

CONTINUATION SHEET

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO THE FILING OF WV 64 CSR 57, PLUMBING REQUIREMENTS

2) require public water systems to identify and provide notice to persons who may be affected by lead contamination in their drinking water, where such contamination results from either the lead content in the construction materials of the system and/or the corrosivity of the water sufficient to cause leaching of lead from plumbing systems.

The Board of Health believes that these are important and significant new requirements and is pleased to note that many of the State's public water systems are already in compliance with these new requirements.

However, failure to enforce the public notification requirements as of June 19, 1988 may result in the withholding by the EPA of up to five percent of the State's \$375,000 public water system supervision program grant.

For the reasons given above, the Board believes that the filing of Plumbing Requirements, 64 CSR 57 on an emergency basis is justified both to comply with a time limitation established by federal statute and to prevent substantial harm to the public interest by potential delays in implementation of these new requirements.

DATE: June 22, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Department

EMERGENCY RULE TITLE: Plumbing Requirements

1. Date of filing: June 22, 1988

2. Statutory authority for promulgating the emergency rule: §16-1-9a

3. Date of filing of proposed legislative rule: June 22, 1988

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts new language

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.

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.

SEE FILING NOTICE

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

SEE FILING NOTICE

[EMERGENCY]

TITLE 64

LEGISLATIVE RULES
DEPARTMENT OF HEALTH

PLUMBING REQUIREMENTS

SERIES 57

1988

[EMERGENCY]
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

PLUMBING REQUIREMENTS

64 CSR 57

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[EMERGENCY]
TITLE 64
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

SERIES 57
PLUMBING REQUIREMENTS

FILED
1988 JUN 22 PM 2:34
OFFICE OF THE CLERK
SECRETARY OF STATE

§64-57-1. General

1.1. Scope - This legislative rule establishes standards regarding lead contamination of public water supplies and plumbing connected to public water supply systems.

1.2. Authority - This legislative rule is issued by the State board of health under the authority of Chapter 16, Article 1, Section 9a of the West Virginia Code and is related to Chapter 16, Article 1, Sections 9 and 9a of the West Virginia Code.

1.3. Filing Date - June 22, 1988

1.4. Effective Date - June 22, 1988

1.5. Supersession and Repeal of Former Regulations - None.

1.6. Final Approval - This rule was approved by the State Board of Health on April 29, 1988.

§64-57-2. Application and Enforcement

2.1. Application - This rule applies to all public water supply systems in West Virginia and to all plumbing, whether public or private, which is connected to a public water supply system.

2.2. Enforcement - This rule shall be enforced by the director.

§64-57-3. Definitions

3.1. Director - The director of the State department of health or his or her lawful designee.

3.2. Lead free - Not more than 0.2% lead when used with respect to solders and fluxes and not more than 8% lead when used with respect to pipes and fittings.

3.3. Public Water Supply - Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five individuals per day for at least sixty days per year; or which has at least fifteen service connections, and shall include: (a) any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) which consists only of distri-

bution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

§64-57-4. Use of Lead Pipes, Fittings, Solder and Flux Prohibited

4.1. Only lead free solder, flux, pipe and fittings may be utilized in the installation or repair of a public water supply system or plumbing which is connected to a public water supply system. This provision shall not require the replacement of existing plumbing which is connected to a public water system as of the effective date of the emergency filing of this rule, except for such plumbing as is repaired after such date.

4.2. Leaded joints necessary for the repair of cast iron pipes shall be exempt from the prohibition stated in Section 4.1 of this rule.

§64-57-5. Public Notice Requirements

5.1. By June 19, 1988, each public water supply system shall issue notice to consumers that may be affected by lead contamination of drinking water where such contamination results from lead content in the construction materials of the public water distribution system or from corrosivity of the water supply sufficient to cause leaching of lead.

5.2. Notice shall be provided by mail delivery (direct mail or with the individual water bills), hand delivery or by three newspaper notices, one for each of three consecutive months and the first no later than June 19, 1988.

5.3. Contents of the notice shall provide a clear and readily understandable explanation of the potential sources of lead; the potential adverse health effects; the reasonably available methods of decreasing lead content in drinking water; methods to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead; any steps the system is taking to decrease lead content in drinking water; and the necessity, if any, for seeking alternative drinking water supplies. Each notice shall contain the telephone number of the owner or operator of the public water supply system.

