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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25905

August 26, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Natural Resources

RULE: Amendments to Series 38, Solid Waste Management

DATE FILED AS AN EMERGENCY RULE: July 15, 1988 and amended
August 11, 1988

DECISION NO. 12-88

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.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 26, 1988
ADMINISTRATIVE LAW DIVISION



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SECRETARY OF STATE
Charleston 25305

DECISION

EMERGENCY RULE DECISION
(ERD 12-88)

AGENCY: Department of Natural Resources
RULE: Amendments to Series 38, Solid Waste Management
FILED AS AN EMERGENCY RULE: July 15, 1988 and amended August 11, 1988

- par. 1 The DNR has filed the above amendments to Series 38 as an emergency.
- 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 DNR has filed this emergency rule with supporting documents with the Secretary of State on July 15, 1988 and with the LRMRC on August 12, 1988.

par. 7 It is the determination of the Secretary of State that the DNR 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 §20-5F-4 reads in part:

(a) The director shall adopt rules and regulations in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and regulations and establishing permit application fees up to an amount sufficient to defray the costs of permit review.

par. 9 WV Code 20-5F-5a reads in part:

§20-5F-5a reads in part:

(e) Exemptions. -- The following transactions shall be exempt from the fee imposed by this section:

(1) Disposal of solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the department of natural resources by regulation as exempt from the solid waste assessment fee.

par. 10 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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. 12 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. 13 The facts and circumstances as presented by the DNR are as follows:

On June 30, 1988, the State Tax Department filed an emergency rule with the Secretary of State to impose solid waste assessment fees pursuant to W. Va. Code §20-5F-5a. Such fees will be imposed upon all individuals who dispose of solid waste at approved solid waste facilities in this State unless the Director of the Department of Natural Resources implements the three fee collection exemptions that are provided under W. Va. Code §20-5F-5a(3). Thus, this amendment to the existing Series 38 legislative rule is being promulgated on an emergency basis in order to prevent the substantial harm to the public interest that would result from the imposition of fees upon individuals whom the Legislature has intended to exempt from such fee collection.

- par. 14 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.
- par. 15 This decision shall be cited as Emergency Rule Decision 12-88 or ERD 12-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the DNR, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 26, 1988
ADMINISTRATIVE LAW DIVISION

Entered _____