

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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MAR 6 1 56 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

March 14, 1997

NOTICE OF A EMERGENCY RULE

AGENCY: Division of Health, Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-1-7

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Sewage Systems

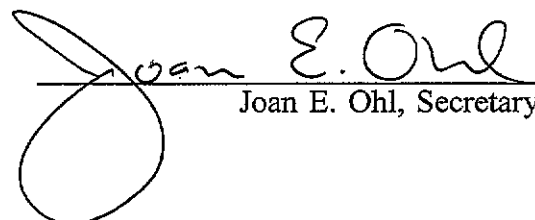
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

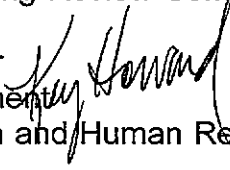
TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The Department of Health and Human Resources is presently in the process of drafting amendments to the current rule for sewage systems, West Virginia Division of Health Legislative Rule, Sewage Systems, 64 CSR 9. It has recently come to the Department's attention that certain provisions of the current rule are seriously interfering with economic development in the State. These older provisions are unnecessarily rigid, and are causing undue confusion. Amendments, which the Department has already drafted and will shortly offer for public comment, address and will correct these problems. Further, these amendments will facilitate the Department's responsibilities under the provisions of Article 12, Chapter 22 of the W. Va. Code for groundwater protection. Immediate promulgation of these amendments will provide much needed relief to various affected parties. The Department believes that there is a need for immediate relief of these problems in order to prevent further substantial harm to the public interest, thus justifying an emergency filing of this amended rule under the provisions of W. Va. Code § 29A-3-15(f).


Joan E. Ohl, Secretary

Date: March 6, 1997
To: Legislative Rule-Making Review Committee
From: Kay Howard, Director
Regulatory Development
Department of Health and Human Resources

Re: Emergency Rule - Sewage Systems, 64 CSR 9

1. Date of filing: March 6, 1997
2. Statutory authority for promulgating the rule: W. Va. Code §16-7-1.
3. Date of filing of proposed legislative rule: The proposed rule has not yet been filed for public comment:
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule amends a current legislative 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.

Not applicable.
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.

Not applicable.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Emergency Filing Notice.

ABSTRACT - PROPOSED EMERGENCY RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HEALTH

**

64 CSR 9

Summary: This proposed emergency amended legislative rule sets forth standards for the regulation of sewage systems. The promulgation authority for this rule is § 16-1-7. The substantive amendments are intended to clarify and make less rigid certain provisions of the current rule, which are unnecessarily interfering with economic development.

The rule contains provisions related to scope, authority supersession and repeal of former regulations, application and enforcement, definitions, general requirements, permits, construction and installation requirements, inspections, maintenance and operation, subdivisions, correction of health hazards, sewage tank cleaning, individual sewer systems installers certification, sewage advisory board, penalties, and administrative due process.

For further information contact: Ron Forren, Director, Division of Public Health Sanitation, Bureau for Public Health, telephone (304) 558-2981, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 518, Charleston, West Virginia, 25305; or the Office of Regulatory Development, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

Copies of the proposed rule may be purchased from the Administrative Law Division of the Office of the Secretary of State, State Capitol Complex, Building 1, Suite 157K, Charleston, WV 25305-0771, phone (304) 558-6000.

3/6/97

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Sewage Systems, 64 CSR 9

Type of Rule: Legislative Interpretive Procedural

Agency: Bureau for Public Health (For the Division of Health)
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The proposed amendments will not require additional general funds.

3. Objectives of this rule:

The purpose of the proposed amendments is to clarify and make more flexible current standards which are confusing, unnecessarily rigid and unduly interfering with economic development.

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.

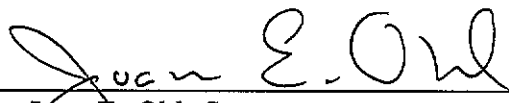
The clarified and less rigid standards should be financially beneficial.

C. Economic Impact on Citizens/Public at Large.

The clarified and less rigid standards should be financially beneficial.

Date: March 6, 1997

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

PROPOSED RULE - TITLE 64

**WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH**

SEWAGE SYSTEMS

SERIES 9

199__

**Emergency Rule
Filed March 6, 1997
Effective _____**

64 CSR 9

PROPOSED RULE - TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION ON HEALTH
SERIES 9
SEWAGE SYSTEMS

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FILED

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EMERGENCY RULE
PROPOSED - TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH
SERIES 9
SEWAGE SYSTEMS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-9-1. General.

1.1. Scope - ~~These legislative rules establish~~ This legislative rule establishes minimum requirements for sewage systems.

1.2. Authority - W. Va. Code §16-1-7.

1.3. Filing Date -

1.4. Effective Date -

§64-9-2. Supersession and Repeal of Former Regulations.

~~These regulations supersede and repeal West Virginia Board of Health Regulations Chapter 1, Article 10 "Small Sewage and Exereta Disposal System Regulations"; and Chapter 1, Article 11 "Sewage Regulations."~~

This rule amends and replaces the Division of Health's Sewage System Rules, 64 CSR 9, effective May 12, 1983.

§64-9-3. Application and Enforcement.

