



**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

JUN 7 4 10 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

6/30/94

NOTICE OF AN EMERGENCY RULE

AGENCY: Dept. of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY: §16-1-9a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Public Water Systems

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS.

The Public Water Systems rule is the basis for the existing state drinking water monitoring program, which is, in part federally funded. Failure to promulgate rules which conform to federal requirements and timetables jeopardizes this established and needed program to monitor and work towards continued improvement of West Virginia's drinking water supplies. It is necessary to emergency file these amendments to the rule to meet federal deadlines.

5.40

Use additional sheets if necessary

Gretchen O. Lewis
Signature
Gretchen O. Lewis, Secretary

DATE: June 7, 1994
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Division of Health
EMERGENCY RULE TITLE: Public Water Systems

1. Date of filing: June 7, 1994
2. Statutory authority for promulgating the emergency rule:
§16-1-9a
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Amends a current rule (Public Water Systems, 64 CSR 3)
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.
See filing notice

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.

See filing notice

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See filing notice

PROPOSED RULE

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

PUBLIC WATER SYSTEMS

SERIES 3

199_

EMERGENCY RULE

Filed June 7, 1994

6/6/94

WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
PUBLIC WATER SYSTEMS
64 CSR 3

TABLE OF CONTENTS

§64-3-1.	General	1
§64-3-2.	Application and Enforcement	1
§64-3-3.	Definitions	1
§64-3-4.	Public Water System Construction, Alteration or Renovation; Standards; Exceptions	2
§64-3-5.	Permit to Operate a Public Water System	3
§64-3-6.	Inspections and Sanitary Surveys of Public Water Systems	4
§64-3-7.	Public Water System Disinfection Requirements	4
§64-3-8.	Public Water System Fluoridation	5
§64-3-9.	Public Water System Control Tests and Record Maintenance	5
§64-3-10.	Adoption of National Regulations	6
§64-3-11.	Bottled Water Treatment Plants and Distributors	7
§64-3-12.	Public Water System Reporting Requirements	8
§64-3-13.	Certification of Laboratories to Conduct Drinking Water Tests	9
§64-3-14.	Penalties	10
§64-3-15.	Administrative Due Process	10
§64-3-16.	Severability	10

EMERGENCY FILING - TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
SERIES 3
PUBLIC WATER SYSTEMS

§64-3-1. General.

1.1. Scope - This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems. It establishes standards for the production and distribution of bottled drinking water, and also adopts federal standards for the certification of laboratories performing analyses of drinking water.

1.2. Authority - W.Va. Code §16-1-9a.

1.3. Filing Date -

1.4. Effective Date -

1.5. Supersession or Repeal of Former Regulations - This rule amends and reenacts Public Water Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 3, 1994.

§64-3-2. Application and Enforcement.

2.1. Application - This rule applies to public drinking water systems, to bottled water treatment plants and distributors and to laboratories desiring certification to perform analytic tests of drinking water.

2.2. Enforcement - This rule is enforced by the director of the division of health.

§64-3-3. Definitions.

3.1. Bottled Water - Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.

3.2. Bottled Water Distributor - A person who buys and sells bottled water on a wholesale basis.

3.3. Community Water System - A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

3.4. Director - Director of the division of health or his or her designee.

3.5. Non-Community Water System - Any public water system that is not a community water system.

3.6. Person - Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.7. Public Water System - Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections and includes:

(1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system, and

(2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

A public water system does not include a system which meets all of the following conditions:

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition;

(3) which does not sell water to any person; and

(4) which is not a carrier conveying passengers in interstate commerce.

3.8. Sanitary Survey - An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of the source, design, facilities, equipment, operation and maintenance for producing and distributing drinking water, as described in the federal regulations adopted in this rule.

§64-3-4. Public Water System Construction, Alteration or Renovation; Standards; Exceptions.

4.1. No person may construct, alter, renovate or award a contract for any construction, alteration or renovation of a public water system without obtaining a permit from the director.

4.2. Application for a permit to construct, alter or renovate shall be made to the director on forms prescribed by the director at least forty-five (45) days prior to the date on which approval by the director is desired. The application shall be

accompanied by an engineering report, maps, and detailed plans and specifications of the proposed construction, alteration or renovation prepared by or under the direction of a registered professional engineer.

