

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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1991 OCT -2 PM 3:28
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

Oct. 21, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-9-34A

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 1C

TITLE OF RULE BEING FILED AS AN EMERGENCY: Disposal of Dead Poultry

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This rule is being filed as an emergency for the immediate preservation of the public health, safety or welfare. This rule will allow persons in the poultry industry to practice the environmentally and economically sound practices of disposing of dead poultry through composting, rendering or incineration. The poultry industry suffers routine losses of their poultry on a daily basis, so these practices need to be implemented immediately.

2:60

Use Additional Sheets If Necessary.


Signature

DATE: 9-26-91

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Barbara Smith, Director of Compliance, WV Dept. of Agriculture

EMERGENCY RULE TITLE: Disposal of Dead Poultry

1. Date of filing: 10-2-91
2. Statutory authority for promulgating the emergency rule:
19-9-34A
3. Date of filing of proposed legislative rule: August 8, 1991
(agency approval)
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
This is a new rule.
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
This rule is being filed as an emergency for the immediate preservation of the public health, safety or welfare. This rule will allow persons in the poultry industry to practice the environmentally and economically sound practices of disposing of dead poultry through composting, rendering or incineration. The poultry industry suffers routine losses of their poultry on a daily basis, so these practices need to be implemented immediately.

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, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: DISPOSAL OF DEAD POULTRY

Type of Rule: Legislative Interpretive Procedural

Agency WVDA Address _____

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations		SEE NUMBER 2 BELOW			
Equipment					
Other					

2. Explanation of above estimates:

This rule has no revenue effect

3. Objectives of these rules:

To develop environmentally and economically acceptable methods for the disposal of dead poultry.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date:

June 26, 1991

Signature of Agency Head or Authorized Representative

Steve Bessert

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-9
SERIES IC

TITLE: Disposal of Dead Poultry

§61-1C-1. General.

1.1 Scope - These rules regulate the disposal of dead poultry and other domestic fowl by persons, firms or corporations engaged in growing poultry or other domestic fowl for commercial purposes.

1.2 Authority - W Va. Code 19-9-34A

1.3 Filing Date -

1.4 Effective Date -

§61-1C-2. Definitions.

2.1 "Poultry" means all chickens, ducks, turkeys, or other domestic fowl being kept or raised for commercial purposes.

2.2 "Dead poultry" means all poultry excluding those intentionally slaughtered, which die as a result of disease, injury or of natural causes.

2.3 "Person" means any person, firm, partnership, corporation, or institution which engages in the raising or keeping of poultry for commercial purposes. A person is further defined as the grower of the poultry regardless of the ownership of the poultry.

2.4 "Raising or keeping of poultry for commercial purposes" means the raising or keeping of 200 or more poultry at one time for the purpose of sale of such poultry or the eggs produced therefrom.

2.5 "Incinerator" means a firebox constructed of masonry or metal in which dead poultry is completely burned by the use of fuel.

2.6 "Composting" means a natural process in which beneficial microbes reduce organic waste (dead poultry) into a biologically safe by-product which is capable of being recycled in the agriculture industry. A composter is a unit constructed of concrete or treated wood located under a roofed structure. A typical unit will contain two treatment areas. A primary treatment area may consist of one or more compartments. The secondary treatment area will be one compartment that will receive partially composted material from the primary treatment areas. Material in the primary treatment area is moved to the secondary area when it has reached a peak temperature of 140 to 160 degrees fahrenheit

after seven to ten days. The composting process is complete when the temperature in the secondary treatment area has reached a peak temperature of 140 to 160 degrees fahrenheit after seven to ten days.

2.7 "Rendering" means the treatment of dead poultry by steam treatment or by cooking at a commercial rendering plant, for a sufficient time to effectively destroy the product for human food purposes and to preclude dissemination of disease through consumption by animals. Dead poultry intended for disposal by rendering shall be picked up by or delivered to the rendering company within 24 hours of death or be refrigerated below 40 degrees fahrenheit pending pickup or delivery. All persons shall hold all dead poultry for rendering in a container that is leak proof, fly proof, and pet and wild animal proof.

§61-1C-3. Rules Pertaining to the Disposal of Dead Poultry.

3.1 It is unlawful for any person to dispose of, or cause to be disposed of, dead poultry in any manner other than by incinerator, composting or through rendering as defined in section 2 of these rules except where the Commissioner of Agriculture authorizes other methods of disposal under the provisions of subsection 3.2 of this rule.

3.2 For protection of public and animal health, the Commissioner of Agriculture may authorize the disposal of dead poultry by methods other than those prescribed in this rule in instances of serious disease outbreak, abnormal death losses, flock depopulation or other emergency situations.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

WILLIAM H. HARRINGTON
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DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

October 21, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Agriculture

RULE: Series 1C, Disposal of Dead Poultry

DATE FILED AS AN EMERGENCY RULE: October 2, 1991

DECISION NO. 94-91

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.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Oct. 21, 1991
ADMINISTRATIVE

KEN HECHLER
Secretary of State

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DECISION

EMERGENCY RULE DECISION
(ERD 94-91)

AGENCY: Agriculture
RULE: New Rule, Series 1C, Disposal of Dead Poultry
FILED AS AN EMERGENCY RULE: October 2, 1991

- par. 1 The Department of Agriculture (Department) has filed the above new rule as an emergency.
- 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 forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State October 2, 1991 and with the LRMRC October 2, 1991.

par. 7 It is the determination of the Secretary of State that the Department 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 §19-9-34a reads:

Notwithstanding any other provision of the law, the commissioner of agriculture is authorized to promulgate rules to regulate the disposal of dead poultry or other domestic fowl by persons, firms or corporations engaged in growing poultry or other domestic fowl for commercial purposes. Said rules shall encompass disposal methodologies of composting, incineration and rendering and shall include emergency situations of flock depopulation, abnormal death losses or serious disease outbreak, all in accordance with -1-1 et seq. of this code.

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

This rule is being filed as an emergency for the immediate preservation of the public health, welfare, safety or welfare. This rule will allow persons in the poultry industry to practice the environmentally and economically sound practices of disposing of dead poultry through composting, rendering or incineration. The poultry industry suffers routine losses of their poultry on a daily basis, so these practices need to be implemented immediately.

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). . . "immediate preservation of public peace, health, safety or welfare."

par. 14 This decision shall be cited as Emergency Rule Decision 94-91 or ERD 94-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Commission.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Oct. 21, 1991

ADMINISTRATIVE LAW DIVISION

KEN HECHLER

Secretary of State



Entered _____