

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**
Form #7

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FILED

1992 MAY 15 PM 1:06

OFFICE OF THE SECRETARY OF STATE
Effective Date

June 17, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: DCL&ER, Division of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: WV Code § 20-5M-9

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 55

TITLE OF RULE BEING FILED AS AN EMERGENCY: Groundwater Protection Act Fee Schedule

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional Sheets If Necessary) : See Attached

330

Ann A. Spaner for
J. Edward Hamrick III, Director

47 C.S.R. 55 is being filed as an Emergency Rule in order to comply with the time limitation established in the following sections of the Groundwater Protection Act. The Groundwater Protection Act, § 20-5M became effective 90 days from passage, which was March 8, 1991.

§ 20-5M-5, subsection 'c' requires that the Department of Agriculture, Division of Energy, Division of Health and Division of Natural Resources promulgate within one year of the effective date of § 20-5M legislative rules to implement the authority granted by that article.

§ 20-5M-9, subsections 'a' and 'b' require that the Division of Natural Resources promulgate legislative rules to establish fee schedules for Groundwater Protection Fees and Groundwater remediation Fees.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MEMORANDUM OF CONSENT

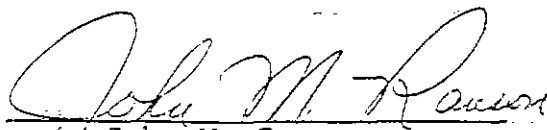
MEMORANDUM TO: J. Edward Hamrick III, Director
Division of Natural Resources

FROM: John M. Ranson, Secretary
Department of Commerce, Labor,
and Environmental Resources

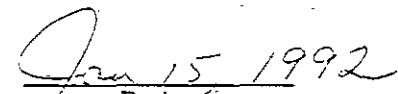
SUBJECT: Consent to File Agency Proposed Regulations

The following regulation concerning groundwater protection act fees has my approval to be proposed pursuant to the Administrative Procedures Act set forth under Chapter 29A of the West Virginia Code [W. Va. Code §29A et seq.].

<u>Title</u>	<u>Series</u>	<u>Name</u>
47	55	Groundwater Protection Act Fee Schedule regulations



John M. Ranson
Secretary



Date

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Groundwater Protection Act Fee Schedule

Type of Rule: X Legislative Interpretive Procedural

Agency: West Division of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$1,004,880	\$	\$	\$1,004,880	\$1,004,880
Personal Services	285,583			285,583	285,583
Current Expenses	113,397			113,397	113,397
Repairs & Alterations	8,170			8,170	8,170
Equipment	155,230			155,230	155,230
Other	442,500			442,500	442,500

2. Explanation of above estimates: The Groundwater Protection Act authorizes collection of up to one million dollars per year for the Protection Fund and allows the collection of two hundred and fifty thousand dollars over a two year period for the Remediation Fund. One hundred and twenty five thousand dollars per year will go to the Remediation Fund. Remediation Funds are not allocated in the above table. The funds outlined above will be allocated to agencies as follows: DEP - \$150,000; Agriculture - \$75,000; Health - \$167,500; Water Resources Board - \$50,000; DNR - \$562,380.

3. Objectives of this rule: To provide a funding mechanism necessary for implementing the provisions of the Groundwater Protection Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government. Proposed rule will have no impact to the General Revenue Fund.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. Local Health Departments will receive \$112,500 per year. Industries will pay \$683,150 per year. Monitoring well drillers will pay between \$50,000 - \$120,000 per year depending upon the number of drillers.
- C. Economic Impact on Citizens/ Public at Large. Citizens will pay \$225,000 per year through the purchase of new septic tanks.

Date: January 15, 1992

Signature of Agency Head or Authorized Representative

Director, Division of Natural Resources

Date: May 14, 1992

To: Legislative Rule-Making Review Committee

From: Division of Natural Resources

Emergency Rule Title: Groundwater Protection Act Fee Schedule

1. Date of filing: May 15, 1992
2. Statutory authority for promulgating the emergency rule: §§ 20-5M-5 and 20-5M-9
3. Date of filing of proposed legislative rule: March 3, 1992 and May 15, 1992 modified version which is same as Emergency filing.
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? New language
5. Has the same or similar emergency rule previously been filed and expired? No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
N.A.
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision or federal statute or regulation and time limit established therein. § 20-5M-5, within one year of the effective date of § 20-5M
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest. N.A.