4.3. A permit to construct, alter or renovate may be revoked by the director for failure of the public water system to comply with this rule.

4.4. A permit to construct, alter or renovate is valid for two (2) years from the date of issuance.

4.5. The public water system shall be constructed, altered or renovated in accordance with the plans and specifications approved by the director in accordance with Design Standards for Public Water Supply Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 42.

4.6. To the extent practical, all new or expanded facilities shall be located outside of the one-hundred-year flood plain.

4.7. The director has the authority to issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage, or distribution facilities of the system before delivery to the consumer as may be necessary to safeguard the public health.

4.8. A permit to construct, alter or renovate is not required for any minor addition to, or alteration or renovation of an existing public water system which will not significantly affect the quality or quantity of the water supply service rendered. The work shall be done in accordance with the provisions of Design Standards for Public Water Supply Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 47 42.

A written description of the proposed additions, alterations or renovations shall be submitted to the director no less than ten (10) working days prior to implementing the additions, alterations or renovations under this provision. The director shall notify the system whether or not the proposed additions, alterations or renovations qualify under this provision within five (5) days of receipt of the description.

4.9. All public water supply systems using a raw water source which is open to the atmosphere or subject to surface runoff shall, at a minimum, provide filtration treatment.

§64-3-5. Permit to Operate a Public Water System.

5.1. A public water system shall be operated in accordance with this rule and the federal regulations adopted in this rule.

5.2. The director has the authority to develop a program for the issuing of a permit to operate a public water system. The permit is renewable annually and may be revoked for failure to comply with the requirements of this rule or the federal standards adopted herein. The permit program shall be administered uniformly. No permit shall be granted until after the director has completed a sanitary survey.

5.3. In the event of a proposed change in the ownership of a public water system, a written application to transfer the permit to operate shall be made to the director by the new owner at least fifteen (15) days before the proposed change.

5.4. The current permit to operate shall be posted in a conspicuous place at the public water system's treatment plant or main office.

§64-3-6. Inspections and Sanitary Surveys of Public Water Systems.

6.1. Public water systems shall be inspected as scheduled by the director and sanitary surveys shall be conducted by the director in accordance with the federal regulations adopted in this rule.

6.2. The director has the right of access to all parts of a public water system and shall be furnished access to all information and records required to be kept by this rule and the federal regulations adopted in this rule.

§64-3-7. Public Water System Disinfection Requirements.

7.1. Disinfection with chlorine, chlorine dioxide, chloramine or ozone is required of all public water systems, provided the requirements of Section 7.6 of this rule are met.

7.2. The disinfectant shall be applied during treatment at a point before entering the distribution system which will provide effective contact time.

7.3. The minimum chlorine contact time for groundwater systems not influenced by surface waters is thirty (30) minutes from the point of application to the point of delivery to the first consumer or as stipulated in Design Standards for Public Water Supply Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 42. At the end of the chlorine contact time, minimum free chlorine residuals shall comply with the requirements of Table 64-3A found at the end of this rule. For these systems, the amount of residual disinfectant in the drinking water at the treatment plant and in the distribution system shall be determined at least once per day, or more often if considered necessary by the director.

7.4. Surface water systems and groundwater systems under the direct influence of surface waters shall meet the disinfection requirements of the federal regulations adopted in this rule.

7.5. Chlorine residual testing equipment shall enable measurement of free and total chlorine residuals to the nearest 0.2 milligrams per liter in the range of 0.0 milligrams per liter to 2.0 milligrams per liter.

7.6. For all public water systems, at least 0.2 milligrams per liter of total chlorine residual shall be maintained throughout the distribution system at all times.

7.7. The director has the authority to authorize variances in the chlorine disinfection parameters specified in this section.

§64-3-8. Public Water System Fluoridation.

8.1. Except for water systems operated by public schools, average concentrations of fluoride present in the drinking water of a public water system, which artificially adjusts fluoride concentrations, shall be no less than the minimum and no higher than the maximum concentrations shown in Table 64-3B found at the end of this rule.

8.2. Average concentrations of fluoride present in a public school drinking water system shall be no less than three (3.0) milligrams per liter and no higher than six (6.0) milligrams per liter, with an optimum concentration of four and one-half (4.5) milligrams per liter.

