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July 9, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Division of Environmental Protection, Office of Waste Management

RULE: Amendments, Series 2, Sewage Sludge Management Rule

DATE FILED AS AN EMERGENCY RULE: June 1, 1998

DECISION NO. 4-98

FILED
JUL 10 8 57 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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.

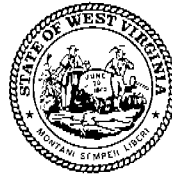

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EMERGENCY RULE DECISION
(ERD 4-98)

AGENCY: WV Division of Environmental Protection, Office of Waste Management

RULE: Amendments, Series 2, Sewage Sludge Management Rule

FILED AS AN EMERGENCY RULE: June 1, 1998

- par. 1 The Office of Waste Management (DEP) 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 DEP filed this emergency rule with supporting documents with the Secretary of State June 1, 1998 and with the LRMRC June 2, 1998.

par. 7 It is the determination of the Secretary of State that the DEP 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-e of this code, to effectuate the requirements of this section.

par. 9 The WV Code further states in §22-15-20(b):

(b) The director shall promulgate emergency rules and propose legislative rules for legislative approval in accordance with the provisions of §29A-3 of this code necessary for the efficient and orderly regulation of sewage sludge no later than 90 days after the effective date of this article.

par. 10 WV Code continues in §22-15-20(q):

(q) All persons operating a sewage sludge processing facility shall provide off-site odor monitoring or testing mechanisms approved by the director. The director shall promulgate emergency rules and propose legislative rules for legislative promulgation, rules specifying the nature and type of odor monitoring or testing which will be approved or how to obtain approval for proposed odor monitoring or testing; the areas where the monitoring or testing shall occur; the frequency of monitoring or testing which shall be no less than semiannually or as otherwise ordered by the director and any other conditions necessary to effectuate the purposes of this subsection.

par. 11 It is the determination of the Secretary of State that the DEP has not exceeded its statutory authority in promulgating this emergency rule.

par. 12 (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.

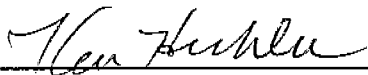
par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 14 The facts and circumstances as presented by the DEP are as follows:

This proposed emergency rule is necessary to update the Sewage Sludge Management Rule, Title 33, Series 2, 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 that the WV DEP promulgate this emergency rule. This bill requires the management of sewage sludge for the potential impact upon groundwater, surface waters, potable water and air quality in the area.

par. 15 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) . . . required by the Legislature and time limitation.

par. 16 This decision shall be cited as Emergency Rule Decision 4-98 or ERD 4-98 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 Waste Management, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

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WEST VIRGINIA