TITLE 47
LEGISLATIVE RULES

FILED

1992 MAY 15 PM 1:07

DIVISION OF NATURAL RESOURCES
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
SECRETARY OF STATE

SERIES 55
GROUNDWATER PROTECTION ACT FEE SCHEDULE

§ 47-55-1. General.

1.1. Scope and Purpose. -- This is a new rule which establishes a schedule of fees for the groundwater protection fund and the groundwater remediation fund. This rule is applicable to any person who owns or operates facilities or conducts activities subject to the provisions of West Virginia Code §20-5M-1 et seq.

1.2. Authority. -- West Virginia Code §20-5M-9 subsections (a) and (b).

1.3. Filing Date. -- May 15, 1992.

1.4. Effective Date. -- _____.

1.5. In order to allow for a review of the effectiveness of the schedule of fees set forth in this regulation, the fee schedule may through rulemaking be revised at any time prior to the regulations expiration. This regulation expires July 1, 1994.

1.6. Incorporation by Reference. -- Whenever federal or state statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on the filing date listed in Section 1.3 of this regulation.

§ 47-55-2. Definitions.

2.1. "Agency" means any branch, section, division, department or unit of the state, county or local government however designated or constituted which has authority under West Virginia Code § 20-5M-1 et seq. to regulate facilities or activities which have the potential for impacting groundwater.

2.2. "Chief" means the chief of the water resources section of the division of natural resources.

2.3. "Class (A through F) landfill" means any landfill Class A through F as defined in Solid Waste Management regulations 47CSR38-2.

2.4. "Director" means the director of the division of natural resources of the department of commerce, labor and environmental resources, unless otherwise specified in these regulations.

2.5. "Generator" means any generator as defined in West Virginia Code §20-5G-1 et seq.

2.6. "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

2.7. "Groundwater Certification" means an assurance issued by the director of the division of natural resources that a permit or other approval issued by a state, county, or local government body regarding an activity that affects or is reasonably anticipated to affect groundwater complies with all requirements of West Virginia Code §20-5M-1 et seq., and the legislative rules promulgated pursuant to that chapter in accordance with West Virginia Code §29A-1-1 et seq. and any other requirements of state law, regulations or agreements regarding groundwater.

2.8. "Groundwater protection fund" is the fund established by West Virginia Code §20-5M-9(c)(1).

2.9. "Groundwater remediation fund" is the fund established by West Virginia Code §20-5M-9(c)(2).

2.10. "Hazardous waste" means any hazardous waste as defined in section 3.1.3 of the division of natural resources' hazardous waste management regulations, 47CSR35.

2.11. "Injection well (Class I through V)" means any injection well, Class I through V, as defined in Regulations for the West Virginia Underground Injection Control Program, 46CSR9.

2.12. "Major facility" means any facility as defined in section 2.22 of the State-National Pollutant Discharge Elimination System Regulations, 46CSR2.

2.13. "Monitoring well driller" means the individual operating the drilling rig when drilling, altering or abandoning (i.e., properly closing) a monitoring well(s).

2.14. "Permit" means any license, certification, registration, permit, or any other approval granted by an agency authorized to regulate facilities or activities, which may have an impact on groundwater.

2.15. "Person" means any industrial user, public or private corporation, institution, association, firm or company

organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

2.16. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any undesirable insects, rodents, nematodes, fungi, weeds, or other organisms which the commissioner of agriculture may declare to be a pest, and any substances intended for use as a plant regulator, defoliant, desiccant or herbicide, except viruses on or in living man or other living animals.

2.17. "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by Section 502(4) of the Clean Water Act. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

2.18. "Solid waste" means any solid waste as defined in West Virginia Code §20-5F-2(k).

§ 47-55-3. Groundwater Protection Fund and Groundwater Remediation Fund Fees.

3.1. Groundwater remediation fund fees and annual groundwater protection fund fees required -- Any person whose activities may affect groundwater quality or is required to obtain a permit from any agency shall pay the appropriate groundwater protection fund and groundwater remediation fund fees in accordance with the provisions of subsections 3.5 and 3.6 of these regulations.

3.2. Method of fee collection, fee limits, and transfer of fees to funds.

3.2.1. All groundwater protection fund and groundwater remediation fund fees assessed under these regulations shall be added together and paid to the appropriate agency by check, money order or electronic transfer.

3.2.2. Groundwater remediation fund fees will be collected for a period not to exceed two years (from the effective date of this regulation). Furthermore, the director shall also discontinue collection of groundwater remediation fund fees if \$250,000.00 is collected before the two year period

expires.

3.2.3. Agencies receiving the aforementioned funds shall transfer to the director of the division of natural resources or his duly authorized representative, at such frequency as the director may deem appropriate, all groundwater protection fund and groundwater remediation fund fees collected.

