

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Solid Waste Management Board TITLE NUMBER: 54

CITE AUTHORITY: W. Va. Code §16-26-1 et seq.; 29A-3-15

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES____, NO^X____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 1

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules and Regulations

Governing Disbursement of Loans and Grants to Governmental
Agencies for the Acquisition or Construction of Solid
Waste Disposal Projects.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

These rules are necessary for the immediate preservation of public health, safety, and welfare because they provide a method of financing for local governmental agencies to use in the acquisition and construction of necessary solid waste disposal facilities. Many local governmental agencies need to construct new facilities or upgrade existing ones in the immediate future because their existing facilities are close to capacity. These facilities must be constructed in accordance with State and Federal law and must meet additional more stringent standards, meaning that financing methods such as that provided by these regulations are essential.

These rules are necessary to enable local governmental agencies to comply with the provisions of W. Va. Code §20-5F-1 et seq. and the regulations at 47CSR38 §4.5.4.a.A. This regulation requires that existing landfills meet more stringent requirements by November 1990, which will result in substantial costs to those local agencies.

These rules are necessary to prevent substantial harm to the public interest by assisting local governments in the construction of new solid waste facilities which are necessary for the protection of public health, safety, and welfare. Further, the construction of such new facilities will prevent the proliferation of unsanitary and unlawful solid waste disposal sites which sites do present a direct harm to the public interest.

Harold A. Taylor

Harold A. Taylor, Chairman
West Virginia Solid Waste
Management Board

FILED
MAY 10 1990
FBI - MEMPHIS

DATE: August 8, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Solid Waste Management Board

EMERGENCY RULE TITLE: Rules and Regulations Governing Disbursement of Loans and Grants to Governmental Agencies for the Acquisition or Construction of Solid Waste Disposal Projects.

1. Date of filing: August 8, 1990
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-26-1 et seq.; 29A-3-15
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts new language.

5. Has the same or similar emergency rule previously been filed and expired?
No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
These rules are necessary for the immediate preservation of public health, safety, and welfare because they provide a method of financing for local governmental agencies to use in the acquisition and construction of necessary solid waste disposal facilities. Many local governmental agencies need to construct new facilities or upgrade existing ones in the immediate future because their existing facilities are close to capacity. These facilities must be constructed in accordance with State and Federal law and must meet additional more stringent standards, meaning that financing methods such as that provided by these regulations are essential.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

These rules are necessary to enable local governmental agencies to comply with the provisions of W. Va. Code §20-5F-1 et seq. and the regulations at 47CSR38 §4.5.4.a.A. This regulation requires that existing landfills meet more stringent requirements by November 1990, which will result in substantial costs to those local agencies.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

These rules are necessary to prevent substantial harm to the public interest by assisting local governments in the construction of new solid waste facilities which are necessary for the protection of public health, safety, and welfare. Further, the construction of such new facilities will prevent the proliferation of unsanitary and unlawful solid waste disposal sites which sites do present a direct harm to the public interest.

TITLE 54
LEGISLATIVE RULES
WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD
SERIES 1
RULES AND REGULATIONS GOVERNING DISBURSEMENT OF LOANS
AND GRANTS TO GOVERNMENTAL AGENCIES FOR THE
ACQUISITION OR CONSTRUCTION OF SOLID WASTE DISPOSAL PROJECTS

§ 54-1-1. General.

1.1. Scope. - These legislative rules establish requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of solid waste disposal projects.

1.2. Authority. - West Virginia Code § 16-26-1 et seq.

1.3. Filing Date. - _____,
19__

1.4. Effective Date. - _____,
19__

§ 54-1-2. Definitions.

Except where the context indicates otherwise, the following terms as used in these rules shall have the meanings ascribed to them as set forth below.

2.1. General definitions.

2.1.1. The "Act" means West Virginia Code § 16-26-1 et seq.

2.1.2. "Applicant" means a governmental agency which applies for a loan or grant pursuant to the provisions of Section 3 or Section 4 of these rules.

2.1.3. The "Board" means the West Virginia Solid Waste Management Board, established pursuant to West Virginia Code § 16-26-4, or its authorized representatives.

2.1.4. The terms "cost," "governmental agency," "solid waste," "solid waste disposal facilities," "solid waste disposal project" and "project" as used in Sections 3 and 4 of these rules, shall have the meanings ascribed to them in the Act.

2.1.5. "Grant" means a grant made by the Board to an applicant pursuant to Section 3 of these rules.

