

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FILED

1990 JUL 23 AM 11:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Health TITLE NUMBER: 64

CITE AUTHORITY: §16-2A-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: Fees for Permits

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 UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This rule revises upwards and adds new maximum allowable fees which local health departments may charge for various permits issued by the departments.

An emergency filing of this revised rule is needed in order to enable certain county health departments to generate sufficient revenue to provide vital public health services such as water and sewage inspections on a full-time basis. Failure to provide these and other services on a full-time basis will result in substantial harm to the public interest.


Taunja Willis Miller, Secretary
Dept. of Health & Human Resources

Use Additional Sheets If Necessary.

DATE: July 23, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Board of Health

EMERGENCY RULE TITLE: Fees for Permits

FILED

JUL 23 AM 11:52
OFFICE OF THE CLERK OF THE SENATE
SECRETARY OF STATE

1. Date of filing: July 23, 1990

2. Statutory authority for promulgating the emergency rule: §16-2A-6

3. Date of filing of proposed legislative rule: July 23, 1990

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative 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 attached "Notice of an Emergency Rule"

[EMERGENCY]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Fees for Permits

-Series 30

[EMERGENCY]

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Fees for Permits

64 CSR 30

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(EMERGENCY)
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

SERIES 30
FEES FOR PERMITS

FILED
1990 JUL 23 AM 11:53
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-30-1. General

1.1. Scope - These legislative rules establish the fees for permits issued by a county, municipal or combined board of health.

1.2. Authority - W. Va. Code §16-2A-6

1.3. Filing Date - July 23, 1990

1.4. Effective Date - July 23, 1990

1.5. Public Hearing - May 23, 1990.

1.6. Approval - These rules were approved by the West Virginia Board of Health on July 20, 1990.

1.7. Supersession and Repeal of Former Regulations - These rules supercede and repeal West Virginia Board of Health Legislative Rules, Fees for Permits, 64 CSR 30, 1983.

§64-30-2. Application and Enforcement

2.1 Application - These legislative rules apply to any county, municipal or combined board of health which charges a fee for the issuance of such permits as covered by these legislative rules.

2.2. Enforcement - The enforcement of these legislative rules is vested with the director of the West Virginia department division of health or his lawful designee.

§64-30-3. Definitions

3.1. Bathing Beach - A public bathing place located on a natural stream, pond or lake or on an artificial pond or lake which is formed by impounding a natural waterway.

3.2. Child Care Center - A facility caring for seven or more children for all or part of a day.

~~3-1-~~ 3.3. Developed Site - A location for placement and hookup of a mobile home.

~~3-2-~~ 3.4. Fixed Expiration Date - An annual date at which time all permits of the same type expire. The fixed expiration date for each of the permits covered by this rule are derived from the state code or the rule which authorizes the issuance of the particular permit.

3-3- 3.5. Food Service Establishment - Any fixed or mobile restaurant; coffee shop; cafeteria; short-order cafe; soda fountain; tavern; bar; cocktail lounge; delicatessen; nightclub; roadside stand; industrial feeding establishment; private, public, or nonprofit organization or institution routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

3.6. Food Service Manager - The individual in a food service establishment who is the supervisor responsible for the day-to-day operations of the establishment.

3.7. Hotel - Any temporary or permanent buildings or structures which are maintained, offered, or used for dwelling or sleeping quarters for pay.

3.8. Individual On-Site Sewage Disposal System - A system for the collection, treatment and disposal of sewage which serves a single dwelling or establishment.

3.9. Innovative Alternative Type Sewage System - A method of sewage disposal for a single family dwelling or establishment for which design standards have been prepared and listed in the West Virginia board of health interpretive rules, Sewage Treatment and Collection System Design Standards, 64 CSR 47, as an innovative or alternative system.

3-4- 3.10. Mobile Food Unit - A vehicle-mounted food service establishment designed to be readily moveable.

3.11. Mobile Home Park - Any site, area, tract, or parcel of land upon which two (2) or more mobile homes, used or occupied for dwelling purposes, are parked, either free of charge or for a consideration.

3-5- 3.12. Organized Camp - Any area, place, parcel, or tract of land on which facilities are established or maintained to provide an outdoor group living experience for children or adults, or where one or more permanent or semi-permanent structures are established or maintained as living or sleeping quarters for children or adults, and operated for educational, social, recreational, religious instruction or activity, physical education or health, or vacation purposes either gratuitously or for compensation, provided, that this definition shall not be construed to include a hunting, fishing, or other camp privately owned and used exclusively for the personal pleasure of the owner.

3-6- 3.13. Potentially Hazardous Food or Drink - Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other in-

redients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include clean, whole, uncracked, odorfree shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less.

