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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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(Plus all the volunteer  
help we can get)

July 2, 1999

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: OFFICE OF WATER RESOURCES

RULE: SERIES 26, AMENDMENTS, WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

DATE FILED AS AN EMERGENCY RULE: JUNE 17, 1999

DECISION NO. 4-99

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.

  
KEN HECHLER  
Secretary of State

OFFICE OF THE SECRETARY OF STATE  
JUL 2 10 05 AM '99  
STATE OF WEST VIRGINIA

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## EMERGENCY RULE DECISION (ERD 4-99)

AGENCY: OFFICE OF WATER RESOURCES  
RULE: SERIES 26, AMENDMENTS, WATER POLLUTION CONTROL  
PERMIT FEE SCHEDULES

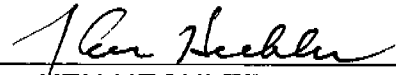
FILED AS AN EMERGENCY RULE: JUNE 17, 1999

- par. 1 The Office of Water Resources 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 Office of Water Resources filed this emergency rule with supporting documents with the Secretary of State June 17, 1999 and with the LRMRC June 17, 1999.

- par. 7 It is the determination of the Secretary of State that the Office of Water Resources 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 HB 2684 reads:
- e) The director shall promulgate an emergency rule and propose a legislative rule for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to implement the fee schedule authorized by the amendments to this section enacted in the year one thousand nine hundred ninety-nine. Beginning the first day of September, one thousand nine hundred ninety-nine, the director shall file a quarterly report with the joint committee on government and finance setting forth the fees established and collected pursuant to this section.
- par. 9 It is the determination of the Secretary of State that the Office of Water Resources 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 Office of Water Resources are as follows:
- House Bill 2684 passed on March 11, 1999 requires the Director to promulgate an emergency rule by July 1, 1999 to implement the fee schedule authorized by the amendment to WV Code 22-11-10.
- 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 4-99 or ERD 4-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of Water Resources, the Attorney General and the Legislative Rule Making Review Commission.



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KEN HECHLER  
Secretary of State

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