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July 10, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

FILED
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OFFICE OF THE SECRETARY OF STATE

AGENCY: Waste Management

RULE: Amendment, 33CSR1, Solid Waste Management Rule

DATE FILED AS AN EMERGENCY RULE: June 30, 2014

DECISION NO. 17-14

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 17-14)

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RULE: Amendment, 33CSR1, Solid Waste Management Rule
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- par. 1 The Waste Management 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 Waste Management filed this emergency rule with supporting documents with the Secretary of State June 30, 2014 and with the LRMRC June 30, 2014.
- par. 7 It is the determination of the Secretary of State that the Waste Management 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 §12-15-8(e) and 12-15-8(h) reads:

(e) The secretary shall promulgate emergency rules and propose for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, to effectuate the requirements of this section. When developing the rules, the secretary shall consider at a minimum the potential impact of the treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

(h) Any solid waste facility taking drill cuttings and drilling waste must install radiation monitors by January 1, 2015. The secretary shall promulgate emergency and legislative rules to establish limits for unique toxins associated with drill cuttings and drilling waste including, but not limited to heavy metals, petroleum-related chemicals, (benzene, toluene, xylene, barium, chlorides, radium and radon) and establish the procedures the facility must follow if that limit is exceeded: Provided, That said rules shall establish and set forth a procedure to provide that any detected radiation readings above any established radiation limits will require that the solid waste landfill immediately cease accepting all affected drill cuttings and drilling waste until the secretary has inspected said landfill and certified pursuant to established rules and regulations that radiation levels have returned to below the established radiation limits. Any truck load of drill cuttings or drilling waste which exceeds the radiation reading limits shall not be allowed to enter the landfill until inspected and approved by the Department of Environmental Protection.

par. 9 It is the determination of the Secretary of State that the Waste Management 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 Waste Management are as follows:

Amended and reenacted §22-15-8 and §22-15-11 of the Code of West Virginia requires the West Virginia Department of Environmental Protection to promulgate emergency rules relating to the disposal of drill cuttings and associated drilling waste generated from well sites at commercial solid waste facilities. The rule establishes limits for unique toxins associated with drill cuttings and associated drilling wastes and requires radiation and leachate monitoring at all facilities receiving drill cuttings and associated drilling wastes.

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). . . "immediate preservation of public peace, health, safety or welfare", "time limitation" and "prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 17-14 or ERD 17-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Waste Management.



NATALIE E. TENNANT
Secretary of State

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