3.14. Retail Food Store - Any place, structure, premise, vehicle, or any part thereof in which food is sold retail, offered for retail sale, or served not to be consumed on the premises. For the purpose of this rule, the term "retail food store" shall not include establishments which handle only pre-packed, non-potentially-hazardous foods; roadside markets that offer only fresh fruits or fresh vegetables; or the delicatessen operation of a retail food store.

3.15. Sewage Tank Cleaning Truck - A truck used for the removal, collection or transportation of sewage.

3.16. Subdivision - Land which has been partitioned or divided into two (2) or more lots, tracts, parcels, plats, sites, areas, units, interests or other division, any of which are less than two (2) acres in size with an average frontage of less than one hundred fifty (150) feet, 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.

3.17. Swimming Pool - Any artificial basin, chamber, or tank used or intended to be used by the public for swimming, diving, or recreational type bathing.

~~3-7-~~ 3.18. Temporary Food Service Establishment - A food service establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days in conjunction with a single event or celebration and required by law Chapter 16, Article 6, Section 3 of the West Virginia Code to have a permit.

~~3-8-~~ 3.19. Tent and Travel Trailer Campground - A tract or parcel of land maintained, offered, or used for camping and parking of recreational house trailers. Wilderness camping areas are not included in this definition.

3.20. Vending Machine - A machine designed for the dispensing of potentially hazardous food or drink to the public by a self-service method.

3.21. Water Well - Any excavation or penetration in the ground, whether drilled, bored, cored, driven, or jetted for a water supply, for the exploration for water, or for removal of water to dewater construction site(s).

\$64-30-4. Options to Charges for Permits

4.1. Any county, municipal or combined board of health may charge a fee for the issuance of a permit covered by these rules.

4.2. Any county, municipal or combined board of health may charge for whichever permits listed and are not required to charge for all permits listed. The amount of each fee listed represents the maximum amount which shall be charged. Any county, municipal or combined board of health may charge any dollar amount up to the maximum. Provided, that a county, municipal or combined board of health shall not change the formulas utilized in section-5-and-6. §§64-30-5 and 6 of this rule.

§64-30-5. Permits and Fees

~~5-5-~~5.1. Bathing Beach and Swimming Pool Permit - \$50 per permit. The fixed expiration date is December 31.

~~5-1-~~5.2. Child Care Center Permit - \$35 \$25 per permit. The fixed expiration date is December 31.

~~5-12-~~ 5.3. Food Service Establishment - See Table 64-30A found at the end of this regulation.

5.4. Food Service Manager Certification (annual) - \$50.

~~5-13-~~ 5.5. Hotel Permit - See Table 64-30B found at the end of this regulation.

~~5-8-~~5.6. Individual On-Site Sewage Disposal Systems and Innovative Alternative Type Sewage Systems (excluding pit privies) - ~~\$50-per-permit-for-new-systems.~~ See Table 64-30C found at the end of this regulation.

~~5-4-~~5.7. Mobile Food Unit Permit - Potentially hazardous food only, ~~\$20~~ \$50 per unit. The fixed expiration date is June 30.

~~5-2-~~5.8. Mobile Home Park Permit - ~~Two--(2)--to--ten--(10)--developed-sites---\$30;--\$1-00-per-developed-site-above-ten--(10);~~ Fixed-expiration-date---December-31;--See Table 64-30D found at the end of this regulation.

~~5-10-~~Milk-Transfer-Station-Permit---\$50-per-permit;--Fixed-expiration-date---June-30.

~~5-6-~~5.9. Organized Camp Permit - \$75 per permit. The fixed expiration date is January 1.

5.10. Retail Food Store Permit - \$25 per check-out station, maximum \$150.

~~5-9-~~5.11. Sewage Tank Cleaning Truck Permit - ~~\$25-per-truck;--Fixed-expiration-date---December-31.~~ \$50 per truck. The fixed expiration date is five years from the date of issuance.

5.12. Subdivisions - See Table 64-30E found at the end of this regulation.

~~5.11.~~ 5.13. Temporary Food Service Establishment Permit-
~~\$10~~ \$25 per unit. The fixed expiration date is June 30.

~~5.7.~~ 5.14. Tent and Travel Trailer Campground - \$35-per
~~permit. Fixed expiration date March 31.~~ See Table 64-30F
found at the end of this regulation.

~~5.3.~~ 5.15. Vending Machine Permit - Potentially hazardous
food only, \$15 \$25 per machine. The fixed expiration date is
June 30.