3.1. Application - ~~These legislative rules apply~~ This rule applies to all sewage systems in West Virginia.

3.2. Enforcement - ~~Enforcement of these legislative rules is vested with~~ This rule is enforced by the director of the West Virginia department division of health. ~~or his lawful designee.~~

§64-9-4. Definitions.

4.1. Acceptable Application - ~~Application~~ Completed forms, plans, specifications, fee, if required, and other data as specified by the ~~Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47 or by instructions issued by the director.

4.2. Accessible - Sewers are considered accessible when a public sewer system is located adjacent to, or available by right-of-way, to a particular lot, and sewage can discharge thereto by gravity or other means approved by the director.

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4.3. Approved - A procedure of operation or construction which is in accordance with design standards, specifications and instructions promulgated by the ~~state board of health~~ division of health or instructions issued by the director.

4.4. Chief, ~~Division Office~~ of Water Resources - The chief, ~~Division office~~ of water resources, ~~Department of Natural Resources~~ division of environmental protection.

4.5. Design Standards - Application procedures, design requirements, specifications and construction standards promulgated by the ~~state board of health~~ division of health, or instructions issued by the director.

4.6. Director - Director of the ~~state department~~ West Virginia division of health or his or her lawful designee.

4.7. Dwelling - A building, structure or place used or intended to be used for human occupancy as a single family or multi-family residence. The term "dwelling" ~~shall be~~ is construed to mean and include the terms "house and housing". This definition also includes, but is not limited to, mobile homes, vacation homes and cabins.

4.8. Effluent - Liquid discharge from a sewage treatment or disposal system.

4.9. Establishment - Any building, structure or place used or intended to be used for multiple dwelling units, or for manufacturing, commercial, religious, institutional, educational or recreational purposes.

4.10. Individual Sewer System - ~~A system serving a single dwelling or establishment for the collection, treatment and disposal of sewage. A system with a daily design flow not to exceed one thousand (1,000) gallons per day with subsurface discharge or not to exceed six hundred (600) gallons per day design flow with surface discharge. Ownership of the system is held by and maintenance performed by a single entity.~~

4.11. Individual Sewer System Installer - Any person engaging in the construction, installation, modification, extension, alteration and location of an individual sewer system, sewage tank, or an excreta disposal system ~~or modification thereof~~, excepting an individual installing, extending, or altering a system for his or her own use who has demonstrated knowledge of the rules by passing the applicable installer certification exam(s).

4.12. Lot - A tract or parcel of land or part of a subdivision used as or intended to be used as a site for a dwelling or establishment. ~~whether immediate or future.~~

4.13. Municipal Sewer System - A system or group of systems which, as a whole, receives sewage from more than one dwelling or establishment and is operated and maintained by an incorporated municipality, or public service district, or sanitary board.

4.14. Percolation Test - A test method described in the ~~design standards~~ Sewage Treatment

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and Collection System Design Standards, 64 CSR 47, by which the soils in a particular area are evaluated for subsurface effluent disposal.

4.15. Permit - A written document issued by the director giving the holder permission to construct, install, extend, alter or operate an approved sewer system, or method of sewage disposal or to collect, remove, transport or dispose of sewage.

4.16. Person - Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, or any entity recognized by law.

4.17. Public Sewer System - A sewage collection system or systems with or without treatment facilities and serving more than one dwelling or establishment: which are not individual systems. Ownership of the system is held by and maintenance performed by a single entity. This definition includes municipal sewer systems.

4.18. Rock Strata - A formation of indurated (hardened) material either above or below the ground surface that requires drilling, blasting or other methods of brute force for excavation. This definition does not include loose stones, boulders or floaters which are separated from bedrock by a minimum of 3 feet of soil.

4.19. Sewage - Any excreta or liquid waste containing animal or vegetable and/or mineral matter in suspension or solution including, but not limited to, waste from water-closets commodes, urinals, lavatories, bathtubs, laundry tubs, washing machines, drinking fountains, sinks, kitchen equipment, and other sanitary fixtures or facilities.

4.20. Sewer System - A system whether publicly or privately owned which receives and treats sewage and provides for the disposal of effluent and sludge therefrom. Included in this definition are individual sewer systems and public sewer systems.

4.21. Sewage Tank - A water-tight receptacle designed and constructed to receive and retain sewage solids. Sewage tanks ~~shall~~ are include, but ~~are~~ are not be limited to, septic tanks, aeration type sewage treatment systems, privy pits ~~and vaults~~, holding tanks or receptacles and self-contained excreta disposal facilities.

4.22. Sewage Tank Cleaner - Any person engaged in the collection, removal, transportation or disposal of sewage.

4.23. Standard Soil Absorption System -A system designed to receive effluent from a septic tank to be disposed of at soil depths ranging from 18 to 36 inches from the original ground surface.

4.24. Subdivider - Any person who divides a tract or parcel of land into two (2) or more lots.

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4.25. Subdivision - The partition or division of land into two or more lots, tracts, parcels, plats, sites, areas, units, interests or other division ~~any of which are less than two acres in size~~ for the purpose of dwelling or establishment development and including the division of land by deed, metes and bounds description, lease, map, plat or other instrument, or by act of construction.