8.3. The drinking water of fluoridated or defluoridated public water systems shall be monitored once per day for fluoride concentration. Records of the monitoring shall be maintained in accordance with Sections 9 and 10 of this rule.

8.4. At least once a month, a sample of drinking water shall be submitted by the public water system to the director or to a certified laboratory for fluoride analysis.

8.5. The requirements of Section 8.2 of this rule supersede the requirements of the National Secondary Drinking Water Regulations, 40 CFR Part 143, as applicable to fluoridation of public school drinking water.

§64-3-9. Public Water System Control Tests and Record Maintenance

9.1. Records of microbiological, turbidity, radiological and chemical analyses, or a summary thereof, shall be retained at a convenient location on or near the premises of the public water

system. Turbidity, radiological and chemical analytical records shall be kept for ten (10) years. Control test, microbiological and operational records shall be kept for five (5) years. All tests and analyses required by this rule or the federal regulations adopted in this rule, with the exception of on-site water system operational tests, shall be conducted by a laboratory certified by the director.

9.2. The records shall include the date, place and time of sampling; the name of the person who collected the sample; identification as to whether it was a routine distribution system sample, resample, raw or drinking water sample, or other special purpose sample; the date of the analysis; the laboratory and person responsible for performing the analysis; the analytical technique or method used for microbiological testing; and the results of the analysis.

9.3. Records of action taken by the system to correct violations of this rule or the federal regulations adopted in this rule shall be kept for three (3) years after the correction is completed.

9.4. Copies of written reports relating to sanitary surveys of the system shall be kept for ten (10) years.

9.5. Records concerning a variance or exemption from this rule or the federal regulations adopted in this rule shall be kept for at least five (5) years following the expiration of the variance or exemption.

§64-3-10. Adoption of National Regulations.

10.1. The following National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations, promulgated and published prior to January 1, 1993 1994, as final rules are hereby adopted by reference:

10.1.1. 40 C.F.R. Part 141, ~~except for Section 141.21(d)(2) and Subpart F (the lead and copper rule);~~

10.1.2. Subparts F and G of 40 C.F.R. Part 142, except for Sections 142.57, 142.60, 142.61, and 142.62(c)-142.62(h); and

10.1.3. 40 C.F.R. Part 143.

10.2. The Director shall use the provisions of 40 C.F.R. Part 142, Subparts F and G, as adopted in this rule as applicable in granting exemptions.

10.3. In the event of a conflict between a federal standard adopted in this rule and a state standard adopted in this rule, the more stringent standard applies, except as stated in Section 8.5 of this rule.

10.4. Copies of these regulations are available from:

U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

§64-3-11. Bottled Water Treatment Plants and Distributors.

11.1. No person may operate a bottled water treatment plant in this State without receiving a permit to bottle and distribute water from the director.

11.2. No person may distribute bottled water in this State without receiving a permit to distribute bottled water from the director.

11.3. Application for a permit to bottle and distribute water shall be made to the director on forms prescribed by the director. Four (4) sets of completed applications, and plans and specifications for the treatment plant shall be submitted to the director for approval at least forty-five (45) days prior to the date on which a permit from the director is desired.

11.4. The source of the water to be bottled and the bottled water shall comply with the requirements of this rule and the requirements of the federal regulations adopted in this rule pertaining to primary and secondary contaminants, sodium, fluoridation, maximum contaminant levels, sampling techniques and monitoring frequencies, for a community water system, except that the monitoring frequency for microbiological contaminants shall be no less than once each week.

11.5. A bottled water treatment plant shall be operated in accordance with the provisions of the federal standards, Current Good Manufacturing Practice in Manufacturing, Packaging or Holding Human Food, 21 CFR Part 110, in effect as of October 30, 1990, and these standards are hereby adopted by reference.

11.6. Each in-State bottled water treatment plant shall be inspected every twelve (12) months or as otherwise determined by the director.

