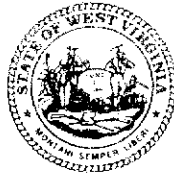


KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
wvsos@secretary.state.wv.us
www.state.wv.us/sos/



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

October 25, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

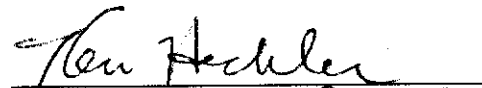
AGENCY: Division of Environmental Protection, Office of Air Quality

RULE: New Rule, Series 1, NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides

DATE FILED AS AN EMERGENCY RULE: September 15, 2000

DECISION NO. 18-00

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


KEN HECHLER
Secretary of State

OFFICE OF THE SECRETARY OF STATE

OCT 25 2 31 PM '00

FILED

KEN HECHLER
Secretary of State



WILLIAM H. HARRINGTON
Chief of Staff

MARY P. RATLIFF
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

JAN CASTO
Deputy Secretary of State

JUDY COOPER
Director, Administrative Law

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
wvsos@secretary.state.wv.us
www.state.wv.us/sos/

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION
(ERD 18-00)

AGENCY: Division of Environmental Protection, Office of Air Quality
RULE: New Rule, Series 1, NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides
FILED AS AN EMERGENCY RULE: September 15, 2000

- par. 1 The Office of Air Quality (OAQ) has filed the above new rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The OAQ filed this emergency rule with supporting documents with the Secretary of State September 15, 2000 and with the LRMRC September 15, 2000.

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

par. 8 (B) Statutory Authority -- W. Va. Code §22-5-4 reads in part:

To promulgate legislative rules, in accordance with the provisions of §29A-1-1 et seq of this code.

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

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) 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 OAQ are as follows:

Pursuant to the June 22, 2000 order of State of Michigan, et al. v. EPA, et al., by the D.C. Circuit Court of Appeals, the State is required on or about October 30, 2000 to submit a revision to its State Implementation Plan (SIP) to reduce NO_x emissions as required under U.S. EPA's No_x SIP Call, a Federal Implementation Plan (FIP) will be implemented in the State of West Virginia.

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(f). . . "federal time limitation"

par. 14

This decision shall be cited as Emergency Rule Decision 18-00 or ERD 18-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of Air Quality, the Attorney General and the Legislative Rule Making Review Committee.

KEN HECHLER
Secretary of State

Entered _____

OCT 25 2 34 PM '00
OFFICE OF THE SECRETARY OF STATE

FILED