4.26. Wastewater - ~~The spent water exclusive of industrial wastes from one or more dwellings or establishments.~~ Water containing human, animal, or domestic waste.

~~4.27. Well - An artificial excavation that derives water from the gaps or intervals of the rocks or soil which it penetrates.~~ Water Well - Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: a water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage, and recovery of coal, oil, and gas, and other mineral resources which are regulated under Chapter 22, 22a, or 22b of the West Virginia Code.

§64-9-5. General Requirements.

5.1. Prior to the construction or installation of any dwelling or establishment which will require an individual sewer system, a division of health sewage disposal installation permit is required. Where subsurface discharge systems are used, there shall be sufficient area to install the initial system and a suitable replacement area.

5.2. 5-1. Every dwelling or establishment whether publicly or privately owned, where persons reside, assemble, or are employed, shall be provided with toilet facilities, and a sewer system as set forth in the an approved plan approved by the director.

5.3. 5-2. It shall be the duty of the owner of such the dwelling or establishment to provide toilet facilities and a sewer system constructed and installed in compliance with an approved plan approved by the director.

5.4. 5-3. When, upon investigation, the director finds a person is constructing, installing, extending, altering, maintaining or operating a toilet facility or sewer system which does not comply with applicable provisions of these regulations this rule, said person shall be notified of the fact in writing, and if said person shall fail to abate or correct the condition within a period of time not to exceed thirty (30) days after the receipt of the written notice, said person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished according to the penalty set forth.

5.5. 5-4. All sewer systems shall be designed, constructed, installed, maintained and operated in such a manner that excreta or sewage contained therein or effluent discharged therefrom:

5.5.a. 5-4-1. Shall not create a health hazard affecting the public.

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~~5.5.2. 5.4.2.~~ Shall not endanger or contaminate any surface or subterranean body of water, which is used as an individual or public water supply or for recreational purposes.

~~5.4.3.~~ Shall not cause an odor or unsightly appearance.

~~5.5.b. 5.4.4.~~ Shall not violate any federal, state or local laws or regulations governing water pollution or sewage disposal.

~~5.6. 5.5.~~ The owner or operator of a sewer system to be abandoned shall abandon such the system in the following manner:

~~5.6.a. 5.5.1.~~ General - The contents of the sewage tank shall be removed by a licensed septic tank cleaner, or by means approved by the director. The tank or excavation filled with earth or a similar inert material, and the excavation, if any, shall be filled to eliminate any physical hazard. If the tank is in useable condition it may be removed and the excavation filled to eliminate any physical hazard; removed it shall be disposed of in a manner approved by the director. Sewage treatment lagoons (ponds) shall be abandoned in a manner approved by the director and the Chief, Office of Water Resources.

~~5.6.b. 5.5.2.~~ Electrical Service - Any electrical service to the system shall be terminated, and electrical service boxes, switches, meters, and similar equipment, removed or rendered harmless;

~~5.6.c. 5.5.3.~~ Water Service - Any water service to the system shall be disconnected;

~~5.6.d. 5.5.4.~~ Hazardous Equipment - Any other potentially hazardous equipment associated with the system shall be removed or rendered harmless.

~~5.7. 5.6.~~ The owner and any person or persons installing or modifying a sewer system shall be jointly responsible for compliance with all applicable provisions of ~~these regulations~~ this rule.

~~5.8. 5.7.~~ Off lot disposal of sewage or effluent requiring the use of or crossing of adjacent property shall require a recorded easement or authorization. ~~for said purposes. Such rights to be~~ These rights are This recorded document must be binding to the heirs and assigns of the properties involved.

§64-9-6. Permits.

6.1. In accordance with ~~Chapter 16, Article 1, Section 9, of the West Virginia Code of 1931, as amended W. Va. Code §16-1-9~~ no system or method of sewage or excreta disposal shall be installed or established without first obtaining a written permit from the director.

6.2. Individual and public sewer systems shall be permitted and constructed only after an acceptable application for, and plans and specifications of, the proposed system, as prepared in accordance with ~~the Design Standards~~ Sewage Treatment and Collection System Design

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Standards, 64 CSR 47, have been reviewed and approved by the director. Where applicable, a discharge permit ~~must~~ shall be obtained from the chief, ~~Division office~~ office of water resources in conformance with ~~Chapter 20, Article 5A of the West Virginia Code of 1931, as amended~~ W. Va. Code §20-5A, prior to construction.

6.3. An acceptable application to construct, install or modify an individual sewer system or a public sewer system shall be made in writing to the director. A permit to construct, install or modify shall be obtained prior to ~~such~~ the construction or installation.

~~6.4. An acceptable application for a permit to construct or install a sewage system shall be made in writing to the director prior to the intended construction or installation of such facility. The director shall approve or deny any application for a permit to construct a public sewer system or an individual sewer system discharging into the surface water of the state within a period of sixty (60) forty-five (45) working days from the date an application is received. The director shall approve or deny an application for an individual onsite sewer system within a period of twenty-one (21) working days from the date an application is received. Any application found to be incomplete shall be denied.~~

~~6.6. Any person operating a sewer system, except agricultural manure handling systems, shall follow the requirements set forth in the Hazardous Waste with Infectious Characteristics Rules promulgated by the state board of health.~~

~~6.5.~~ 6.7. The director shall deny a permit if the information on the application form is incomplete, inaccurate, false, or misleading, or indicates the applicable provisions of these regulations this rule cannot be met.

