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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

February 2, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Highways

RULE: Amendment to Series 7 Transportation of Hazardous Waste by Highway Mode

DATE FILED AS AN EMERGENCY RULE: December 22, 1986

DECISION NO. 2-87

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.

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Secretary of State

FILED
1987 FEB -4 AM 11:15
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision (ERD 2-87)

AGENCY: Department of Highways
RULE: Amendment to Series 7 Transportation of Hazardous
Waste by Highway Mode

DATE FILED AS AN EMERGENCY RULE: December 22, 1986

- par. 1 The Department of Highways has filed as emergency rule an amendment to the above rule.
- par. 2 West Virginia Code 29A-3-15A 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-3-15a(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 ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department of Highways has filed this emergency rule with supporting documents with the Secretary of State on December 22, 1986.

par. 7 It is the determination of the Secretary of State that the Department of Highways has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §20-5E-7(a):

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a (§29A-1-1 et seq.) of this code, shall promulgate, as necessary, rules and regulations governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such rules and regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such rules and regulations shall apply to the interstate transportation of hazardous wastes as well as the intrastate transportation of such waste within the boundaries of this state.

par. 9 It is the determination of the Secretary of State that the Department of Highways has not exceeded its statutory authority by adopting this 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 Department of Highways claims this rule is necessary to "comply with a time limitation established by . . . a federal . . . regulation."

par. 13 The facts and circumstances as presented by the Insurance Commission are as follows:

This Emergency Rule is being filed in order to comply with the Code of Federal Regulations, 40 CFR, Parts 261 thru 263 and 49 CFR, Parts 171 thru 173, 177 thru 179 and 390 thru 397. The cited Federal Regulations were published in the March 24, 1986 and November 21, 1986 "Federal Register", respectively. The established compliance deadline is January 1, 1987.

- par. 14 It is the decision of the Secretary of State that this proposal by the Department of Highways is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Highways; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 15 This decision shall be cited as Emergency Rule Decision 2-87 or ERD 2-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Highways, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

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1987 FEB -4 AM 11:15
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