3.3. Conditions of certification relative to fees and effect on permits.

3.3.1. Each agency's permit shall require that all groundwater protection fund and groundwater remediation fund fees be paid in accordance with subsections 3.5 and 3.6 of these regulations. The permit shall also contain language stating that failure to remit groundwater protection fund and/or groundwater remediation fund fees shall result in withdrawal or denial of groundwater certification, and subject the person to the penalties outlined in West Virginia Code §20-5M-10.

3.3.1.a. Agencies may require operating facilities/activities, which do not hold a valid permit and which are identified in either section 3.5 or 3.6 of this regulation, to pay the fees provided for in section 3.5 and 3.6.

3.3.1.b. Prior to issuing a permit, each agency shall require that all groundwater protection fund fees and groundwater remediation fund fees be paid following the provisions set forth in section 3.4.1 of this regulation.

3.3.2. No permit, subject to the requirements of West Virginia Code §20-5M-1 et seq. shall be issued, modified, or renewed without groundwater certification, unless the director declares otherwise pursuant to West Virginia Code §20-5M-8 (c).

3.4. Schedule of groundwater protection fund fees. -- (Fees are assessed on facility/activity type based on the projected cost of administering the Groundwater Protection Act.)

3.4.1. Persons subject to the fees outlined in subsections 3.5 and 3.6 of these regulations will be notified by the director, or his delegate, of the appropriate rate or actual amount of the fee, and the date fees are due.

3.4.2. The director shall coordinate the fee collection activities to assure that the statutory limits on fees provided for in West Virginia Code §20-5M-9 subsections (a) and (b) are not exceeded.

3.5. Schedule of groundwater protection fund fees -- The annual groundwater protection fund fee for the following

facilities/activities except 3.5.3 which is a one time registration fee due prior to installation, and except 3.5.6 which is a tipping fee, shall be:

- 3.5.1. Registering a pesticide -- \$15.00.
- 3.5.2. Fertilizers - reserved.
- 3.5.3. Septic tank registration seals - \$30.00 each. These seals are to be purchased from the division of natural resources, water resources section.
- 3.5.4. Underground storage tank certification/ registration - \$5.00 per tank.
- 3.5.5. Generators of hazardous waste - \$100.00.
- 3.5.6. Disposal of solid waste in a class A, B, or C landfill - a tipping fee of one cent per ton (\$0.01/ton). These fees will be collected following the procedures outlined in West Virginia Code §20-5F-5a.
- 3.5.7. A Class F solid waste facility - \$300.00.
- 3.5.8. A facility which may impact groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under West Virginia Code §22A-3-1 et seq., or West Virginia Code §20-5A-5 (b)(6) (subject to the jurisdiction of the division of environmental protection), or West Virginia Code §22A-4-1 et seq. - \$100.00.
- 3.5.9. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is designated a major facility (industrial) - \$500.00.
- 3.5.10. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is not designated as a major facility (industrial) or is not described in 3.5.11, 3.5.12 or 3.5.13 below - \$50.00.
- 3.5.11. A POTW with design flow greater than one million gallons per day (gpd) - \$100.00.
- 3.5.12. A POTW with design flow less than one million gallons per day (gpd) - \$25.00.
- 3.5.13. A non POTW operating a sewage treatment plant - \$10.00 per plant.

3.6.19. Facilities/activities/persons reasonably suspected to have the potential to adversely impact groundwater quality, as determined by the chief, and that are not subject to fees outlined in 3.6.1 through 3.6.18 above - reserved.

§ 47-55-4. Severability.

If any provisions of this regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the regulation, and to this end the provisions of the regulation are declared severable.

3.6.7. A facility which may impact groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under West Virginia Code §22A-3-1 et seq., or West Virginia Code §20-5A-5 (b)(6) (subject to the jurisdiction of the division of environmental protection), or West Virginia Code §22A-4-1 et seq. - \$12.50.

3.6.8. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is designated a major facility (industrial) - \$62.50.

3.6.9. A facility which may impact groundwater quality, as determined by the chief, which is required to obtain a permit under West Virginia Code §20-5A-5 (b)(1 through 6), and which is not designated as a major facility (industrial) or is not described in 3.6.10, 3.6.11 or 3.6.12 below - \$6.25.

