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July 5, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Development Office

RULE: New Rule, 145CSR13, Use of Coalbed Methane Severance Tax Proceeds

DATE FILED AS AN EMERGENCY RULE: June 13, 2011

DECISION NO. 5-11

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 5-11)

AGENCY: West Virginia Development Office
RULE: New Rule, 145CSR13, Use of Coalbed Methane Severance Tax Proceeds
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- par. 1 The West Virginia Development Office (Development Office) 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 Development Office filed this emergency rule with supporting documents with the Secretary of State June 13, 2011 and with the LRMRC June 13, 2011.
- par. 7 It is the determination of the Secretary of State that the Development Office 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 §11-13A-20a(h)(4) reads:

(4) Prior to expending any coalbed methane severance tax moneys, each county economic development authority must obtain the approval of the development office in writing for the purpose of such expenditure. The Development Office shall approve all plans for use of the moneys if such plans are within the required uses provided in subdivision (2) of this subsection. The Director of the State Development Office shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code in order to set

forth the required documentation to be submitted to the Development Office from the county economic development authorities to ensure that such funds are utilized as intended by the Legislature. The Director of the Development Office is authorized to promulgate emergency rules to implement the provisions of this section.

par. 9 It is the determination of the Secretary of State that the Development Office 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.

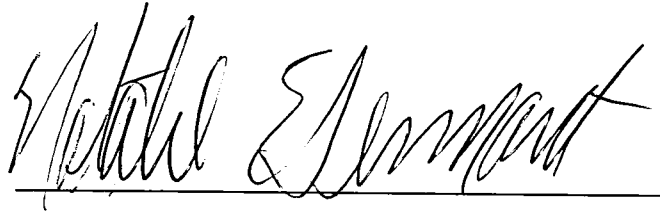
par. 12 The facts and circumstances as presented by the Development Office are as follows:

Without emergency rules, the county economic development authorities cannot prepare land sites for any public or private facility; design or construct water, sewer and stormwater infrastructure therefore delaying economic development of the county which could lead to loss of jobs.

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). . . "required by HB 2953" and "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 5-11 or ERD 5-11 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Development Office, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT

Secretary of State

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