2.1.6. "Grant Agreement" means an agreement entered into between the Board and the applicant pertaining to a grant and as more particularly described in Section 3.6 of these rules.

2.1.7. "Loan" means a loan made by the Board to an applicant pursuant to Section 4 of these rules.

2.1.8. "Loan Agreement" means an agreement entered into between the Board and the applicant pertaining to a loan and as more particularly described in Section 4.7 of these rules.

§ 54-1-3. Grants.

3.1. Eligibility for participation in grant program.

3.1.1. Governmental agencies eligible for participation in program. - A governmental agency or any combination thereof empowered to acquire, construct and equip solid waste disposal facilities shall be eligible to participate in the program.

3.1.2. Application for participation in program. - Any eligible governmental agency or any combination thereof which desires to participate in the program shall make a separate application to the Board on forms prescribed by the Executive Director of the Board for each project for which such participation is desired.

3.1.3. Acceptance of grant applications. - Subject to Section 3.6.1 of these rules, no application which is received by the Board shall be accepted until the applicant has satisfied the following conditions:

3.1.3.a Delivered to the Board an agreement for the construction, maintenance and operation of the project between the applicant and the Board which is consistent with Section 3.7.1 of these rules, which has been authorized and approved by the legislative authority or authorities of the applicant and which has been executed by the applicant.

3.1.3.b If required by the Board, provided a feasibility study prepared by an independent engineering firm and an independent certified public accounting firm demonstrating that the project is technically and financially feasible.

3.1.3.c Provided certification that detailed plans, profiles, cross sections, estimates, specifications and such other requirements as are appropriate have been approved by all legally required agencies.

3.1.3.d Provided written assurance that a properly

certified operator will be employed upon completion of fifty percent (50%) of the project's construction.

3.3.1.f Grants will be awarded for a maximum period of one year, provided that the Board may extend this period for up to 60 days. Applicants should not depend on continued financing for long-term projects through this grant program.

3.1.4. Eligibility for participation in program if project should be combined with another project. - If the Board determines that a project for which application is made should be combined with another project or should serve governmental agencies not included as the applicant, the Board may delay the date upon which the project's priority is established in relation to other projects for which applications are received until such date as the project is expanded to include the additional project or projects or governmental agency or agencies.

3.2. Payment of costs of projects.

3.2.1. Payment of project costs by Board. - Upon entering into the agreement between the Board and the applicant referred to in Section 3.1.3.a of these rules and upon determination by the Board of a project's priority pursuant to Section 3.6.1 of these rules, the amount prescribed by Section 3.3.1 of these rules shall be paid by the Board. In the event such agreement is terminated by the Board pursuant to, and not in breach of, the provisions of such agreement, or in the event such agreement is terminated by the applicant whether

or not in breach of this agreement, such grant will be immediately withdrawn.

3.2.2. Source of payment of project costs. - Subject to Section 3.3.1 of these rules, grants shall be made from funds appropriated to the Board or from funds contained in Board accounts which provide for such use.

3.2.3. Distribution of moneys constituting project costs. - The Board shall pay directly to the applicant such payment as to those project costs which the applicant or one (1) of the governmental agencies constituting applicant has not paid from its own funds. As to those project costs which the applicant or one (1) of the governmental agencies constituting the applicant has paid from its own funds, the Board shall reimburse the applicant or such governmental agency upon an accounting to the Board of such payment and a request for reimbursement.

3.2.4. Availability of funds. - The grant funds for the purposes herein provided will be disbursed to eligible projects as set forth in Section 3.1 of these rules and will be disbursed until all such projects have been satisfied or until the funds so provided have been exhausted, whichever comes first.

3.3. Participation payments by applicant.

3.3.1. Grants. - Participation in the grant program as described in these rules is subject to the following restrictions:

3.3.1.a The grant(s) as herein provided is a grant(s) of up to fifty percent (50%) of the total project costs.

3.3.1.b Credit will be given for in-kind services when determining the amount of funding from the authority to be matched by a grant.

3.3.1.c Volunteer services will be valued at the minimum hourly wage unless the applicant can demonstrate that such services would normally be valued above that wage in the area served by the applicant's program.

3.3.1.d Donated equipment will be valued at its fair market value prorated over the life of the grant. Such equipment may only be used to determine the amount of matching funds during the first year that a grant is given to the authority involving that equipment.

