



STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

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March 18, 1983

WILLIAM PLASS
21 Grandview Drive
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FRANCES E. HUNTER
Board Secretary

STATE WATER RESOURCES BOARD TO MEET

The State Water Resources Board has scheduled a meeting for March 29, 1983, to be held in conference room located at 1205 Greenbrier Street, Charleston, West Virginia, at:

9:00 a. m. - Possible Adoption of the Underground Injection Control Regulations

Development of Proposed Hazardous Waste Regulations on Standards for Groundwater and Permit Conditions Pertaining to Discharge

Other Board Business Deemed Necessary at This Time

The meeting is open to the public pursuant to Chapter 6, Article 9A, of the Code of West Virginia, 1931, as amended.

Seating capacity of the conference room is 50.

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

THIS DATE 3-18-83

MINUTES OF THE STATE WATER RESOURCES BOARD

The water resources board met on March 29, 1983, in the board conference room starting at 9:00 a. m. with all members present.

By proper motion and vote the following actions were taken:

Motion made and seconded (Plass and Samuels) that the UIC regulations S. B. 356 be adopted. Vote unanimous.

After discussion motion was made to adopt an errata sheet submitted on this date by John Northeimer re: proposals submitted to the Board on March 24, 1983 on the groundwater protection standard. Motion made and vote was unanimous.

Motion was then made on adoption of "Plan A" of above proposal to be adopted to go to public notice - vote was unanimous. (Dr. Hamner, Mr. Scott).

The board went into executive session briefly.

Discussion was then held on whether it (regulation) should be filed under an emergency basis. Motion was made (Mr. Plass, Mr. Scott) vote 4-1; Dr. Hamner voting "nay" as he does not believe in adoption of emergency regulations and it is so noted for the record. These regulations are to be filed the same time that the Director files the Hazardous Waste Management Regulations with an effective date same as date of filing.

Motion was made if the board can make a finding that an emergency exists on the groundwater protection standards (Mr. Plass, Mr. Scott) - motion carried after discussion 4-1, Dr. Hamner voting "no", the rest of the board votes "aye". Motion moved as to text being "A" plan - unanimously carried.

Chairman Ailes announced approval of new budget and addition of small staff hopefully by July 1. Discussion to be in p. m. in executive session on staffing.

The board discussed the upcoming triannual review of water quality standards and it was agreed that a notice or news release go out publicly

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that suggestions on revisions would be accepted until May 15, 1983.

Letter submitted by the W. Va. Manufacturer's Association was filed with no action taken on it.

The next meeting of the board is scheduled for April 20, 1983, to consider the Camelot Appeal No. 157 and any other board business deemed necessary at that time.

The board also agreed unanimously to change the Board's secretary's working title to "Executive Secretary" from "Board Secretary".

