



Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

2013 MAR 12 PM 4:31

SECRET
Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

March 12, 2013

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Water Resources, Division of Water and Waste Management

RULE: Title 47CSR2, Requirements Governing Water Quality Standards

DATE FILED AS AN EMERGENCY RULE: January 30, 2013

DECISION NO. 3-13

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 3-13)

AGENCY: Water Resources, Division of Water and Waste Management
RULE: Title 47CSR2, Requirements Governing Water Quality Standards
DATE FILED AS AN EMERGENCY RULE: January 30, 2013

par. 1 The Water Resources has filed the above amendment to an existing rule as an emergency 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 Water Resources filed this emergency rule with supporting documents with the Secretary of State January 30, 2013 and with the LRMRC January 30, 2013.

par. 7 It is the determination of the Secretary of State that the Water Resources 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 22-11-4(a)(16) reads:

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code: (A) Implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no rule adopted by

the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant;

par. 9 It is the determination of the Secretary of State that the Water Resources 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 Water Resources are as follows:

“As stated in the emergency rule justification, the listing of waters as impaired initiates the Total Maximum Daily Load (TMDL) process and the associated efforts result in significant expenditure of agency resources. For example, in the Monongahela and West Fork River watersheds, DEP has 31 streams listed as impaired for Aluminum and is currently in the early stages of the TMDL development process. The costs associated with this specific example, alone just in contractor support is ~\$70000 and this does not include the expenditures of monitoring or DEP administrative efforts. If this emergency rule were in effect now some of this work may not have been deemed necessary and would have saved DEP both on contractor and internal costs, which could have been better utilized for more warranted tasks. Hence we can assume with much certainty that future costs savings will be achieved by this emergency rule action since DEP has projected numerous TMDL efforts targeting Al impairments in the Tygart and Cheat River Watersheds in 2013 and 2014.”

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). . . To prevent substantial harm to the public interest.

par. 14

This decision shall be cited as Emergency Rule Decision 3-13 or ERD 3-13 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Water Resources, Division of Water and Waste Management, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____

FILED

2013 MAR 12 PM 4:31

OFFICE OF THE
SECRETARY OF STATE