~~6.6.~~ 6.8. A permit shall be suspended or revoked by the director for failure to comply with the provisions of the permit, improper construction or operation of the sewer system, where false or misleading information was utilized in obtaining the permit, where it is determined that the applicable provisions of this rule cannot be met, or for failure to comply with a lawful order of the director.

~~6.7.~~ 6.10. Any person whose application for a permit has been denied or whose permit has been suspended or revoked may request a hearing. A written request ~~must~~ shall be made within thirty (30) days of the date of denial of the permit and a hearing date shall be established within twenty (20) days of the director's receipt of the written request. ~~Said~~ The hearing shall be held within a period of forty-five (45) days after receipt of the written request for ~~such~~ the hearing.

~~6.8.~~ 6.11. A permittee who wishes to dispute the conditions and restrictions of the permit may request a hearing in order to appeal its provisions. A written request ~~must~~ shall be made within thirty (30) days of the date of issuance of the permit and a hearing date shall be established within twenty (20) days of the director's receipt of the written request. ~~Said~~ The hearing shall be held within a period of forty-five (45) days after receipt of the written request for ~~such~~ the hearing.

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~~6.9. 6.12.~~ A permit for an individual sewer system or for a public sewer system, construction of which has not begun within one (1) year from the date of issuance, shall be invalid unless request for renewal is approved by the director.

~~6.10. 6.13.~~ Permits ~~shall not be~~ are not transferable or assignable and shall automatically become invalid upon a change in ownership, except when application for transfer or assignment is made to, and ~~such~~ the transfer or assignment is approved by, the director. Permits shall be issued to the property owner.

6.11. A person engaging in the business of sewage tank cleaning shall receive a permit only after application has been made on a form prescribed by the director and the director has inspected, or caused to be inspected, all sewage tank cleaning equipment, containers, or other devices used in the collection, removal, transportation or disposal of sewage tank contents to ascertain that said items are used, maintained and operated in compliance with all applicable provisions of ~~these regulations~~ this rule. The application shall include a list of D.E.P. approved disposal sites. A sewage tank cleaning permit shall expire ~~five (5) years~~ one (1) year from the date of issuance and the permit holder shall apply to the director for renewal of the permit prior to the expiration date.

~~6.12. 6.9.~~ When a sewage tank cleaning permit has been suspended, or revoked, the person thereby affected shall immediately discontinue engaging in the business of collecting, "removing", transporting or disposing of the contents of sewage tanks.

§64-9-7. Construction and Installation Requirements.

7.1. The construction and installation or modification of all sewer systems shall be in accordance with ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47 or otherwise approved plans and specifications for which a permit has been issued by the director. Design standards may be obtained from the central office, district offices or local health department offices.

7.2. Diversion drains, ditches and curtain drains shall be installed when storm water, surface or ground water will affect the satisfactory operation of a sewer system. No foundation drains or downspouts shall be connected to the sanitary sewer system.

7.3. Percolation tests and other tests, as may be required for installation of an individual sewer system, shall be performed by persons whose qualifications are acceptable to the director and ~~such~~ the tests shall be conducted in accordance with ~~the Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47. The person conducting the tests shall certify as to the accuracy of the results of ~~such~~ the tests and ~~such~~ the information shall be submitted in a form acceptable to the director.

7.4. Subsurface absorption systems shall be constructed at the site where percolation and other tests have been performed. In the event the location of the subsurface absorption system

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must be changed, additional testing will be required at the proposed new location.

~~7.5. The holder of a permit shall notify the director when construction or installation is to begin.~~

§64-9-8. Inspections.

8.1. The director ~~shall~~ may make, or cause to be made, as many inspections as he deems are necessary during the construction, installation, modification, landscaping or operation of sewer systems to determine compliance with the applicable provisions of ~~these regulations~~ this rule.

8.2. The owner or occupant of a dwelling, establishment, or land shall provide the director access to all parts of the property for the purpose of making ~~such~~ the inspection.

8.3. No individual system shall be used or placed into operation until the system installation has been ~~inspected and~~ approved in writing by the director.

8.4. No part of any individual sewer system utilizing soil absorption disposal of effluent shall be covered until said system installation has been ~~inspected and~~ approved in writing by the director. Any part of ~~such~~ the system that is covered prior to ~~such~~ approval shall be uncovered upon oral or written order of the director.

8.5. In addition to making inspections or causing inspections to be made of a sewer system, the director may collect or cause to be collected samples of sewage and effluent from the system, or conduct or cause to be conducted, such tests as he deems are necessary and proper to insure that the system is in compliance with all applicable provisions of ~~these regulations~~ this rule.

8.6. If the director ~~shall find~~ finds that the construction, installation, extension, alteration, landscaping or operation of a sewer system is not in compliance with the applicable requirements of ~~these regulations~~ this rule, the director may issue an order for the corrections to be made, ~~revoking the construction permit~~. The order shall be issued in writing to the owner of the sewer system and ~~such~~ the order shall be effective immediately. ~~An order revoking a permit may be appealed in accordance with the procedure set forth in Section 6.10 of these regulations.~~

§64-9-9. Maintenance and Operation.

