

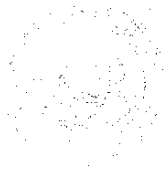
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(Plus all the volunteer
help we can get)

August 11, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Water Resources Board

RULE: Amendments to Series 1 Water Quality Standards

DATE FILED AS AN EMERGENCY RULE: June 30, 1987

DECISION NO. 12-87

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

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 11, 1987
ADMINISTRATIVE LAW DIVISION

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DECISION

Emergency Rule Decision (ERD 12-87)

AGENCY: Water Resources Board
RULE: Amendment to Series 1, Water Quality Standards
DATE FILED AS AN EMERGENCY RULE: June 30, 1987

- par. 1 The Water Resources Board ((WRB) has filed emergency rule amendments to the above titled Series 1. Amendments are to Section 7.2.c.
- 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(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 ERD 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 WRB has filed this emergency rule with supporting documents with the Secretary of State on June 30, 1987, and with the LRMRC on June 30, 1987.

par. 7 It is the determination of the Secretary of State that the WRB has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §20-5A-3(b)(2) reads in part:

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of chapter twenty-nine-A (§29A-1-1 et seq.) of this Code, (A) implementing and making effective the declaration of policy contained in section one (§20-5A-1) of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; (C) establishing standards of quality for the waters of the State under such conditions as the board may prescribe for the prevention, control and abatement of pollution.

par. 9 It is the determination of the Secretary of State that the Water Resources Board has not exceeded its statutory authority in the promulgation of these emergency rules.

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 WRB are as follows:

In the opinion of the State Water Resources Board there is sufficient justification to support the filing of Series 1, Section 7.2.c.6, as an emergency rule for the following reasons:

1. If this water quality standard revision is not implemented immediately, then Sharon Steel Corporation will be in violation of their permit as of July 1, 1987 and could be subject to civil and criminal liability.

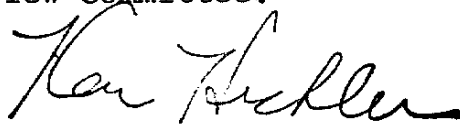
2. If Sharon Steel is required to comply with these terms of their existing permit, which based upon these revisions, then the Corporation would have to spend a large amount of money for a temporary treatment facility and might rather file for bankruptcy.

3. Both the Chief of the Division of Water Resources of West W. Va. DNR and the Water Quality Standards Coordinator for Region III of the U.S. Environmental Protection Agency have reviewed and approved the variance request.

par. 13 As stated in previous ERD's, economic conditions may be utilized as a public interest and rules needed to prevent substantial harm may qualify as an emergency.

par. 14 It is the decision of the Secretary of State that this proposal by the Water Resources Board is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Water Resources Board; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 15 This decision shall be cited as Emergency Rule Decision 12-87 or ERD 12-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Water Resources Board, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE Aug 11, 1987
ADMINISTRATIVE LAW DIVISION