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(Plus all the volunteer
help we can get)

October 20, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

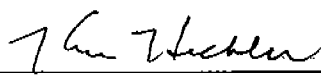
AGENCY: OFFICE OF WASTE MANAGEMENT

**RULE: AMENDMENTS, SERIES 32, UNDERGROUND STORAGE TANK
INSURANCE TRUST FUND**

DATE FILED AS AN EMERGENCY RULE: OCTOBER 14, 1998

DECISION NO. 14-98

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
WEST VIRGINIA

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**EMERGENCY RULE DECISION
(ERD 14-98)**

AGENCY: OFFICE OF WASTE MANAGEMENT
RULE: AMENDMENTS, SERIES 32, UNDERGROUND STORAGE TANK
INSURANCE TRUST FUND

FILED AS AN EMERGENCY RULE: OCTOBER 14, 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 October 14, 1998 and with the LRMRC October 14, 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 §22-17-6 reads in part:

(a) The director has overall responsibility for the promulgation of rules under this article. In promulgating and revising such rules the director shall comply with the provisions of §29A-1-1 et seq. of this code. Such rules shall be no more stringent than the rules & regulations promulgated by the US environmental protection agency pursuant to Subtitle I.

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:

Both federal & state regulations require UST owners to upgrade, replace or close their USTs by December 22, 1998. The DEP wishes to provide up to \$500,000 from the UST Insurance Trust Fund to the Small Business Revolving Loan Program which was created last year to make loans to small businesses for UST qualifying loans. Many UST owners are finding it difficult to obtain the funding from other sources.

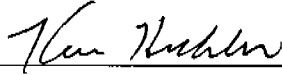
The deadline of December 22, 1998, is not a deadline for the agency but for UST owners. The rules requiring the UST upgrades, replacement or closure is federal regulation 40 CFR Part 280 Subpart B. The state rule is §33-30-2.

Without the ability to obtain this funding some small business will have to stop operating. They will not have the means to upgrade their systems or to properly close them. Therefore human health & safety and the environment will be

threatened due to unprotected UST systems remaining in the ground. The loss of these small business will also affect the public by reducing the number of service stations available to them.

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). . . "time limitation" and "prevent substantial harm"

par. 14 This decision shall be cited as Emergency Rule Decision 14-98 or ERD 14-98 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

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VIRGINIA

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