actually be lowering the drinking water quality and thereby possibly causing "harm to the public health" and "substantial harm to the public interest" which is totally opposite of what the Code mandates.

Also, we had some problems finding the emergency. When we asked for a list of who needed the variances, we were told that no one had even inquired about obtaining a variance and a list would be impossible at this time.

Once again thank you for the time you spent with us on this rule.

Sincerely,

Judy Cooper, Director
Administrative Law Division

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800 UNITED CENTER
500 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA 25301

August 17, 1993

Mr. Kenneth Hechler
Secretary of State
Room 157
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

The Division of Environmental Protection of the Department of Commerce, Labor and Environmental Resources has filed proposed 47 CSR 57, Groundwater Quality Standard Variances, with your office on August 16, 1993 as a legislative and emergency rule. As a member of the Groundwater Task Force that negotiated the Groundwater Protection Act and this rule, I urge you to approve the Groundwater Quality Standard Variance rule as an emergency rule, as I believe that the rule is within the agency's scope of authority and an emergency exists which justifies the promulgation of the rule.

The variance rule sets the standards for allowing exceptions to the Water Resources Board's groundwater quality standards, which will take effect on August 25, 1993. Unless this rule, with its provision for a temporary waiver of the standards, is in effect, regulatory agencies will be forced to take action after that date to implement groundwater quality standards in a permit, even though the permitted activity is expected to receive a variance under this rule. The result would be conditions imposed on facilities and activities that they could not meet, and would not have to meet once a final variance is granted. For example, approvals are regularly issued for septic systems, which in many cases cannot meet groundwater quality standards. Without a temporary variance such as provided in Section 6.10 of this rule, septic systems might not qualify for permits without expensive upgrades, which would be unneeded once a final variance is granted.

The groundwater variance rule provides a further waiver from groundwater quality standards for any person who has filed an

ROBINSON & MCELWEE

application for a variance prior to December 31, 1993. However, unless the groundwater variance rule is filed as an emergency rule, this deadline will pass before the rule becomes effective, which would be some time in the Spring of 1994 at the earliest. Even those with the foresight to file a petition for a variance prior to the December 31, 1993 deadline could not file a valid petition because no rule would be in effect allowing the petitions at the time the deadline passed. If, on the other hand, the groundwater variance rule is put into effect as an emergency rule before that date, valid petitions for variances could be filed, and those applying for the variances could obtain a waiver from the groundwater quality standards while the final variance was being processed.

The Division of Environmental Protection is filing the rule in emergency form at this time because it wanted to wait for public comment before proposing it. I believe that waiting for such comment was appropriate, given the far-reaching effect of this rule and the groundwater quality standards. By waiting until comments were received the Division was able to address the concerns of interested parties, making it more likely that the rule will avoid any unintended effects or cause substantial disruption to anyone.

Approval of the Groundwater Quality Standards Variance rule as an emergency rule will allow the groundwater quality standards to take effect with a minimum of disruption to industry and homeowners in the state of West Virginia. I urge you to approve the rule as an emergency rule.

Very truly yours,

David M. Flannery
David M. Flannery

DMF/kjd

WEST VIRGINIA Oil and Natural Gas
ASSOCIATION

September 22, 1993

The Honorable Ken Hechler
Secretary of State
Capitol Complex, Bldg. 1, Suite 157
Charleston, WV 25305-0070

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 23 8 43 AM '93

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Dear Secretary Hechler:

The West Virginia Oil & Natural Gas Association respectfully requests you to approve the emergency filing of the state's proposed Groundwater Quality Standard Variance rule (#47 C.S.R. 57) as an emergency rule. The association strongly feels that the groundwater variance rule is a central part of the groundwater regulatory program negotiated among agency officials, environmentalists and representatives of the business community. The rule represents a thoughtful compromise between the general application of groundwater quality standards and the need for relief from those standards in some situations.

Since the groundwater quality standards are now in effect, there is a corresponding need for putting the groundwater variance rule into effect immediately and giving businesses and homeowners the temporary variance from groundwater standards that is allowed by the rule. Otherwise, they will be exposed to the possibility of unnecessary agency action implementing the groundwater quality standards until their petitions for individual variances are granted.

The West Virginia Oil & Natural Gas Association is committed to implementation of a state groundwater protection program in a reasonable and prudent manner. The interim variance provided by the filing of the groundwater variance rule as an emergency rule is a necessary part of this program.

Thank you for your immediate consideration of this important matter.

Sincerely,



Lawrence J. Malone
Executive Director

P.O. BOX 3231
CHARLESTON, WV 25332
(304) 343-1609



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KEN HECHLER
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Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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October 7, 1993

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Sincerely,

Judy Cooper, Director
Administrative Law Division



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1201 Greenbrier Street
Charleston, WV 25311-1088

Gaston Caperton
Governor

John M. Runson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

MEMORANDUM

TO: Ken Heckler, Secretary of State
FROM: Laidley Eli McCoy, Chief, Office of Water Resources, DEP
SUBJECT: Withdrawal of Proposed Emergency Rule

Please be advised that the Division of Environmental Protection is withdrawing it's request for emergency consideration of Proposed Rule - Title 47, Series 57 - Groundwater Quality Standard Variances, with the understanding that the Division may refile for emergency consideration at a later date.

Thank you for your cooperation in this matter and if you should have any questions please feel free to contact me at 558-2107 or TDD 558-2751.

cc: Ann A. Spaner
David P. Watkins

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Oct 7 1 06 PM '93

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DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1201 Greenbrier Street
Charleston, WV 25311-1088

Gaston Caperton
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M E M O R A N D U M

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David P. Watkins