RECEIVED

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JUSTIFICATION OF EMERGENCY

WATER RESOURCES BOARD

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

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

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

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

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

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

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

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

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

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

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

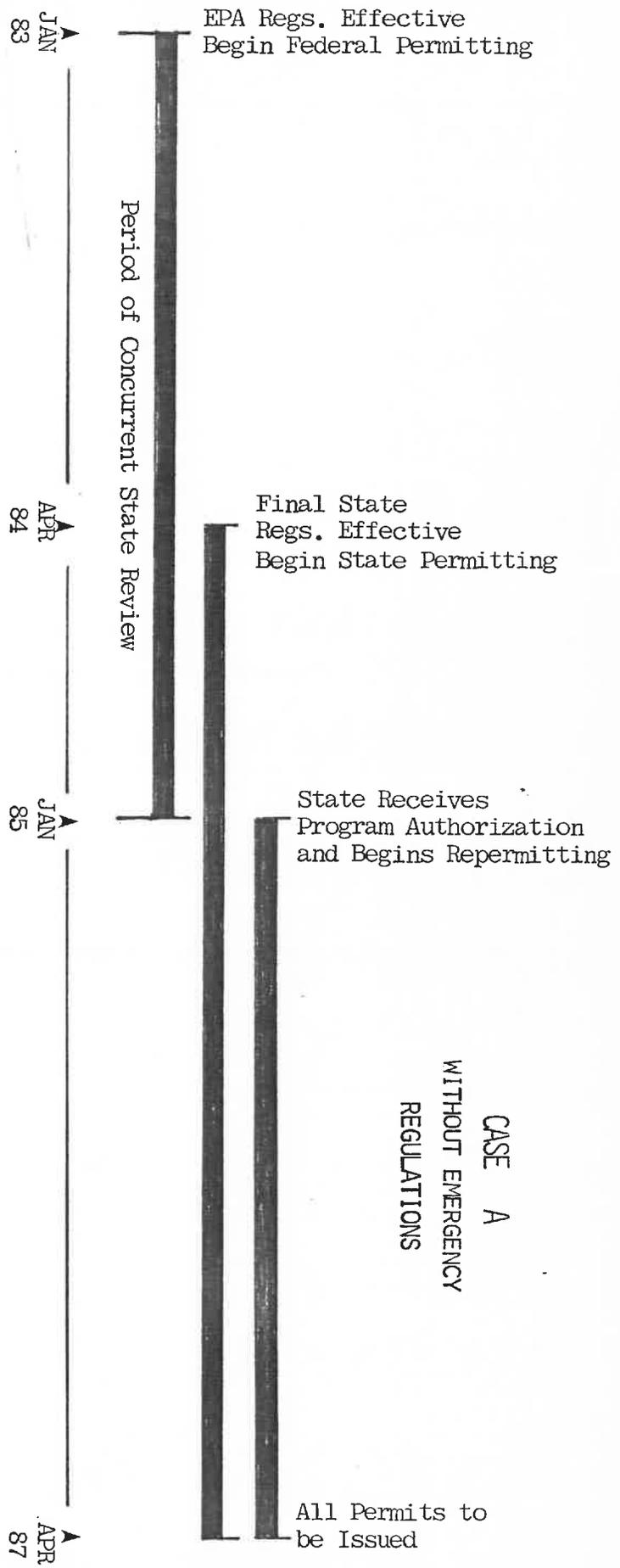
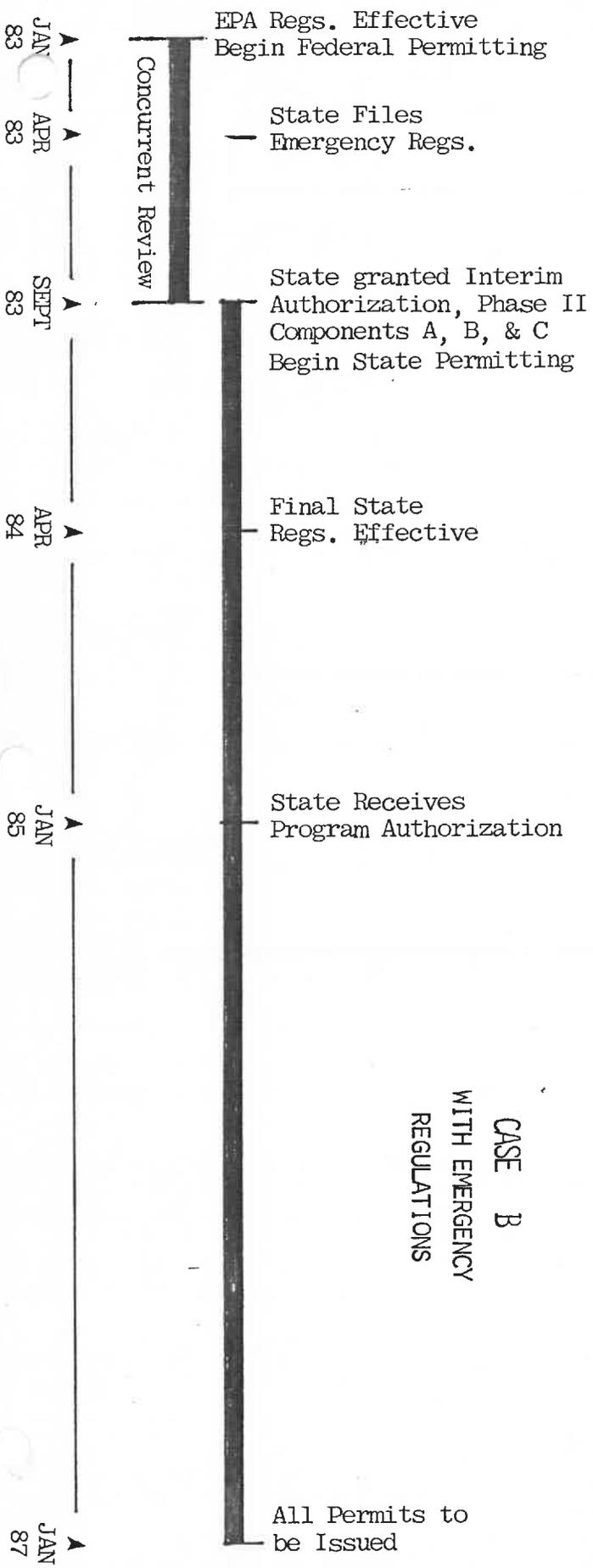
A third case also on the Ohio River involved the storage and disposal of materials which caused the contamination of an alluvial aquifer with cyanide. The responsible company is required to collect and treat the ground water in an attempt to clean up the problem while removing the source of pollution.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

FIGURE II

PERCENTAGE OF TOTAL
FACILITIES SUBJECT
TO PERMITTING

ESTIMATED FY '84 REVENUES
(Based on projected
rate of permit review)

REGULATORY ACTION NEEDED

Storage and Treatment in Tanks and Containers	81%	\$30,000	Promulgate Financial Regulations
Storage and Treatment in Surface Impoundments and Waste Piles		\$60,000 Total \$90,000 Accumulated	Promulgate Financial Regulations and Ground Water Regulations
Disposal Facilities - landfills - land farms - surface impoundments	9%	\$60,000 Total \$150,000 Accumulated	Promulgate Financial, Ground Water and facility standards for landfills, land farms and surface impoundments.