3.3.1.e Applicants are only eligible for one (or more) grants totalling an amount not to exceed 10% of the estimated revenues of the Board for the fiscal year during which the grant is to be received, provided that this amount of money may be increased when the applicant consists of two or more governmental agencies acting collectively for the purposes of a grant.

3.4. Rights of access - construction requirements.

3.4.1. Rights of access to property. - In the event the applicant or one (1) or more of the governmental agencies constituting the applicant either acquires or owns the real and personal property constituting the project, the Board and, if applicable, other legally constituted regulatory entities and

agencies shall have rights of access to the project as may be reasonably necessary to inspect the construction of the project and as may be reasonably necessary to ensure the proper operation and maintenance of the project following construction. Similar rights of access shall be given by the Board to the applicant if the Board acquires or owns the real and personal property constituting the project.

3.4.2 Requirements which governmental agency must follow when constructing project. -- If the project is constructed by applicant or one (1) or more of the governmental agencies constituting the applicant, such governmental agencies shall (i) Obtain all federal, state, county and municipal approvals required under existing law in connection with the construction of the project; (ii) advertise for bids or construction contracts only after approval by the Board; (iii) require that each construction contractor furnish a performance and payment bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of the contract and payment of the subcontract; (iv) require that each of its contractors and subcontractors maintain during the life of the contract workers' compensation insurance, public liability, property damage and vehicle liability insurance in the amounts and in terms satisfactory to the Board; (v) provide and maintain competent and adequate resident engineering services satisfactory to the Board covering the supervision and inspection of the development and construction of the project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the

Board and the applicant at the completion of construction that construction is in accordance with approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto; and (vi) provide an operation and maintenance manual for the project.

3.5. Operation and maintenance of project.

3.5.1. Option to determine who shall operate and maintain project. -- If the project serves directly only one (1) governmental agency, the project may be operated and maintained by the Board or the applicant at the option of the Board. If the project serves directly more than one (1) governmental agency, the project may be operated and maintained by the Board at the option of the Board or by one (1) or more of the governmental agencies. Whether operated by one (1) or more than one (1) governmental agency, the operation and maintenance of the project must meet Board requirements.

3.5.2. Requirements which governmental agency must follow when operating and maintaining project. If the project is operated and maintained by applicant or one (1) or more of the governmental agencies constituting the applicant, such governmental agency shall: (i) Provide adequate operation and maintenance of the project to comply with the water quality standards established for the river basin affected thereby and with all applicable rules and regulations of the West Virginia Department of Health and Human Resources and the West Virginia Department of Commerce, Labor and Environmental Resources; (ii) retain sufficient qualified operating personnel approved by Board to operate the project and perform all operational tests and

measurements necessary to determine compliance with the preceding sentence (i) to ensure proper and efficient operation and maintenance of the project from the time of commencement of operation until the approval of the discontinuance of the operation of the project by the Board and all legally required agencies; (iii) operate and maintain the project in a manner which is consistent with design capacity and capability of the project in accordance with an ordinance or resolution acceptable to the Board; (iv) provide property and casualty insurance satisfactory to the Board; (v) if the governmental agency shall fail to comply with either (i), (ii) or (iii) above, it shall permit the Board at its discretion to remedy such default and shall pay the cost of remedying such default to the Board together with interest thereon from the date of payment by the Board.

3.5.3. Requirements which governmental agency must follow when Board operates and maintains project. - If the project is operated and maintained by the Board, the applicant shall (i) agree to provide the funds necessary to pay the cost of operating and maintaining the project at such times as will permit the prompt payment of such costs by the Board from the funds of the applicant; and; (ii) cooperate fully with the Board in the operation and maintenance of the project in relation to the operation and maintenance of the project.

3.6 Determination of priority for participation in grant program.

3.6.1. Criteria for considering applications - Each application will be evaluated according to the following criteria:

3.6.1.a The Board will give preferences to projects in the following order of priority: (i) source reduction; (ii) recycling, reuse and resource recovery; and (iii) landfilling.

3.6.1.b Potential of project to further the efficient and effective collection, processing, recycling and disposal of solid waste within the area and to assist in the protection of the environment.

3.6.1.c Sustainability of the project beyond the grant period.

3.6.1.d Cost effectiveness of the project.

3.6.1.e Degree of public involvement in the project.

3.6.1.f Projects that have not received funding from this particular grant program will be considered before projects funded previously under this program.

3.6.1.g Consideration of the applicant's ability to assess and collect rentals, fees and service charges for the use or services of any solid waste disposal facilities involved in the grant application.