11.7. An out-of-State bottled water treatment plant desiring to distribute bottled water in West Virginia shall apply for a permit to bottle and distribute bottled water on forms approved by the director. Four (4) copies of all materials shall be submitted. The out-of-State treatment plant shall comply with the requirements of this rule and the federal regulations adopted in this rule for in-State bottled water treatment plants. Subsequent to the initial evaluation, monitoring of the treatment plant by the regulatory agency of the state wherein the treatment plant is located is considered acceptable for the purposes of

this rule. The out-of-State treatment plant shall notify the director of any corrective action it is required to take by its state regulatory authority and shall notify the director of any change in ownership or in the event that it closes.

11.8. A person wishing to distribute bottled water in the State who does not operate a bottled water treatment plant shall apply for a permit to distribute bottled water on a form approved by the director. The applicant shall identify the location of the plants from which the bottled water is obtained and any distributor other than the bottled water plant from which the bottled water is obtained and shall provide other information required by the director. The director shall grant a permit to distribute bottled water if the bottled water complies with the requirements of this rule.

11.9. A permit issued by the director may be revoked for failure to comply with provisions of this rule.

§64-3-12. Public Water System Reporting Requirements.

12.1. Unless otherwise specified in this rule or the federal regulations adopted herein in this rule, the results of any test, measurement or analysis required to be made by this rule or the federal regulations adopted in this rule shall be reported to the director within forty (40) days of the system's receipt of the test, measurement or analysis.

12.2. Analytical results for total trihalomethane (TTHM) analyses shall be reported to the director within thirty (30) days of the system's receipt of the results.

12.3. Failure to comply with this rule or the federal regulations adopted in this rule shall be reported to the director within forty-eight (48) hours of the discovery of the violation.

12.4. Analytical results of tests performed by the laboratory of the division of health are not required to be reported.

12.5. A written summary of the public water system operation, test data, and other information as may be required by the director shall be submitted to the director at least once per month. The director may require more frequent reports in cases where there are public health concerns.

12.6. All reports and summaries required by this rule or the federal regulations adopted in this rule shall be submitted in a manner or form approved by the director.

12.7. The water supply system shall submit to the director a representative copy of each type of notice distributed, posted or made available to the public or media within seven (7) days following any notification of the public of a violation of this

rule or of the federal regulations adopted in this rule.

§64-3-13. Certification of Laboratories to Conduct Drinking Water Tests.

13.1. All laboratories providing drinking water testing results for purposes of this rule or the federal regulations adopted in this rule shall be certified by the director or by the Federal Environmental Protection Agency.

13.2. A certified laboratory shall comply with the requirements of this rule and with the requirements and criteria contained in the sections titled "Local Laboratories," "Other Considerations for Laboratory Certification," "Requirements for Maintaining Certification Status," "Criteria and Procedures for Downgrading/Revoking Certification Status," and "Training," of Chapter III, and in Chapters IV, V and VI of the federal Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Third Edition, April, 1990, Change 1, October, 1991, and Change 2, September, 1992 and these parts of the manual are hereby adopted by reference.

13.3. An in-State laboratory shall submit an application form when seeking initial approval sixty (60) days prior to the date certification is desired.

13.4. A laboratory located outside the boundaries of this State shall be certified by the director if:

13.4.1. It has been certified by the Federal Environmental Protection Agency; or

13.4.2. It has been certified by a program for the certification of laboratories equivalent to the program of this State as determined by the director. If the program of the state in which the laboratory is located is not judged equivalent, the laboratory may request an on-site evaluation and full certification review by the director.

13.5. An out-of-state laboratory shall submit an application form when seeking initial approval and shall include with its application evidence of compliance with Section 13.4.1 or 13.4.2 of this rule. The out-of-state laboratory shall notify the director immediately of any change in its certification status under Section 13.4.1 or 13.4.2.

13.6. An on-site inspection of in-State laboratories to determine compliance with this rule and the federal standards adopted in this rule shall be conducted initially prior to certification, and at least every three (3) years thereafter. The division has the right of entry upon proper identification at any time considered necessary during operating hours in order to conduct the inspections.

13.7. Certificates of approval shall be issued upon initial approval and are renewable on an annual basis thereafter pursuant to the conditions listed in this rule. Certificates issued will contain the name and location of the laboratory, a laboratory code number, the name of the laboratory director and the date of expiration of the certificate.

