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April 25, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Office of Mining and Reclamation

RULE: Amendments, 38CSR2, Surface Mining Reclamation Rule

DATE FILED AS AN EMERGENCY RULE: April 19, 2002

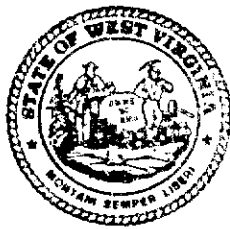
DECISION NO. 5-02

FILED  
2002 APR 30 A 9:16  
OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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.

  
JOE MANCHIN, III  
Secretary of State

SCANNED



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**EMERGENCY RULE DECISION**  
**(ERD 5-02)**

**AGENCY:** Office of Mining and Reclamation  
**RULE:** Amendments, 38CSR2, Surface Mining Reclamation Rule  
**FILED AS AN EMERGENCY RULE:** April 19, 2002

- par. 1 The Office of Mining and Reclamation (OMR) has filed the above amendments to an existing 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 OMR filed this emergency rule with supporting documents with the Secretary of State April 19, 2002 and with the LRMRC April 19, 2002.

par. 7 It is the determination of the Secretary of State that the OMR 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 §22-3-4 reads:

*(1) Promulgate rules in accordance with the provisions of §29A-1-1 et seq. of this code, to implement the provisions of this article: Provided, That the director shall give notice by publication of the public hearing required in §29A-3-1 et seq. of this code: Provided, however, That any forms, handbooks or similar materials having the effect of a rule as defined in §29A-3 of this code were issued, developed or distributed by the director pursuant to or as a result of a rule are subject to the provisions of §29A-3 of this code.*

par. 9 It is the determination of the Secretary of State that the OMR 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 OMR are as follows:

The Federal Office of Surface Mining has stated that it will initiate 732 process (program takeover) on May 1, 2002, if certain changes to the West Virginia Program are not made.

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). . . time limitation

par. 14

This decision shall be cited as Emergency Rule Decision 5-02 or ERD 5-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of Mining and Reclamation, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III  
Secretary of State

Entered \_\_\_\_\_

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SECRETARY OF STATE

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