5.16. Water Well Permit (new or repair) - \$50 per well.

~~§64-30-6. Prorating of Fixed Expiration Date Permit Fees - The~~
~~fee charged for an annual permit with a fixed expiration date~~
~~shall be prorated according to the following formula: (See Table~~
~~64-30E formula shown in Table 64-30G found at the end of this~~
~~regulation.~~

~~§64-30-7. Severability - If any provision of these rules or the~~
~~application thereof to any person or circumstance shall be held~~
~~invalid, such invalidity shall not affect the provisions or the~~
~~application of the rules which can be given effect without the~~
~~invalid provisions or application, and to this end the provisions~~
~~of these rules are declared to be severable.~~

~~§64-30-8. Administrative Due Process - Those persons adversely~~
~~affected by the enforcement of these legislative rules 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 Protested Case Hearings and Declaratory Rulings,~~
~~West Virginia Board of Health Procedural Rules, Series 1, 1983 64~~
~~CSR 1. The aforementioned procedural rules are incorporated~~
~~herein by reference.~~

Table 64-30A. Food Service Establishment Permit Fees

<u>Seating Capacity</u>	<u>Fee for Permit</u>
0-35	\$ 50
36-75	\$-75 <u>\$100</u>
76 and over	\$100 <u>\$150</u>

The fixed expiration date is June 30.

Table 64-30B Hotel Permit Fees

<u>Number of Rooms</u>	<u>Fee for Permit</u>
0-35	\$ 50
36-75	\$-75 <u>\$100</u>
76 and over	\$100 <u>\$150</u>

The fixed expiration date is June 30.

Table 64-30C. Individual On-Site and Innovative Alternative Type Sewage System Permit Fees

<u>Type of System</u>	<u>Fee for Permit</u>
<u>Class I (New or Modified)</u>	<u>\$150</u>
<u>Class II (New or Modified)</u>	<u>\$150</u>
<u>Home Aeration Unit</u>	<u>\$150</u>

Table 64-30D. Mobile Home Park Permit Fees

<u>Number of Developed Sites</u>	<u>Fee for Permit</u>
<u>0-35</u>	<u>\$ 50</u>
<u>36-75</u>	<u>\$100</u>
<u>76 and over</u>	<u>\$150</u>

The fixed expiration date is December 31.

Table 64-30E. Subdivision Permit Fees

<u>Number of Lots</u>	<u>Fee for Approval</u>
<u>1-5</u>	<u>\$ 50</u>
<u>6-10</u>	<u>\$100</u>
<u>11-14</u>	<u>\$150</u>

Table 64-30F. Tent and Travel Trailer Campground Permit Fees

<u>Number of Developed Sites</u>	<u>Fee for Permit</u>
<u>0-35</u>	<u>\$ 50</u>
<u>36-75</u>	<u>\$100</u>
<u>76 and over</u>	<u>\$150</u>

The fixed expiration date is March 31

Table 64-30G. Prorated Fixed Expiration Date Permit Fees Formula

less than 3 months	3 months to less than 6 months	6 months to less than 9 months	9 months to less than 12 months
25% of annual fee	50% of annual fee	75% of annual fee	100% of annual fee

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

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DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION

August 14, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: Amendments, Series 30; Fees for Permits

DATE FILED AS AN EMERGENCY RULE: July 23, 1990

DECISION NO. 29-90

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA
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(Plus all the volunteer
help we can get)

DECISION EMERGENCY RULE DECISION
(ERD 29-90)

AGENCY: Division of Health
RULE: Amendments, Series 30, Fees for Permits
FILED AS AN EMERGENCY RULE: July 23, 1990

- par. 1 The Division of Health has filed the above amendments to an existing 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(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 Division of Health filed this emergency rule with supporting documents with the Secretary of State on July 23, 1990 and with the LRMRC on July 23, 1990.

par. 7 It is the determination of the Secretary of State that the Division of Health 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 §16-2A-6 reads in part:

Notwithstanding any other provision of this chapter, any county, municipal or combined board of health, whether created and maintained pursuant to the provisions of this article or article two of this chapter, may assess and charge fees for permits and licenses for the provision of public health services: Provided, that no such fees may be assessed or charged pursuant to the provisions of this section for permits and licenses required for agricultural activities. Such fees shall be established by regulation promulgated in accordance with the provisions of §29A-1-1 et seq. of the Code, by the state board of health.

par. 9 It is the determination of the Secretary of State that the Division of Health 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 Authority are as follows:

This rule revises upwards and adds new maximum allowable fees which local health departments may charge for various permits issued by the departments.

An emergency filing of this revised rule is needed in order to enable certain county health departments to generate sufficient revenue to provide vital public health services such as water and sewage inspections on a full-time basis. Failure to provide these and other services on a full-time basis will result in substantial harm to the public interest.

- par. 17 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency as a "time limitation."
- par. 18 This decision shall be cited as Emergency Rule Decision 29-90 or ERD 29-90 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

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION

Entered _____