13.8. Certified laboratories shall notify the director when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. The director shall administer and use the criteria and procedures of the Section titled "Criteria and Procedures for Downgrading/Revoking Certification Status" of the Manual for the Certification of Laboratories Analyzing Drinking Water referenced in Section 13.2 of this rule.

§64-3-14. Penalties.

Any person who violates any provision of this rule or orders issued under this rule, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) and each day's violation shall constitute a separate offense. In addition, thereto, the director of health or his or her authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this rule or orders issued under this rule, a person, upon a finding thereof by the circuit court of the county in which the violation occurs, is subject to a civil penalty of not more than five thousand dollars (\$5,000), and each day's violation is grounds for a separate penalty.

§64-3-15. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Administrative Rules, Division of Health, 64 CSR 1.

§64-3-16. Severability.

The provisions of this rule are declared to be severable. If any provision of this rule is held invalid, the remaining provisions remain in effect.

TABLE 64-3A. Minimum Levels of Free Chlorine Residual at Various Water Sample pH Levels

<u>pH VALUE</u>	<u>FREE CHLORINE RESIDUAL</u>
Up to 7.0	0.4 mg/l
7.1 to 8.0	0.6 mg/l
8.1 to 9.0	1.0 mg/l

TABLE 64-3B. Average Acceptable Range of Fluoride Concentration at Various Annual Average Maximum Daily Air Temperatures

<u>ANNUAL AVERAGE MAXIMUM DAILY AIR TEMPERATURE</u>	<u>FLUORIDE CONCENTRATION IN MILLIGRAMS PER LITER</u>		
	Lower	Optimum	Upper
53.8 - 58.3° F 12.1 - 14.6° C	0.8	1.1	1.5
58.4 - 63.8° F 14.7 - 17.7° C	0.8	1.0	1.3
63.9 - 70.6° F 17.7 - 21.4° C	0.7	0.9	1.2



KEN HECHLER
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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Charleston, WV 25305-0770

June 30, 1994

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Health

RULE: Amendments, Series 3, Public Water Systems

DATE FILED AS AN EMERGENCY RULE: JUNE 7, 1994

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
JUN 30 3 16 PM '94

FILED

DECISION NO. 9-94

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

DECISION

EMERGENCY RULE DECISION
(ERD 9-94)

AGENCY: Board of Health
RULE: Amendments, Series 3, Public Water Systems
FILED AS AN EMERGENCY RULE: JUNE 7, 1994

- par. 1 The Board of Health (Board) has filed the above amendments as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State June 7, 1994 and with the LRMRC June 7, 1994.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-1-9a reads in part:

The state board of health shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. Such rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer.

It shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

In addition, the state board of health shall establish by legislative rule set out in §29A-1-1 et seq. of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, as set out in §29A of this code, establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water.

All regulations authorized under this section shall be promulgated by legislative rules in accordance with §29A-3-1 et seq. of this code.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

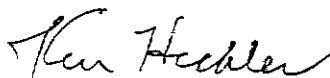
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

The Public Water Systems rule is the basis for the existing state drinking water monitoring program, which is, in part federally funded. Failure to promulgate rules which conform to federal requirements and timetables jeopardizes this established and needed program to monitor and work towards continued improvement of West Virginia's drinking water supplies. It is necessary to emergency file these amendments to the rule to meet federal deadlines.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g) due to a Federal requirement to implement this rule. (See attachment.)

par. 14 This decision shall be cited as Emergency Rule Decision 9-94 or ERD 9-94 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 30 3 16 PM '94

FILED

West Virginia Department of Health and Human Resources -
U.S. Environmental Protection Agency - Region III
Primacy Extension Agreement
for the
Lead and Copper Rule

On May 27, 1992, the West Virginia Department of Health and Human Resources (WVDHHR) requested an extension from the U.S. Environmental Protection Agency (EPA) Region III for meeting the primacy requirements of the Lead and Copper Rule (LCR). Information supporting the extension request was contained in the May 27, 1992 letter and is made part of this Extension Agreement (EA) as Attachment 1. EPA Region III has determined these reasons are valid pursuant to 40 C.F.R. § 142.12(b). EPA Region III has also determined that WVDHHR is making a good faith effort to meet the requirements of the Public Water System Supervision (PWSS) Program, despite conditions beyond the control of the Department that will prevent them from meeting the LCR regulatory deadline of December 7, 1992.

