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STATE OF WEST VIRGINIA

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December 1, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Air Pollution Control Commission

RULE: Amendments, Series 29, Regulations Requiring the
Submission of Emission Statements for Volatile Organic
Compound Emissions and Oxides of Nitrogen Emissions

DATE FILED AS AN EMERGENCY RULE: November 12, 1992

DECISION NO. 32-92

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION (ERD 32-92)

AGENCY: Air Pollution Control Commission
RULE: Amendments, Series 29, Regulations Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions

FILED AS AN EMERGENCY RULE: November 12, 1992


- par. 1 The Air Pollution Control Commission (APCC) has filed the above amendments as an emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The APCC filed this emergency rule with supporting documents with the Secretary of State November 12, 1992 and with the LRMRC November 12, 1992.
- par. 7 It is the determination of the Secretary of State that the APCC 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 16-20-5 reads in part:
- (4) 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: Provided, That no rule of the commission shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the commission hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the commission first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to WV or some area thereof.
- par. 9 It is the determination of the Secretary of State that the APCC 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 APCC are as follows:

The Clean Air Act Amendments of 1990 (42 U.S.C. §§701, et seq.) require a November 15, 1992, revision to the State Implementation Plan (SIP) for states with ozone nonattainment areas. West Virginia has six counties designated as ozone nonattainment areas are Kanawha, Cabell, Putnam, Wayne, Wood and Greenbrier. (Note: Greenbrier county is a marginal ozone nonattainment area. All other listed counties are moderate ozone nonattainment areas).

42 U.S.C. §7511a(a)(3)(B) [C.A.A. 182(a)(3)(B)] requires states with ozone nonattainment areas to adopt rules requiring the annual submission of emission statements from stationary sources emitting volatile organic compounds (VOCs) or oxides of nitrogen (NOx). The emergency rule 45CSR 29 provides for emission statements as required by the Clean Air Act. Sanctions for state failure to revise State Implementation Plans are provided in 42 U.S.C. §7509 (C.A.A. §179).

- 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). . . "federal time limitation".
- par. 14 This decision shall be cited as Emergency Rule Decision 32-92 or ERD 32-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Air Pollution Control Commission, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

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SECRETARY OF STATE

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November 30, 1992

**The Honorable Ken Hechler
Secretary of State
State of West Virginia
Main Building, State Capitol
Charleston, West Virginia 25305**

Attention: William Harrington, Chief of Staff

Re: 45 CSR 19

Dear Secretary Hechler:

We are writing to urge you to certify the emergency filing of 45 CSR Series 19 as soon as possible. These regulations contain requirements for preconstruction review, determination of emission offsets for proposed new or modified stationary sources of air pollutants and emission trading for intrasource pollutants. They were filed by the Air Pollution Control Commission with your Administrative Law Division as emergency regulations on November 12, 1992. In order for these regulations to affect the construction of the only major facility to which they would currently apply, the Union Carbide triton surfactant unit at South Charleston, it is necessary for the regulations to be in effect as soon as possible. We have been informed that the Office of Air Quality intends to issue a permit for construction of a surfactant unit early in December, 1992.

The target date for the changes to Series 19 reflected in rules as required by the federal Clean Air Act was November 15, 1992. We believe the intent of the act would be fulfilled by your certification of this filing.

Thank you for your attention to this matter. If we can be of assistance to you in any respect, please do not hesitate to contact us.

Very truly yours,

Jacqueline Hallinan
JACQUELINE HALLINAN