5.3.1. Information concerning potential adverse health effects shall include the following language:

"The United States Environmental Protection Agency (EPA) and the West Virginia Department of Health set drinking water standards and have determined that lead is a health concern at certain levels of exposure.

There is currently a standard of 0.050 parts per million (ppm). Based on new health information, this standard may be lowered in the future.

Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though the lead content of your water may not exceed the current standard.

The EPA and the Department of Health are concerned about lead in drinking water. Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system and red blood cells. The greatest risk, even with short-term exposure, is to young children and pregnant women.

Lead levels in your drinking water are likely to be highest:

- if your home or water system has lead pipes; or
- if your home has copper pipes with lead solder, and
- if the home is less than five years old, or
- if you have soft or acidic water, or
- if water sits in the pipes for several hours."

5.3.2. Each notice should advise consumers to use only the cold water faucet for drinking, cooking with, or preparing baby formula, and to run the water until it gets as cold as it is going to get before each use. If there has recently been major water use in the household, such as showering or bathing, flushing toilets, or doing laundry with cold water, this should take 5-30 seconds; if not, flushing could take as much as several minutes. Each notice should also advise consumers to check to see if lead pipes, solder, or flux have been used in plumbing that provides tap water and to ensure that new plumbing and plumbing repairs use lead free materials.

§64-57-6. Penalties - Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who violates any provision of this rule shall be subject to the penalties found at West Virginia Code, Chapter 16, Article 9a:

"Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who shall violate any provision of this section, or any of the regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, and each day's violation shall constitute a separate offense. In

addition thereto, the state board of health or the state director of health, or his authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this section, or of any of the regulations or orders issued thereunder, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or entity recognized by law, upon finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars, and each day's violation shall be grounds for a separate penalty."

§64-57-7. Administrative Due Process - Those persons adversely affected by the enforcement of 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.

§64-57-8. Severability - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

August 4, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Health

RULE: New Rule, Series 57, Plumbing Requirements

DATE FILED AS AN EMERGENCY RULE: June 22, 1988

DECISION NO. 7-88

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.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE August 4, 1988
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION
(ERD 7-88)

AGENCY: Department of Health
RULE: New Rule, Series 57, Plumbing Requirements
DATE FILED AS AN EMERGENCY RULE: June 22, 1988

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

par. 6 The Department of Health has filed these emergency amendments with supporting documents with the Secretary of State on June 22, 1988 and with the LRMRC on June 22, 1988.

par. 7 It is the determination of the Secretary of State that the Department 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 §16-1-9a reads in part:

The state board of health shall prescribe by regulation the maximum containment levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer.

It shall further prescribe by regulation minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

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

Promulgation of this new rule, Plumbing Requirements, will bring West Virginia into compliance with various new federal Environmental Protection Agency (EPA) regulatory requirements (40 CFR Parts 141, 142 and 143, final rule published October 28, 1987 in the Federal Register) established under the June

19, 1986 amendments to the Safe Drinking Water Act, 42 U.S.C. 300f, et seq. These federal statutory and regulatory provisions and the new State rule:

1) prohibit the use of certain lead pipe, solder and flux in:
a) the installation or repair of any public water system; or
b) any plumbing in a residential or nonresidential facility connected to a public water system and providing water for human consumption;

2) require public water systems to identify and provide notice to persons who may be affected by lead contamination in their drinking water, where such contamination results from either the lead content in the construction materials of the system and/or the corrosivity of the water sufficient to cause leaching of lead from plumbing systems.


The Board of Health believes that these are important and significant new requirements and is pleased to note that many of the State's public water systems are already in compliance with these new requirements.

However, failure to enforce the public notification requirements as of June 19, 1988 may result in the withholding by the EPA of up to five percent of the State's \$375,000 public water system supervision program grant.

For the reasons given above, the Board believes that the filing of Plumbing Requirements, 64 CSR 57 on an emergency basis is justified both to comply with a time limitation established by federal statute and to prevent substantial harm to the public interest by potential delays in implementation of these new requirements.

par. 13 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 14 This decision shall be cited as Emergency Rule Decision 7-88 or ERD 7-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Health, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE
FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE August 4, 1988
ADMINISTRATIVE LAW DIVISION

Entered _____