3.6.2. Withdrawal of grant. The Board reserves the right to withdraw a grant upon determination of unsatisfactory program compliance with either these rules, or the specifications in the grant document, or the application for the grant.

3.6.3. Cancellation of grant. A failure to commence program activities within 90 days after receiving funding from the Board may result in the cancellation of the grant.

3.7 Miscellaneous.

3.7.1. Agreement between Board and applicant. - The agreement between the Board and the applicant referred to in Section 3.1.3.a of these rules, shall be consistent with these rules and shall contain such additional provisions which the Board determines are necessary to the implementation of these rules and ensure the proper carrying forward of the program.

3.7.2. Purposes for which grants can be obtained - Grants obtained in accordance with these rules shall be used by a governmental agency or combination thereof only for the purpose of acquiring, constructing and/or equipping solid waste disposal projects.

§ 54-1-4. Loans.

4.1. Description of loans.

4.1.1. Source of loan funds. - It is anticipated that the Board shall obtain the funds with which to make loans from the proceeds of revenue bonds and notes issued from time to time by the Board pursuant to the Act, although the Board may use funds from other sources to make such loans.

4.1.2. Evidence of and security for loans. - The loans shall be evidenced by a note or other debt instruments issued by applicants at a discount to reflect the costs of the Board incurred in issuing its obligations to provide the funds to make the loans, and other costs

related to financing such projects, and shall be secured by a pledge of the fees, charges and all other revenues of the projects to be constructed, in whole or in part, with the proceeds of the loans and any other collateral required by the Board.

4.1.3. Amount of loan. - Each loan shall be in an amount which shall cover all costs of the project to be constructed by the applicant for which funds from the aforesaid grant or other sources are not available.

4.2 Eligibility for loans.

4.2.1. Governmental agencies eligible for loans. - All governmental agencies, or any combination thereof, which have the authority under applicable law to acquire, construct and equip a project shall be eligible for a loan.

4.2.2. Application for loan. - Any eligible governmental agency which desires to obtain a loan shall make a separate application to the Board on forms prescribed by the Executive Director of the Board for each project for which a loan is desired.

4.2.3. Acceptance of loan application - Subject to Section 4.7.1 of these rules, no application which is received by the Board shall be accepted until the applicant has satisfied the following conditions:

4.2.3.a Provided documentation satisfactory to the Board that the project is eligible for a loan under the provisions of the Act.

4.2.3.b If required by the Board, provided a feasibility study prepared by an independent engineering firm and an independent

certified public accounting firm demonstrating that the project is technically and financially feasible.

4.2.3.c Demonstrated to the satisfaction of the Board that it has adopted or will adopt all necessary ordinances or resolutions in form and substance satisfactory to the Board and has taken or will take all proceedings required by law to enable it to enter into a loan agreement with the Board and that it has obtained or will obtain all other necessary governmental agencies approval of user charges for the project which will provide annual net revenues to the applicant which exceed, by an amount or percentage specified in the loan agreement, the annual payments required to be made by the applicant to the Board under the loan agreement.

4.3 Loans to be subject to agreement.

4.3.1. Prior to the making of a loan, the Board shall execute and enter into a loan agreement with the applicant, pursuant to the provisions of Section 4.7 of these rules, which shall include such provisions as may be required by the Board, including, without limitation, the following:

4.3.1.a The cost of such project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the pledge of all fees, charges and other revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;

4.3.1.b The specific purposes for which the proceeds of

the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the applicant in regard to the construction or acquisition of the project;

4.3.1.c The agreement of the applicant to impose, collect and, if required to repay the obligations of such applicant under the loan agreement, increase service charges from persons using said project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of such applicant under the loan agreement; and

4.3.1.d The agreement of the applicant to comply with all applicable laws, rules and regulations issued by the Board or other state, federal and local bodies in regard to the financing, construction, operation, maintenance and use of the project.

4.4 Repayment of loans; interest on loans; fees and charges.

4.4.1. Payment of principal and interest on loan. -- Payments of the principal of the loan shall be made by the applicant on a monthly, quarterly, semi-annual or annual basis as scheduled by the Board and interest payments on the loan shall be made by the applicant on a monthly, quarterly, semi-annual or annual basis as scheduled by the Board, in accordance with the provisions of the loan agreement.

