

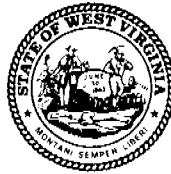
KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



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

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

August 5, 1997

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

FILED
Aug 5 2 56 PM 1997
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE


AGENCY: Division of Environmental Protection, Office of Air Quality

RULE: Series 7, Amendments, To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations

DATE FILED AS AN EMERGENCY RULE: June 27, 1997

DECISION NO. 6-97

Following review under WV 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

KEN HECHLER
Secretary of State



WILLIAM H. HARRINGTON
Chief of Staff

MARY P. RATLIFF
Deputy Secretary of State

JUDY COOPER
Director, Administrative Law

JAN CASTO
Deputy Secretary of State

PENNEY BARKER
Supervisor, Corporations

CATHERINE FREROTTE
Executive Assistant

(Plus all the volunteer
help we can get)

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900

STATE OF WEST VIRGINIA
SECRETARY OF STATE

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

EMERGENCY RULE DECISION
(ERD 6-97)

AGENCY: Division of Environmental Protection, Office of Air Quality
RULE: Series 7, Amendments, To Prevent and Control Particulate Air Pollution From Manufacturing process Operations

FILED AS AN EMERGENCY RULE: June 27, 1997

- par. 1 The Division of Environmental Protection, Office of Air Quality (OAQ) has filed the above amendments to an existing rule as an emergency 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].
- 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 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 June 27, 1997 and with the LRMRC June 27, 1997.

par. 7 It is the determination of the Secretary of State that the OAQ 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 §22-5-4(a)(4) reads in part:

To promulgate legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code not inconsistent with the provisions of this article, relating to the control of air pollution.

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 -- WV 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 in part:

The current version of 45CSR7 "To Prevent & Control Particulate Air Pollution from Manufacturing process Operations," establishes a program of regulation to prevent and control particulate air pollution from manufacturing process operations. Regulation 7 establishes particulate emission standards for a wide variety of manufacturing process operations. The regulation affects small process operations such as a single spray painting booth to large process operations associated with steel production such as coke oven batteries. The revisions to this regulation are being sought on a permanent basis and pursuant to the §29A-3-15, which enables state agencies to promulgate emergency rules. This emergency rule will establish specific emission performance standards for Johns Manville International, Inc.'s (JM) unique flame attenuation fiberglass manufacturing operations and will create source-specific performance standards appropriate to control the emission of particulate matter from individual stacks venting the fiber-forming collection chambers of duplicate flame attenuation (pot and marble) fiberglass operations that were in existence prior to June 1, 1993. The emergency rule is promulgated pursuant to: a) specific legislative authorization provided in HB 2333; b) the terms of a related administrative Consent Order; and c) is concurrent with the Office of Air Quality's review of a petition for regulatory change by JM (formerly Schuller

International, Inc.) and would affect only that company's existing fiberglass production facility located at Vienna, WV in Wood County....
As part of the consent order, JM agreed to continue its efforts to amend Regulation 7 to establish specific performance standards for the flame attenuation fiberglass process. Accordingly, JM petitioned OAQ in 1996 to revise Series 7. The timely adoption of these revisions are necessary since the terms of the consent order expire on July 1, 1998. A public hearing for the proposed revisions was held on March 27, 1997. EPA, Region III filed comments on the proposed revisions, and a variety of technical issues regarding the revisions were raised by Region III's comments, all of which have been resolved or are the subject of an on-going collaborative effort among the OAQ, Region III and JM. Due to time constraints of the 1997 legislative session, the proposed revisions were not permanently incorporated into Series 7. However, cognizant of the need to revise Series 7 to incorporate specific performance standards near term, the Legislature, in HB 2333, authorized the Director of Environmental Protection to propose for promulgation an emergency to so amend Series 7. This emergency rule is being filed pursuant to that express legislative authorization. The primary objective of this emergency rule is to comply with the terms of the aforementioned Consent Order and to adopt appropriate specific performance standards. The formerly proposed revised rule will proceed through normal review and will be filed with the Legislature for approval. For the reasons stated above, this emergency rulemaking is being undertaken in order to comply with the time limitations in the underlying State consent Order and to preserve the public interest as reflected by the provisions of HB 2333 authorizing the promulgation of an emergency amendment to Series 7.

- 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). . . "mandated by the Legislature."
- par. 14 This decision shall be cited as Emergency Rule Decision 6-97 or ERD 6-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Environmental Protection, Office of Air Quality, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 5 2 56 PM '97

FILED