EPA Region III is hereby granting the State of West Virginia an extension **until June 7, 1994** for approval of revisions to its PWSS Program. This extension is granted under the conditions agreed to in this document.

REASONS FOR REQUESTING THE EXTENSION

- o The State currently lacks the regulatory authority to implement and enforce the LCR regulations. The magnitude of the regulatory and administrative procedures required for development and adoption of the regulations will prevent WVDHHR from adopting the regulations by December 7, 1992.
- o The extension will allow for State legislative review and approval to amend the West Virginia Board of Health's Public Water Supply Regulations.

CONDITIONS OF THE EXTENSION

- o WVDHHR will inform community water systems (CWSs) and non-transient, non-community water systems (NTNCWSs), and certified laboratories of their responsibility to meet new EPA and upcoming State requirements. Until EPA approves the State revision, EPA will be the ultimate enforcement agency when formal enforcement actions are required. WVDHHR will phase in distribution of the EPA guidance manuals and/or WVDHHR summaries by system size with priority distribution to the larger systems first. WVDHHR will inform all CWSs and NTNCWSs by **April 1, 1993** at the latest.
- o WVDHHR will collect laboratory and other compliance and operation data required by the LCR regulations. WVDHHR will, at that same time, make compliance determinations and report violation data to EPA in the Federal Reporting Data System (FRDS) format **beginning with 2nd Quarter FY '93 (January-March 1993)**.
- o Initial compliance data will include:
 - 1) the results of lead and copper, and water quality parameter (WQP) monitoring for large CWSs (systems serving more than 50,000 people) for the two initial monitoring periods of January 1 to June 30, 1992 and July 1 to December 31, 1992.
 - 2) the results of lead and copper monitoring for medium CWSs and NTNCWSs (systems serving 3,301 to 50,000 people) for the first (of two) initial monitoring period of July 1 to December 31, 1992.

- 3) the results of WQP monitoring for medium CWSs and NTNCWSs that exceeded the lead or copper action level during the July 1 to December 31, 1992 monitoring period.
- o Subsequent compliance data will include:
- 1) the results of lead and copper monitoring for medium CWSs and NTNCWSs for the second (of two) monitoring period of January 1 to June 30, 1993.
 - 2) the results of WQP monitoring for medium CWSs and NTNCWSs that exceed the lead or copper action level during the January 1 to June 30, 1993 monitoring period.
 - 3) the results of lead and copper monitoring for small CWSs and NTNCWSs (systems serving 3,300 or less people) for the two initial monitoring periods of July 1 to December 31, 1993 and January 1 to June 30, 1994.
 - 4) the results of WQP monitoring for small CWSs and NTNCWSs that exceed the action level for lead or copper during either or both monitoring periods.
- o After reviewing the data, WVDHHR will notify all PWSs that exceed the lead action level (0.015 mg/L at the 90th percentile), or the copper action level (1.3 mg/L at the 90th percentile), that the systems must:
- 1) collect source water samples and submit the data along with a treatment recommendation to remove lead or copper in the source water.
 - 2) conduct corrosion control studies or propose an optimal corrosion control treatment.
 - 3) deliver the EPA-developed public education program to their customers within 60 days of exceedance of the action level.
 - 4) continue the deliverance of the public education program for as long as the system exceeds the action level.
- o WVDHHR will notify all large PWSs that they must conduct corrosion control studies regardless of whether or not they exceeded the lead or copper action level during either or both of the initial six-month monitoring periods. WVDHHR will notify all large CWSs that corrosion control studies must be received by WVDHHR by July 1, 1994.
- o For those medium PWSs that exceeded the lead or copper action level, the State must take one of the following two actions:
1. **By January 1, 1994**, WVDHHR will notify medium PWSs that exceeded the lead or copper action level that they must conduct corrosion control studies,
- OR
2. **By July 1, 1994**, WVDHHR will notify medium PWSs that exceeded the action level of the optimal corrosion control treatment designated for each system by the State.
- o WVDHHR will report (as required by 40 C.F.R. § 142.15) to EPA by **February 15, May 15, August 15, and November 15 of each year** the following information related to each CWS's and NTNCWS's compliance with the treatment techniques for lead and copper under 40 C.F.R. § 141, Subpart I during the preceding calendar quarter:
- 1) Each CWS and NTNCWS which exceeded the lead and copper action levels and the date upon which the exceedance occurs (see Note below).
 - 2) Each CWS and NTNCWS required to complete the corrosion control evaluation specified in 40 C.F.R. § 141.82(c) and the date WVDHHR received the results of the evaluation from each system (see Note below).
 - 3) Each CWS and NTNCWS for which WVDHHR has designated optimal corrosion control treatment under 40 C.F.R. § 141.82(d), the date of the determination, and each