4.4.2. Computation of interest on loans. -- Each loan shall bear interest from the date of the delivery of the notes or other debt instruments of the applicant

evidencing the loan to the applicant at a rate or rates per annum which shall be equal to the rate or rates per annum borne by the obligations of the Board issued to provide the funds to make the loan: Provided, That pursuant to the provisions of the loan agreement, the Board may purchase the notes or other evidences of indebtedness of the applicant at par or at a discount to reflect the costs of the Board incurred in issuing its said obligations and other costs relating to the making of the loan.

4.4.3. Fees and charges. -- In addition to payments of principal and interest on the loan, each applicant shall agree in the loan agreement to pay fees and charges to the Board equal to the applicant's share of the administrative expenses of the Board relating to the loan program referred to in this Section 4, including, without limitation, any fees and charges established by rule of the Board, and the fees and expenses of the trustee and paying agents for the bonds to be issued by the Board to make the loan.

4.5. Agreement of Board to make loans conditioned upon sale of bonds.

The obligation of the Board to make any loan is and shall be conditioned upon receipt by the Board of the proceeds of bonds issued by the Board or funds from other sources in such amounts and on such terms and conditions as in the sole judgment of the Board, will enable it to make the loans.

4.6. Construction of project.

Each applicant receiving a loan shall, prior to commencement of construction of the project, comply with all applicable provisions of the

Act, of the loan agreement and of the resolution or ordinance authorizing the issuance of bonds or notes evidencing the loan, including, without limitation, that the applicant shall obtain all federal, state and local approvals.

4.7. Determination of priority for participation in loan program.

4.7.1. Criteria for ranking applications - Each application will be evaluated according to the following criteria:

4.7.1.a The Board will give references to projects in the following order of priority: (i) source reduction; (ii) recycling, reuse and resource recovery; and (iii) landfilling.

4.7.1.b Potential of project to further the efficient and effective collection, processing, recycling and disposal of solid waste within the area and to assist in the protection of the environment.

4.7.1.c Degree of public involvement in the project.

4.7.1.d Consideration of the applicant's ability to assess and collect rentals, fees and service charges for the use or services of the project involved in the grant application.

4.7.1.e Cost effectiveness of the project.

4.8. Miscellaneous.

4.8.1. Agreement between Board and applicant. - The agreement between the Board and the applicant

referred to in Section 4.3 of these rules, shall be consistent with these rules and shall contain such additional provisions which the Board determines are necessary to the implementation of these rules and ensure the proper carrying forward of the program.

4.8.2. Purposes for which loans can be obtained - loans obtained in accordance with these rules shall be used by a governmental agency or combination thereof only for the purpose of acquiring, constructing and/or equipping solid waste disposal projects.

Solid Waste
A:Title.54
7/30/90

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

September 12, 1990

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 12, 1990
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Solid Waste Management Board

RULE: New Rule, Series 1; Disbursement of Loans and Grants to
Governmental Agencies for the Acquisition or Construction
of Solid Waste Disposal Projects

DATE FILED AS AN EMERGENCY RULE: August 8, 1990

DECISION NO. 37-90

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.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 37-90)

AGENCY: Solid Waste Management Board
RULE: New Rule, Series 1, Disbursement of Loans and Grants to Governmental Agencies for the Acquisition or Construction of Solid Waste Disposal Projects
FILED AS AN EMERGENCY RULE: August 8, 1990

- par. 1 The Solid Waste Management Board (Board) has filed the above new rule 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 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 Board filed this emergency rule with supporting documents with the Secretary of State on August 8, 1990 and with the LRMRC on August 8, 1990.

par. 7 It is the determination of the Secretary of State that the Board 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 §16-26-6(1) reads:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business, and rules and regulations, promulgated pursuant to the provisions of §29A-1-1 et seq. of this code, to implement and make effective its powers and duties.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency 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 facts and circumstances as presented by the Board are as follows:

These rules are necessary for the immediate preservation of public health, safety and welfare because they provide a method of financing for local governmental agencies to use in the acquisition and construction of necessary solid waste disposal facilities. Many local governmental agencies need to construct new facilities or upgrade existing ones in the immediate future because their existing facilities are close to capacity. These facilities must be constructed in accordance with state and federal law and must meet additional more stringent standards, meaning that financing methods such as that provided by these regulations are essential.

- 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(g) . . . "immediate preservation of public peace, health safety or welfare," "time limitation" and "prevent substantial harm to public interest."
- par. 14 This decision shall be cited as Emergency Rule Decision 37-90 or ERD 37-90 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Solid Waste Management Board, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 12, 1990
ADMINISTRATIVE LAW DIVISION

Entered _____