3.6.10. A POTW with design flow greater than one million gallons per day - \$12.50.

3.6.11. A POTW with design flow less than one million gallons per day - \$3.13.

3.6.12. A non POTW operating a sewage treatment plant - \$1.25 per plant.

3.6.13. An oil well - \$0.38 per well.

3.6.14. A gas well - \$0.38 per well.

3.6.15. A class II or class III UIC underground injection well:

3.6.15.a. Class II-D or class III underground injection well - \$9.38 per well.

3.6.15.b. Class II-R underground injection well - \$6.25 per well.

3.6.16. Class V underground injection wells - \$1.88 per permit.

3.6.17. Class I underground injection wells - \$25.00 per well.

3.6.18. A monitoring well drilling operation shall utilize a certified monitoring well driller for the drilling of groundwater monitoring wells. The certification fee for each monitoring well driller shall be ~ \$25.00.

- 3.5.14. An oil well - \$3.00 per well.
- 3.5.15. A gas well - \$3.00 per well.
- 3.5.16. A class II or class III UIC underground injection well:
 - 3.5.16.a. Class II-D or class III underground injection well - \$75.00 per well.
 - 3.5.16.b. Class II-R underground injection well - \$50.00 per well.
- 3.5.17. Class V underground injection wells - \$15.00 per permit.
- 3.5.18. Class I underground injection wells - \$200.00 per well.
- 3.5.19. A monitoring well drilling operation shall utilize a certified monitoring well driller for the drilling of groundwater monitoring wells. The certification fee for each monitoring well driller shall be - \$200.00.

3.5.20. Facilities/activities/persons which are reasonably suspected to have the potential to adversely impact groundwater quality, as determined by the chief, and which are not subject to fees outlined in 3.5.1 through 3.5.19 above - reserved.

3.6. Schedule of groundwater remediation fund fees -- The groundwater remediation fund fees for the following facilities/activities except 3.6.3 which is a one time registration fee due prior to installation, and except 3.6.5 which is a tipping fee, shall be:

- 3.6.1. Registering a pesticide - \$2.00.
- 3.6.2. Fertilizers - reserved.
- 3.6.3. Septic tank registration seals - \$3.75. These seals are to be purchased from the division of natural resources, water resources section.
- 3.6.4. Generators of hazardous waste - \$12.50.
- 3.6.5. Disposal of solid waste in a Class A, B, or C landfill - a tipping fee of \$0.00125/ton. These fees will be collected following the procedures outlined in West Virginia Code §20-5F-5a.
- 3.6.6. For Class F solid waste facilities - \$37.50.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

June 17, 1992

FILED
JUN 17 PM 2:54
OFFICE OF THE SECRETARY OF STATE

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DIVISION OF NATURAL RESOURCES

RULE: NEW RULE, SERIES 55, "GROUNDWATER PROTECTION ACT FEE SCHEDULE"

DATE FILED AS AN EMERGENCY RULE: MAY 15, 1992

DECISION NO. 11-92

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 *A.R.C.*



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
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help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION (ERD 11-92)

AGENCY: DIVISION OF NATURAL RESOURCES
RULE: NEW RULE, SERIES 55, "GROUNDWATER PROTECTION ACT FEE
SCHEDULE
FILED AS AN EMERGENCY RULE: MAY 15, 1992

- par. 1 The Division of Natural Resources (DNR) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(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 emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The DNR filed this emergency rule with supporting documents with the Secretary of State May 15, 1992 and with the LRMRC May 15, 1992.
- par. 7 It is the determination of the Secretary of State that the DNR 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 §20-5M-9 reads in part:
- (a) The director of the division of natural resources shall promulgate legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. The schedule of fees shall be calculated by the director to recover the reasonable and necessary costs of implementing the provisions of this article as it relates to a particular facility or activity.
- par. 9 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.
- 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 DNR are as follows:
- This rule is being filed as an Emergency Rule in order to comply with the time limitation established in the following sections of the Groundwater Protection Act. The Groundwater Protection Act, §20-5M became effective 90 days from passage, which was March 8, 1991. §20-5M-5, subsection 'c' requires that the Department of Agriculture, Division of Energy, Division of Health and Division of Natural Resources promulgate within one year of

the effective date of §20-5M legislative rules to implement the authority granted by that article. §20-5M-9, subsections 'a' and 'b' require that the Division of Natural Resources promulgate legislative rules to establish fee schedules for Groundwater Protection Fees and Groundwater Remediation Fees.

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(g). . . "time limitation."

par. 14 This decision shall be cited as Emergency Rule Decision 11-92 or ERD 11-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

A.R.C.

Entered _____

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1992 JUN 17 PM 2:54

OFFICE OF THE SECRETARY OF STATE