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Secretary of State
State of West Virginia

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May 12, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Conservation Committee

RULE: West Virginia Conservation Agency financial Assistance Program 63CSR2

DATE FILED AS AN EMERGENCY RULE: April 29, 2015

DECISION NO. 1-15

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.

A handwritten signature in black ink, reading "Natalie E. Tennant". The signature is written in a cursive style with a large, stylized "N" and "T".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 1-15)

AGENCY: Soil Conservation Committee
RULE: West Virginia Conservation Agency financial Assistance Program
FILED AS AN EMERGENCY RULE: April 29, 2015

- par. 1 The Soil Conservation Committee (Committee) has filed the above new 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 Committee filed this emergency rule with supporting documents with the Secretary of State April 29, 2015 and with the LRMRC April 29, 2015.
- par. 7 It is the determination of the Secretary of State that the Committee 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 §19-21A-4a reads:
- (a) If a conservation district supervisor applies to participate in a West Virginia Conservation Agency financial assistance program, then his or her application for that particular program shall be evaluated for approval or denial by the West Virginia Conservation Agency.*
- (b) A conservation district supervisor may not vote for the authorization, approval or ratification of a contract in which he or she or an immediate family member is beneficially interested.*

© *The State Conservation Committee shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code to establish:*

(1) The criteria, ranking and standards required for an applicant to qualify to participate in West Virginia Conservation Agency programs;

(2) A process to disclose the recipients of the award; and

(3) The process for an unsuccessful qualified applicant to appeal an award.

(d) The State Conservation Committee may propose emergency rules as necessary to implement the provisions of this section.

par. 9 It is the determination of the Secretary of State that the Committee has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 © 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.

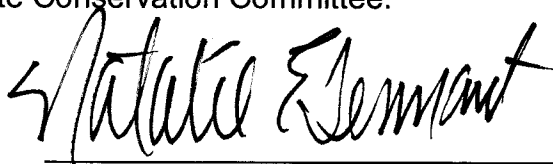
par. 12 The facts and circumstances as presented by the Committee are as follows:

The Legislature authorized the West Virginia Conservation Agency to file an emergency rule to implement Senate Bill 250, which passed during the 2015 Regular Session and signed by the Governor on March 24, 2015. This rule establishes procedures for West Virginia's 114 elected and appointed Conservation District supervisors to participate in WVCA financial assistance programs; the transfer of decision-making authority to the West Virginia Conservation Agency when a supervisor applies to a WVCA financial assistance program; and the public notification, disclosure and the appeal of financial assistance program decisions to the State Conservation Committee. This emergency rule is not expected to increase costs or generate revenue for state government. Approval of this rule would allow District Supervisors, who by law must be farmers, to take advantage of financial assistance programs designed to implement best management practices to conserve soil and reduce water pollution on their farms.

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 1-15 or ERD 1-15 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Conservation Committee.



NATALIE E. TENNANT
Secretary of State

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