9.1. All sewer systems shall be maintained and operated so as to be in compliance with ~~Chapter 16 of the West Virginia Code of 1931, as amended~~ W. Va. Code §16 and the provisions of ~~these regulations~~ this rule.

9.2. Upon written request by the director, the permit holder shall submit operational data such as influent, effluent, flow data, or any operational data necessary to ascertain compliance. ~~with Section 9.3.~~

9.3. All mechanical individual sewer systems with surface discharge and all mechanical

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individual sewer systems where additional treatment is required for subsurface discharge shall have a perpetual maintenance program approved by the director.

~~9.3.~~ 9.4. The Control Tests and Operating Records of Sewage Treatment Plants Serving Public Sewer Systems.

~~9.3.1.~~ 9.4.a. Every sewage treatment or disposal plant serving a public sewer system shall be equipped with testing apparatus for making the physical, chemical, and bacteriological control tests which are considered necessary by the state ~~department~~ division of health for the safe, proper, and efficient operation of the plant. The state ~~department~~ division of health, upon written request, shall furnish a statement of the control tests necessary for a particular plant.

~~9.3.2.~~ 9.4.b. There shall be regularly made at each sewage treatment or disposal plant ~~such any~~ physical, chemical, and bacteriological control tests which are considered necessary by the state ~~department~~ division of health for the proper and safe operation of the plant.

~~9.3.3.~~ 9.4.c. The frequency of making ~~such the~~ physical, chemical, and bacteriological control tests shall be determined by the state ~~department~~ division of health.

~~9.3.4.~~ 9.4.d. The results of the control tests together with the record of sewage treatment plant operation shall be entered upon a permanent record form or ledger and maintained at the plant.

~~9.3.5.~~ 9.4.e. Each month or as otherwise directed by the state ~~department~~ division of health the operator of the sewage treatment or disposal plant shall furnish a summary of operation and control data to the state ~~department~~ division of health. The data shall be submitted on a standard form or another form acceptable to the state ~~department~~ division of health.

~~9.3.6.~~ 9.4.f. The state ~~department~~ division of health, by specific written direction, may waive the submission of operating reports from sewage treatment or disposal plants serving five hundred (500) or less persons.

§64-9-10. Subdivisions.

10.1. All subdivisions or housing developments originating after July 1, 1970, the effective date of the original regulations, shall be served by a method of sewage disposal approved by the director.

10.2. In the event it is proposed that a subdivision be served by a public sewer system, a permit for said the system must shall be obtained from the director in compliance with the provisions of Section 6 of these regulations this rule.

10.3. In the event individual sewer systems are proposed as the desired method of sewage disposal for a subdivision, written approval shall be obtained from the director in compliance with the provisions of these regulations this rule; ~~Chapter 16, Article 1, Section 7 of the West Virginia~~

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~~Code of 1931, as amended W. Va. Code §16-1-7 and the procedures set forth in the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47.~~ In addition, a permit for each individual sewer system within the subdivision shall be obtained in compliance with Section 6 of ~~these regulations~~ this rule.

10.4. The replatting of a prior recorded plat or of a subdivision which originated prior to July 1, 1970, the effective date of the previous regulations, ~~shall not be~~ is not exempt from the provisions of ~~these regulations~~ this rule. The prior platting of a portion of a larger tract prior to July 1, 1970, ~~shall does~~ not exempt the remainder of the tract from the provisions of ~~these regulations~~ this rule.

10.5. The division of land through public or private auction sale or through the terms of a will or court order ~~shall constitute~~ constitutes a subdivision under the provisions of ~~these regulations~~ this rule. It shall be the responsibility of the owner of ~~such~~ the land or executor of the will to meet all requirements of ~~these regulations~~ this rule.

10.6. In those instances where a lot was purchased or acquired for dwelling construction, and either its deed was recorded prior to July 1, 1970, or the lot was laid out, described and designated on a map of a subdivision, which map was recorded prior to July 1, 1970, and:

10.6.a. Where a public water supply system is available, but a public sewer system is not available, no individual sewer system shall be permitted on any lot, site or area containing less than ten thousand (10,000) square feet.

10.6.b. Where neither a public sewer system nor a public water supply system is available, no individual sewer system shall be permitted on any lot, site or area containing less than twenty thousand (20,000) square feet.

10.7. The director may waive the square footage requirements stipulated in Section 10.6 provided he or she has been petitioned and has ascertained through a hearing, an on-site inspection, percolation tests and other requirements of ~~these regulations~~ this rule that an individual sewer system can be expected to function satisfactorily on a lot, site, or area containing less than the minimum prescribed number of square feet.

