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(Plus all the volunteer  
help we can get)

December 2, 1997

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

AGENCY: Division of Health

RULE: New Rule, Series 49, Drinking Water Treatment Revolving Fund

DATE FILED AS AN EMERGENCY RULE: November 14, 1997

OFFICE OF THE  
SECRETARY OF STATE  
DEC 2 12 12 PM '97  
FILED

DECISION NO. 14-97

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.

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

KEN HECHLER  
Secretary of State

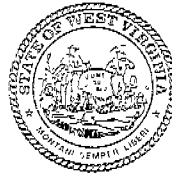
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**EMERGENCY RULE DECISION  
(ERD 14-97)**

AGENCY: Division of Health  
RULE: New Rule, Series 49, Drinking Water Treatment Revolving Fund  
FILED AS AN EMERGENCY RULE: November 14, 1997

- par. 1 The Division of Health (Division) has filed the above new 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 November 14, 1997 and with the LRMRC November 14, 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 §16-13C-2(b) reads:

*(b) The division of health shall propose rules for legislative approval in accordance with provisions of §29A-3-1 et seq. of the code for the purpose of effecting the administration of the provisions of this article. The rules shall include, but are not limited to, establishing requirements for: (1) Capacity development; (2) environmental review; (3) disadvantaged community designation; (4) receipt and disbursement of fund moneys; and (5) establishment of a drinking water treatment revolving fund program to direct the financial management of the fund to water systems and establish the interest rates and repayment terms of the loans.*

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 Division of Health declares that speedy implementation of the proposed new Drinking Water Treatment Revolving Fund Rule, 64 CSR 49, is needed in order to prevent substantial harm to the public interest, and that the circumstances stated herein meet the statutory criteria for filing an emergency rule stated in W. Va. Code §29A-3-15(f)(3).

The 1997 legislature passed HB 2712 in order to position the State to take advantage of a new federal program authorized in 1996 in amendments to the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) This new federal Drinking Water State Revolving Fund Program is designed to assist states to provide loans to public water systems to finance the cost of infrastructure improvements needed to comply with State and federal requirements for safe drinking water. Under this program, the U.S. Environmental Protection Agency (EPA) will provide most of the initial funding to start the W. Va. Drinking Water Treatment Revolving Fund program and will continue to provide substantial grant funds through the year 2004. The

Division expects that the overall federal funds provided for this loan program will total well over \$55 million.

Approximately \$12.5 million can be made available to West Virginia in the current fiscal year if the State receives early approval of its loan program. The Division's goal is to obtain federal approval for West Virginia's program timely to have loan funds available by January 1998. West Virginia has more than 600 small water systems in need of upgrading in order to provide safe drinking water for their customers. Funding these systems at as early a date as possible will help prevent water contamination and illness. These systems do not have adequate financial resources nor do they have the means to secure funding to carry out needed improvements. Maximizing the amount of funds available to provide loans to these systems will be of substantial benefit to the public health and safety. There is already a waiting list of 200 potentially eligible applicants.

This proposed new legislative rule establishes standards and procedures regarding administration and management of the State's loan program. Under various federal and State laws, guidelines, rules and regulations, the loan fund will be administered by the W. Va. Water Development Authority under the direction of the Division of Health. Additionally, all projects must be approved by the W. Va. Infrastructure and Jobs Development Council in order to qualify for a loan under this program.

Under federal guidelines, this rule must be in place in order for the State's application to receive federal approval, thereby making it possible for early loan funds availability.

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). . . change in federal guidelines, federal money, and "to prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 14-97 or ERD 14-97 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 WEST VIRGINIA  
SECRETARY OF STATE

Dec 2 12 12 PM '97

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Nov 26 3 33 PM '97

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

*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*

November 25, 1997

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

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

Dear Secretary Hechler:

At the November 17, 1997 Legislative Rule-Making Review Committee meeting, the Department of Health appeared before the Committee to ask support for the filing of an emergency rule that needs to be in place as soon as possible; **Drinking Water Treatment Revolving Fund (64CSR49)**.

The emergency rule, if approved, will result in the receipt of over twelve million dollars in federal funding this fiscal year. This money will be used for improvements to the state's public water system infrastructure and will assist the state in meeting federal Clean Water Act requirements. As a result of these significant public benefits, the Committee voted that sufficient grounds exist for an emergency rule and therefore urges your approval of this emergency rule.

If you have any questions or desire further information please do not hesitate to contact me at 340-3259.

Very truly yours,

Joe Altizer  
Counsel

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