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OFFICE OF THE ATTORNEY GENERAL
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ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Robert A. Rabin

**PREAMBLE TO A PROPOSED PROCEDURAL RULE
CONCERNING SOLID WASTE ASSESSMENT FEE EXEMPTIONS**

STATE AGENCY: Department of Natural Resources

REGULATIONS: Title 47, Series 38A, "Solid Waste Assessment Fee Exemptions"

AUTHORITY: W. Va. Code §20-5F-4

ACTION: Proposed Rule; Notice of Hearing and Comment Period

DATES: A public hearing on this proposal will be held on August 10, 1988 at 1:00 p.m. in Room 674, Building 3, State Capitol Complex, Charleston; written comments will be received by the Department until 4:30 p.m. on that day.

CONTACT: For further information regarding this filing, please contact Mr. Jeffrey E. Herrold, WV Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305, telephone (304) 348-2761.

SUMMARY: The Enrolled Committee Substitute for House Bill 3146, passed during the 1988 Regular Session, creates a new solid waste fee assessment to be collected by the operators of solid waste facilities and remitted to the State Tax Commissioner. Section 20-5F-5a(e) of the West Virginia Code establishes three exemptions from the assessment fee collection. Of particular interest to many West Virginians, W. Va. Code §20-5F-5a(e)(3) provides that the disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste is exempted from solid waste assessment fee collection "on such days and times as designated by the director of the department of natural resources by regulation as exempt from the solid waste assessment fee."

On June 30, 1988, the State Tax Department filed an emergency rule with the Secretary of State to impose solid waste assessment fees pursuant to W. Va. Code §20-5F-5a. In order to provide the exemptions allowed by law, the Director of the Department of Natural Resources is today proposing a procedural rule to implement the exemptions.

TITLE 47
PROCEDURAL RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 38A
SOLID WASTE ASSESSMENT FEE EXEMPTIONS

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SECRETARY OF STATE

§47-38A-1. Scope and Authority.

1.1. Scope and Purpose. -- This rule establishes procedures to be followed in obtaining solid waste assessment fee exemptions provided under W. Va. Code §20-5F-5a(e).

1.2. Authority. -- W. Va. Code §20-5F-4.

1.3. Filing Date. --

1.4. Effective Date. --

§47-38A-2. Solid Waste Assessment Fee Collection Exemptions.

2.1. Exemptions for Certain Facility Owners, Operators, and Lessees. A person who owns, operates, or leases an approved solid waste disposal facility is exempt from the payment of solid waste assessment fees, upon the receipt of a certificate of exemption from the director, if that facility is used exclusively to dispose of waste originally produced by such person in his regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis.

2.1.1. In order to obtain a certificate of exemption under Section 2.1 of these regulations, a person must submit the following information to the Department:

2.1.1.a. The name, address, and telephone number of the person applying for the exemption;

2.1.1.b. A notation of the status of the person applying for the exemption as either the owner, operator, or lessee of the approved solid waste disposal facility;

2.1.1.c. The location and permit number of the facility;

2.1.1.d. A description of the origins, types, and estimated amounts of all wastes disposed of at the facility;

2.1.1.e. A brief description of each business or activity that produces the wastes disposed of at the facility;

2.1.1.f. The name, address, and telephone number of each person utilizing the facility on a cost-sharing or nonprofit basis; and

2.1.1.g. A copy of each legal document that describes the relationship between the owner, operator, or lessee of the approved facility and the other person or persons disposing of solid waste at the facility.

2.2. Exemption for Reused or Recycled Solid Waste. A person who segregates and delivers his solid waste to an approved resource recovery or recycling facility for the purpose of reuse or recycling of that waste is exempt from the payment of solid waste assessment fees upon the receipt of a certificate of exemption from the director.

2.2.1. In order to obtain a certificate of exemption under Section 2.2 of these regulations, a person must submit the following information to the Department:

2.2.1.a. The name, address, and telephone number of the person applying for the exemption;

2.2.1.b. The location and permit number of the facility to which the waste is delivered for reuse or recycling;

2.2.1.c. A description of the origin, type, and estimated amount of the waste delivered for reuse or recycling;

2.2.1.d. A brief description of the process or method of reusing or recycling the delivered waste; and

2.2.1.e. A notarized statement from the owner or operator of the approved facility that certifies that a reuse or recycling process is in operation at his facility and that the delivered waste will in fact be reused or recycled.

2.3. Exemption for Residential Solid Waste. An individual who is not in the business of hauling or disposing of solid waste is exempt from the payment of solid waste assessment fees when disposing his residential solid waste at an approved solid waste facility on such days and times as designated by the owner or operator of that facility and approved by the director.

2.3.1. Days and times for the exempt disposal of residential solid waste must be designated by the owner or operator of each approved facility in the State and submitted to the director for approval. The owner or operator must designate at least ten (10) hours per week for the exempt disposal of residential waste.

2.3.2. Changes in either the days or the times for the exempt disposal of residential waste at an approved facility may be made by the director at his discretion.

2.3.3. Upon receiving approved days and times for the exempt disposal of residential waste from the director, the owner or operator must post a sign at the entrance to the facility that lists those approved days and times.

§47-38A-3. Certificates of Exemption.

3.1. After reviewing the information submitted by a person seeking an exemption under Section 2.1 or 2.2 of these regulations, Department personnel will recommend to the director that:

3.1.1. A certificate of exemption be granted;

3.1.2. A certificate of exemption be denied; or

3.1.3. A letter requesting additional information be sent to the person seeking the exemption.

3.2. If the director accepts a recommendation to deny the granting of a certificate of exemption, he will notify the person who sought the exemption of the denial and the reasons therefor.

3.2.1. A decision of the director to deny the granting of a certificate of exemption is appealable under the provisions of W. Va. Code §29A-5-4.

3.3. Whenever a change occurs which modifies the information submitted under Section 2.1 or 2.2 of these regulations, the person granted a certificate of exemption must, within fourteen (14) days, submit written notice to the Department detailing the change.

3.3.1. Failure by a person granted a certificate of exemption to submit the change of information notice required under Section 3.3 of these regulations constitutes cause for revoking the certificate.