- OWS and NTCWS that completed installation of treatment as certified under 40 C.F.R. § 141.90(c)(3).
- 4) Each CWS and NTCWS for which WVDHHR has designated optimal WQPs under 40 C.F.R. § 141.82(f) and the date of the determination.
 - 5) Each CWS and NTCWS which WVDHHR has required to install source water treatment under 40 C.F.R. § 141.83(b)(2), the date of the determination, and each system that completed installation of treatment as certified under 40 C.F.R. § 141.90(d)(2).
 - 6) Each CWS and NTCWS for which WVDHHR has specified maximum permissible source water levels under 40 C.F.R. § 141.83(b)(4) (see Note below).
- Note: Changes in some of the State reporting requirements of 40 C.F.R. § 142.15 have been developed but have not yet been promulgated. Upon publication of these changes in the Federal Register, these EA conditions will be revised.

- o WVDHHR will provide technical assistance to public water systems.
- o WVDHHR will assist EPA in the development of the technical aspects of enforcement actions and in conducting informal follow-up on violations (telephone calls, letters, etc.).
- o WVDHHR currently projects the adoption and effective date of the LCR regulations to be no later than June 7, 1994. The Department will submit draft regulations, crosswalks and checklists for the LCR addressing the appropriate special primacy conditions found at 40 C.F.R. § 142.16(d) by April 1, 1994.
- o WVDHHR must submit a final PWSS Program Primacy Revision Application, including the Attorney General's statement and all other materials necessary for approval of the State's PWSS Primacy Program as required by 40 C.F.R. § 142.12(c) by June 7, 1994, or 30 days after the effective date of the State's LCR regulations, whichever is earlier.
- o If requested, EPA Region III will assist WVDHHR in the development of technical guidelines, regulation summaries, or implementation protocols for the LCR regulations.
- o EPA Region III will notify WVDHHR of any federal enforcement actions taken under these regulations.

STEPS TO BE TAKEN TO REMEDY PROGRAM DEFICIENCIES

- o WVDHHR will request approval for additional funds for the State's fiscal year beginning July 1, 1993. EPA Region III will work to ensure that the federal funding for West Virginia's PWSS Program remains at or near the current level.
- o WVDHHR and EPA Region III will actively promote the importance of State retention of primacy for the PWSS Program to local governments, waterworks owners, and professional societies and associations.

GENERAL PROVISIONS

- o The Department's performance in implementing the above conditions of this EA will be evaluated in the Second and Fourth Quarter Evaluations of FY '93 and FY '94. EPA may initiate the primacy withdrawal process on the basis of these evaluations if WVDHHR has not

fulfilled the conditions of this EA.

- o If, after the maximum extension period has expired, EPA determines that the State's PWSS Program does not meet the minimum requirements for primacy, EPA Region III will initiate the primacy withdrawal process.
- o EPA Region III will review and approve or disapprove the State's PWSS Program revision application under the procedures found at 40 C.F.R. § 142.12, 142.13, and 142.17.
- o WVDHHR will provide to EPA Region III copies of all notices to water supplies and guidance to staff developed in conjunction with the LCR regulations.
- o This agreement may be modified upon written consent of both parties.

We the undersigned agree that our respective Agencies will conduct the tasks listed in this document to ensure full implementation of the federal LCR until WVDHHR has adopted the regulations and EPA has approved the State's revisions to their PWSS Program.

 Stanley L. Laskowski, Acting Administrator
 U.S. Environmental Protection
 Agency Region III

W. Donald Weston

 W. Donald Weston, M.D., Acting Secretary
 West Virginia Department of
 Health and Human Resources

Date _____

Date 12-1-92