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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

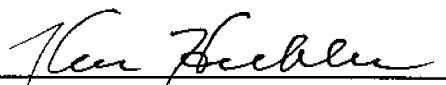
AGENCY: Division of Health

RULE: Amendments, Series 9, Sewage Systems

DATE FILED AS AN EMERGENCY RULE: March 6, 1997

DECISION NO. 2-97

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.


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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

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OFFICE OF THE
SECRETARY OF STATE



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 THE SECRETARY OF STATE
MAR 12 2 20 PM '97

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
Page 2

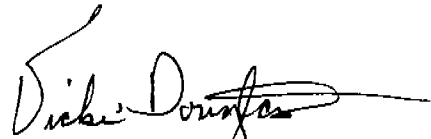
The current rule requires a minimum of 10,000 feet of contiguous drainage field for water runoff. The emergency rule allows for the drainage field to be non-contiguous. This change will not cause any adverse affects to groundwater quality. Other small changes are also made to the rule to clarify circumstances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