10.8. ~~For subdivisions and lots All lots originating after July 1, 1970 prior to May 12, 1983, where individual sewer systems are proposed, shall comply with section 5.1. the minimum sizes as set forth in Section 10.6 do not apply. All lots Subdivisions originating after July 1, 1970 must shall comply with Section 10.9 or Section 10.10.~~

10.9. If a ~~central sewage collection and treatment~~ public sewer system is proposed to serve a subdivision, it shall be designed in accordance with ~~Section II and III of the "Design Standards for Sewage Collection and Treatment Systems."~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47. A permit shall be obtained prior to construction of the sewage system in accordance with ~~Chapter 16, Article 1, Section 9 of the West Virginia Code of 1931, as amended W. Va. Code §16-1-9 and Section 6 of these regulations~~ this rule. Application for the

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permit shall be made in accordance with the procedures outlined in ~~the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47.~~ There are no limitations relative to lot size for subdivisions served by a ~~central sewage collection and treatment public sewer system.~~

10.10. Subdivisions proposing the use of individual sewage sewer disposal systems shall follow the procedures and requirements outlined below. Written approval of the proposed subdivision shall be obtained prior to initiation of construction in accordance with Section 6 of ~~these regulations~~ this rule.

10.10.a. All lots less than two acres in total surface area or lots with an average frontage of less than 150' shall contain a minimum on-site disposal area of 10,000 square feet, which shall be set aside for the installation of ~~septic tank soil~~ standard soil absorption system(s). ~~Each such area shall have a minimum width of 80 feet, and no-~~ No development or structures shall be permitted on this on-site disposal area other than those comprising the ~~septic tank soil absorption~~ individual sewer system(s). The layout of each reserve area shall be such that 10,000 square feet is usable for the installation of standard soil absorption system(s). Where multiple reserve areas are used, such areas shall be 3,000 sq. ft. or more in size.

10.10.b. Area consisting of land sloping in excess of twenty-five percent (25%), or land in an existing or proposed public road ~~or land within a 25 year flood plain~~ shall not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 10.10.1.

10.10.c. Area consisting of land containing rock strata or seasonal high water table within five (5) feet of the ground surface shall not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 10.10.1. Area consisting of land not in compliance with the minimum separation distances listed in ~~the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47,~~ shall not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 10.10.1.

10.10.d. Area consisting of land which has been determined through testing to have a percolation rate slower than ~~60~~ ninety (90) minutes per inch shall not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 10.10.1.

10.10.e. Area where seasonal flooding occurs shall not be utilized in establishing the minimum area for lots in accordance with the requirements of Subsection 10.10.1. unless approved by the director.

10.10.f. All lots two acres and over shall contain a minimum on-site disposal area of 10,000 square feet, which shall be set aside for the installation of standard or alternative soil absorption system(s). No development or structures shall be permitted on this on-site disposal area other than those comprising the individual sewer system(s). The layout of each reserve area

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shall be such that 10,000 sq. ft. is usable for the installation of standard or alternative soil absorption system (s). Where multiple reserve areas are used, such areas shall be 3,000 sq. ft. or more in size.

10.10.g. Alternative systems which may be considered for new construction on lots two acres and over include low pressure systems, mound systems, shallow and elevated soil absorption systems experimental systems, and unique systems designed for specific situations.

§64-9-11. Correction of Health Hazards.

11.1. To correct or abate public health hazards resulting from the malfunctioning of individual sewer systems, and public sewer systems which hazards are not correctable by methods set forth in the ~~Design Standards, Sewage Treatment and Collection System Design Standards, 64 CSR 47,~~ the director may permit the installation of an experimental or nonstandard sewer system upon written petition for ~~such~~ the system.

11.2. The petition shall request the director to authorize installation of the system desired and shall contain information as to the location, reasons why a conventional system cannot be installed, information concerning the malfunctioning system, and information concerning the system desired. The director may request additional information which may include a meeting with the petitioner.

11.3. If the director determines that a potential public health hazard exists, he or she may issue a written approval authorizing installation of the system desired. The written approval shall apply only to the petitioner and the facts presented at the meeting.

§64-9-12. Sewage Tank Cleaning.

12.1. No person shall engage in the business of collecting, removing, transporting, or disposing of the contents of a sewage tank without first obtaining a state-wide permit for ~~such~~ the activity from the director, in accordance with Section 6 of ~~these regulations~~ this rule.

12.2. Equipment, containers or other devices used in the collection, removal, transportation or disposal of the contents of sewage tanks shall be in compliance with ~~the Design Standards Sewage Treatment and Collection System Design Standards, 64 CSR 47,~~ and instructions issued by the director.

12.3. The cleaning of sewage tanks by bailing or dipping and emptying the bailing or dipping container into a carrier tank is prohibited.

12.4. Precaution shall be taken by the sewage tank cleaner to prevent the leaking, spilling, or dripping of the sewage tank contents during collection, removal, transportation and disposal.

12.4.a. Any leakage, spillage, or drippings shall be cleaned up immediately.

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12.4.b. Provisions shall be made by the sewage tank cleaner to carry chlorinated lime or similar satisfactory disinfectant for immediately treating the areas where leakage, spillage, or dripping has occurred.

12.5. The contents of sewage tanks shall not be transported in an open bed motor carrier vehicle, or any other type vehicle, unless said sewage contents are contained within approved portable receptacles.

12.6. All facilities used for the cleaning of sewage tank cleaning equipment shall, prior to use, be inspected and approved by the director.

12.7. The contents of sewage tanks shall be disposed of in a manner that will prevent the spread of disease and avoid nuisance conditions, and said contents shall be disposed of ~~by one or a combination of the following methods:~~ in accordance with Sewage Treatment and Collection System Design Standards, 64 CSR 47.

