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(Plus all the volunteer
help we can get)

August 3, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Office of Waste Management

RULE: Amendments, Series 1, Solid Waste Management Rule

DATE FILED AS AN EMERGENCY RULE: June 22, 1998

DECISION NO. 7-98

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.



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Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 3, 1998
ADMINISTRATIVE LAW DIVISION

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EMERGENCY RULE DECISION (ERD 7-98)

AGENCY: Office of Waste Management
RULE: Amendments, Series 1, Solid Waste Management Rule
FILED AS AN EMERGENCY RULE: June 22, 1998

- par. 1 The Office of Waste Management (OWM) 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 OWM filed this emergency rule with supporting documents with the Secretary of State June 22, 1998 and with the LRMRC June 22, 1998.

par. 7 It is the determination of the Secretary of State that the OWM 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 §22-15-8(e) reads:

The director shall promulgate emergency rules, and propose for legislative promulgation, legislative rules pursuant to the provisions of §29A-3-1 et seq. of this code, to effectuate the requirements of this section. When developing the rules, the director shall consider at a minimum the potential impact of the treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

(1) On the groundwater, surface waters and potable waters in the area;

(2) On the air quality in the area;

(3) On the projected life and design capacity of the solid waste facility;

(4) On the available air space, lined acreage, equipment type and size, personnel and wastewater treatment capabilities;

(5) The facility's ability to adequately develop markets and market the product which results from the proper treatment of sewage sludge; and

(6) Other factors related to the environmentally safe and efficient treatment, storage, processing, composting, dumping or placing of sewage sludge at a solid waste facility.

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

This proposed emergency rule is necessary to update the Solid Waste Management Rule, Title 33, Series 1, to comply with the mandates set forth in SB 178, previously passed into law during the 1998 regular session of the West Virginia Legislature. SB 178 requires the DEP promulgate this emergency rule pursuant to directives found at WV Code §22-15-8(e) as amended.

- 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 1998 Legislature.
- par. 14 This decision shall be cited as Emergency Rule Decision 7-98 or ERD 7-98 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of Waste Management, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 3, 1998
ADMINISTRATIVE LAW DIVISION