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(Plus all the volunteer
help we can get)

October 25, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: OFFICE OF WASTE MANAGEMENT

RULE: AMENDMENT, SERIES 5, WASTE TIRE MANAGEMENT RULE

DATE FIRST EMERGENCY AMENDMENT FILED: September 15, 2000

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: JULY 14, 2000

DECISION NO. 16-00

Following review under W. Va. 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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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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EMERGENCY RULE DECISION
(ERD 16-00)

AGENCY: OFFICE OF WASTE MANAGEMENT
RULE: AMENDMENT, SERIES 5, WASTE TIRE MANAGEMENT RULE
FIRST EMERGENCY AMENDMENT FILED: September 15, 2000
ORIGINALLY FILED AS AN EMERGENCY RULE: JULY 14, 2000

- par. 1 The Office of Waste Management (OWM) has filed the above amendments to an existing rule as an emergency amended rule.
- par. 2 W. Va. 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: W. Va. 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 September 15, 2000 and with the LRMRC September 15, 2000.

par. 7 It is the determination of the Secretary of State that the OWM has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §22-15-21(k) reads:

The division shall propose for legislative promulgation emergency and legislative rules to effectuate the purposes of this section.

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 -- W. Va. 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.

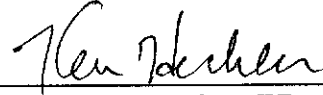
par. 12 The facts and circumstances as presented by the OWM are as follows:

Mandated by §22-15-21(k), which allows the disposal of waste tires in solid waste landfills, but only when agency has determined there is no reasonable alternative available. Emergency rule also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters and commercial landfill facilities relative to waste tire disposal.

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 Legislature.

par. 14

This decision shall be cited as Emergency Rule Decision 16-00 or ERD 16-00 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 Committee.



KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE
COMMONWEALTH OF VIRGINIA

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