~~12.7.1. By incinerating in an approved high temperature incinerator.~~

~~12.7.2. By burial, provided prior written approval is received from the director regarding the manner and the conditions under which said burial of sewage tank contents can take place. Sewage tank contents shall not be buried on public or private property without the written permission of the property owner or his authorized agent.~~

~~12.7.3. By discharging the contents into a public sewer manhole or at an acceptable point in a sewage treatment plant, provided, the written approval of a responsible official of the governmental entity or other entity owning or operating the public sewer system or sewage treatment plant is received prior to the use of such disposal facilities.~~

12.8. Special written permission from the director ~~must~~ shall be obtained for any method of cleaning or disposal not specifically mentioned in the ~~Design Standards~~ Sewage Treatment and Collection System Design Standards, 64 CSR 47.

12.9. All sewage tank cleaners shall keep a written record of all jobs accomplished. The record shall be on a form prescribed by the director and submitted to the director quarterly.

~~12.10. Such record shall contain, but not be limited to:~~

~~12.10.1. Name and address of the person for whom the sewage tank was cleaned;~~

~~12.10.2. Date and time the job was completed;~~

~~12.10.3. Size of sewage tank and the amount, in gallons, of the contents removed from said sewage tank;~~

~~12.10.4. Location and type disposal site utilized for the disposal of the sewage tank~~

contents:

~~12.11. Said records shall be preserved for at least 12 months and upon request such records shall be readily available to the state director of health.~~

§64-9-13. Individual Sewer Systems Installers Certification.

13.1. All individual sewer system installers shall be certified ~~for such activity~~ by the director. An individual shall be a minimum of eighteen (18) years old to qualify for certification. ~~Provided, that certification requirements shall not apply to an individual who constructs, installs, extends, alters, operates or modifies his own individual sewer system pursuant to a permit obtained from the director and such system is constructed and inspected in accordance with the provisions of these regulations.~~

13.2. Certification is not required of a driver delivering a part or parts of a system, a manufacturer who does not install a part or parts of a system or an employee of a contractor holding a certificate, provided, that ~~such~~ the employee is under the direct on-site surveillance of a certified installer.

13.3. Certificates shall be issued to qualified installers of individual sewer systems in two classifications:

13.3.a. A class I certificate ~~shall apply~~ applies to the installation of ~~conventional septic tank standard soil absorption systems, soil absorption beds, holding tanks, effluent lift stations and grey water soil absorption systems, and privies.~~

13.3.b. A class II certificate ~~shall apply~~ applies to those individual sewer systems covered by the class I certificate plus all alternative and ~~innovative other~~ individual sewer systems as set forth ~~within the Design Standards in Sewage Treatment and Collection System Design Standards, 64 CSR 47, or approved by the director.~~

~~13.3.3. Within one (1) year after the effective date of these regulations installers shall be certified for this activity.~~

13.4. An application for certification to install individual sewer systems, or renewal of certification to install individual sewer systems, shall be made in writing to the director on a form prescribed by the director.

13.5. The director may deny certification if the information on the application form is incomplete, inaccurate, false or misleading.

13.6. In addition to filing an application for certification to install individual sewer systems, the applicant ~~must~~ shall pass a written examination for each classification and ~~may~~ shall be required to demonstrate that he ~~or she~~ possesses adequate knowledge and skill in making installations in accordance with ~~the Design Standards~~ Sewage Treatment and Collection

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System Design Standards, 64 CSR 47.

13.7. Written examinations shall be administered by the director at a site and on a date designated by the director. A passing grade of seventy percent (70%) ~~must~~ shall be obtained. Any applicant who has failed an examination ~~must~~ shall wait thirty (30) days before re-examination.

13.8. Certification ~~shall not be~~ is not transferable or assignable and ~~shall automatically become~~ becomes invalid upon suspension or revocation.

13.9. Certification ~~shall expire~~ expires five (5) years from date of issuance and the certificate holder shall apply to the director for renewal of the certificate prior to the expiration date. Should the expiration date be exceeded by six (6) months, renewal cannot be issued. Renewal ~~will~~ shall be based upon recommendation of the local health department in those counties knowledgeable of the individuals work.

~~13.9.1. Evidence of construction of at least one approved system within the preceding year.~~

~~13.9.2. Recommendation of the local health department.~~

13.10. In the event any person certified is found to be violating any of the applicable requirements of ~~these regulations~~ this rule, his or her certification may be immediately suspended for a period of ~~ten (10)~~ thirty (30) days by the director. Two ~~successive~~ separate violations shall be sufficient grounds for revocation of certification.

§64-9-14. Sewage Advisory Board.

14.1. The director may establish an advisory board and designate the chairman of said board.

14.2. The advisory board membership shall consist of, but not necessarily be limited to, the following members:

Sewage Industry Representatives:	2 members
State Health Department:	2 members
State Division of Environmental Protection	1 member
Local Health Department:	4 members

14.3. The duties of the advisory board shall be assigned by the director.

§64-9-15. Penalties. for Violating Provisions of Regulations.

15.1. Any person who violates any provision of ~~these regulations~~ this rule or any

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~~regulation rule~~ adopted by the ~~West Virginia State Board of Health~~ division of health pursuant to authority granted by ~~these regulations~~ this rule shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than two hundred dollars (\$200) and/or thirty (30) days imprisonment as provided in ~~Chapter 16, Article 1, Section 18 of the Public Health Laws of West Virginia, West Virginia Code of 1931, as amended~~ W. Va. Code §16-1-18.

15.2. Each day's failure to comply with any applicable provision of ~~these regulations~~ this rule shall constitute a separate offense.

§64-9-15 16. Administrative Due Process.

Those persons adversely affected by the enforcement of ~~these legislative rules~~ this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1. ~~West Virginia Department of Health Procedural Rules, Series 1, 1983.~~ The aforementioned procedural rules are incorporated herein by reference.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

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STATE OF WEST VIRGINIA

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(Plus all the volunteer
help we can get)

March 14, 1997

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: Amendments, Series 9, Sewage Systems

DATE FILED AS AN EMERGENCY RULE: March 6, 1997

DECISION NO. 2-97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAR 14 11 29 AM '97

FILED

Following review under WV 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.


KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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EMERGENCY RULE DECISION (ERD 2-97)

AGENCY: Division of Health
RULE: Amendments, Series 9, Sewage Systems
FILED AS AN EMERGENCY RULE: March 6, 1997

- par. 1 The Division of Health (Division) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia 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: 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 Division filed this emergency rule with supporting documents with the Secretary of State March 6, 1997 and with the LRMRC March 6, 1997.

par. 7 It is the determination of the Secretary of State that the Division 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 §16-1-7 reads in part:

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations in accordance with provisions of §29a-1-1 et seq. of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof: Provided, That no rules or regulations shall be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed 2 acres each in total surface area and which tracts are sold, leased or utilized only as single family dwelling units. The provisions next above notwithstanding, noting in this section shall be construed to abate the authority of the department of health and human resources to: (1) Restrict the subdivision or development of such tract for any more intense or higher density occupancy than such single family dwelling unit: (2) promulgate and enforce rules and regulations applicable to single family dwelling units for single family dwelling unit sanitary sewage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply. The secretary shall have the power to appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers & beauticians, postmortem examinations, mental health and mental retardation centers and such other areas as it deems necessary to advise the secretary on rules and regulations.

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

par. 10 (C) Emergency -- WV 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 Division are as follows:

The Department of Health & Human Resources is presently in the process of drafting amendments to the current rule for sewage systems, West Virginia Division

of Health Legislative Rule, Sewage Systems, 64 CSR 9. It has recently come to the Department's attention that certain provisions of the current rule are seriously interfering with economic development in the State. These older provisions are unnecessarily rigid, and are causing undue confusion. Amendments, which the Department has already drafted and will shortly offer for public comment, address and will correct these problems. Further, these amendments will facilitate the Department's responsibilities under the provisions of §22-12 of the W. Va. Code for groundwater protection. Immediate promulgation of these amendments will provide much needed relief to various affected parties. The Department believes that there is a need for immediate relief of these problems in order to prevent further substantial harm to the public interest, thus justifying an emergency filing of this amended rule under the provisions of W. Va. Code §29A-3-15(f).

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). . . "prevent substantial economic harm."

par. 14 This decision shall be cited as Emergency Rule Decision 2-97 or ERD 2-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Mar 14 11 29 AM '97

FILED



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

March 10, 1997

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Complex
Building 1 - Suite 157K
Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAR 12 2 20 PM '97

FILED

Re: Health Department Emergency Rule filed for 64CSR9

Dear Secretary Hechler:

We are writing to you as Co-Chairs of the Legislative Rule-Making and Review Committee. Our Committee, at its February 11, 1997 meeting, requested that the Department of Health file an emergency rule amendment for the Sewage System Rule [64CSR9], because of difficulties in interpretation of the rule in certain counties causing hardship to private individuals. In several instances, home sites which have met other necessary permit construction requirements are now being designated as unbuildable because of local health departments' interpretation of this rule.

As a result, home sites in which financing and construction have been arranged are now on hold, stalling the development of housing, causing harm to the building industry of this state, and making previously valuable real estate parcels worthless for home construction. The Committee received testimony regarding the status of several property owners who are seriously affected by this rule.

Letter to Secretary of State
March 10, 1997
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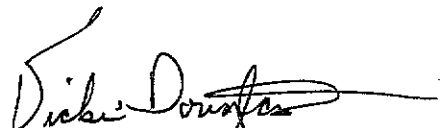
The current rule requires a minimum of 10,000 feet of contiguous drainage field for water runoff. The emergency rule allows for the drainage field to be non-contiguous. This change will not cause any adverse affects to groundwater quality. Other small changes are also made to the rule to clarify circumstances surrounding larger acreage sites.

It is the opinion of the Legislative Rule-Making Review Committee that this situation constitutes an emergency within the requirements of West Virginia Code §29A-3-15, and supports the Department of Health's filing of this rule as an emergency.

Sincerely,



Senator Mike Ross
Co-Chair, LRMRC



Delegate Vicki Douglas
Co-Chair, LRMRC