

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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FILED
1988 NOV -7 PM 12:56
By _____
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code §20-9-9

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 38B

TITLE OF RULE BEING ADOPTED: _____

Proof of Proper Solid Waste Disposal

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 1, 1989



PREAMBLE TO AN ADOPTED INTERPRETIVE RULE
CONCERNING PROOF OF PROPER SOLID WASTE DISPOSAL

FILED

1988 JUL -7 PM 12:56

STATE AGENCY: West Virginia Department of Natural Resources

REGULATIONS: Title 47, Series 38B, "Proof of Proper Solid Waste Disposal"

AUTHORITY: W. Va. Code §20-9-9

ACTION: Adopted Rule

SUMMARY: The Enrolled Committee Substitute for House Bill 3146, passed during the 1988 Regular Session, adds a new Article 9 to Chapter 20 of the West Virginia Code. As a part of this new article, W. Va. Code §20-9-9 compels the Director of the Department of Natural Resources to promulgate rules that establish an approved method or methods of supplying proof of proper disposal of solid waste from residences and business establishments in this State. Today's filing provides guidance to the public regarding the approved method of supplying such proof to the Department.

RESPONSE TO COMMENTS: A public hearing on the proposed interpretive rule was held on August 10, 1988 in Charleston; written comments were received until 4:30 p.m. on that day. Twenty individuals attended the public hearing and oral or written comments were received from fourteen individuals, associations, or companies. The comments received and the Department's responses appear below:

Section 2.1

Comment: One commenter objected to the wording of this provision by arguing that, in its proposed form, Section 2.1 would impose restrictions on waste disposal which are more stringent than the law requires. Specifically, the commenter cited W. Va. Code §20-9-9(ii) which states that a person, in lieu of subscribing to a solid waste collection service, may "provide proper proof that said person properly disposes of solid waste at approved solid waste facilities or in any other lawful manner." The commenter requested that the Department provide another form of proof of proper solid waste disposal to cover disposal in "any other lawful manner."

Response: The Department asserts that no other lawful manner is currently available for the disposal of solid waste in this State beyond disposal or recycling at an approved facility.

Section 2.2.1

Comment: Several commenters asked the Department to define the term "solid waste collection service" in these regulations. These commenters observed that, in many areas of West Virginia, "gratis" haulers may collect their neighbors' garbage without charge and thus avoid regulation by the Public Service Commission. One commenter wrote:

(A) residence or business establishment should not be permitted to demonstrate "proof of proper solid waste disposal" on the sole basis of depositing his or her garbage with a solid waste collection service which is neither approved by the Public Service Commission nor operated by a municipality.

The commenters recommended that the Department adopt a definition of "solid waste collection service" that included collection services offered either by a common carrier certificated by the Public Service Commission or by a municipality or other governmental body.

Response: The Department accepts the commenters' recommendation and has revised this subsection accordingly.

Section 2.3

Comment: Five commenters objected to the placement of the burden of record keeping upon facility operators. These commenters argued that the Department should require individuals, not facility operators, to provide the proof of proper disposal to the State. One commenter suggested that the regulations be revised to require individuals to supply bills of receipt to the State when they pay their annual property taxes. Another commenter suggested that residents be required to submit proof of proper disposal to their county or regional solid waste authority.

Response: The Department does not believe that record keeping by facility operators is unduly burdensome. On the contrary, such record keeping provides an essential check vital to the effective enforcement of the State's new solid waste law. Furthermore, the Department is currently evaluating all means of enforcing the mandatory disposal provisions of the new law and may modify these regulations in the future to require the submission of proof as contemplated by the commenters. In addition, county and regional solid waste authorities are required by statute to address this issue in their comprehensive litter and solid waste plans and may choose to require such submissions.

Section 2.3 (continued)

Comment: One commenter suggested that the Department simplify the record keeping requirements of this section by requiring facility operators to maintain bills of receipt that contain all pertinent information, rather than separate records and copies of bills of receipt.

Response: If a facility operator desires to maintain bills of receipt that contain all pertinent information, rather than separate records and copies of bills of receipt, he will be in compliance with the Department's regulations. The Department agrees that bills of receipt may prove the most convenient way to compile the required information but does not wish to mandate that such a method be adopted by all facilities.

Comment: Several commenters observed that the proposed regulations did not differentiate between the operators of commercial disposal facilities and companies which dispose of their own wastes at their own facilities. The commenters requested that an exclusion from the record keeping requirements of Section 2.3 be added for facilities which dispose of in-house wastes under an approved DNR permit.

Response: The Department believes that the regulations as written are sufficiently clear. Section 2.3 does not reference the disposal of in-house wastes but rather the disposal of wastes delivered to a facility "by an individual who is not in the business of hauling or disposing of solid waste."

Section 2.3.1

Comment: One commenter objected to the requirement that facility operators record the name and address of each person who delivers residential waste for disposal. Another commenter suggested that Section 2.3.1 be revised to require the keeping of name and address only (i.e., delete the provision requiring the keeping of telephone numbers).

Response: Records of the name and address of each person delivering residential waste to an approved facility are essential to fulfilling the intent of the State's new solid waste law. Such records must be maintained at each approved facility so that the Department has the means of confirming information supplied by individuals. The Department accepts the request to delete the provision that required the

keeping of telephone numbers and has revised this subsection accordingly.

Section 2.4

Comment: One commenter objected to the requirement that facility operators maintain, for a three-year period, records of the disposal of residential waste by individuals and suggested that this period be reduced to one (1) year.

Response: The three-year period conforms to State Tax Department record keeping requirements and better enables the Department to enforce the provisions of the State's new solid waste law than would a one-year retention period.

TITLE 47
INTERPRETIVE RULES
DEPARTMENT OF NATURAL RESOURCES

FILED

1988 NOV -7 PM 12:56

SERIES 38B
PROOF OF PROPER SOLID WASTE DISPOSAL

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§47-38B-1. Scope and Authority.

1.1. Scope and Purpose. -- This rule provides guidance to persons occupying a residence or operating a business establishment in this State regarding the approved method of providing proof of proper solid waste disposal to the Department.

1.2. Authority. -- W. Va. Code §20-9-9.

1.3. Filing Date. -- November 7, 1988.

1.4. Effective Date. -- January 1, 1989.

§47-38B-2. Proof of Proper Solid Waste Disposal.

2.1. Each person occupying a residence or operating a business establishment in this State must be able to provide proof to the Department that his solid waste was disposed of at an approved solid waste facility.

2.2. Proof of proper solid waste disposal includes:

2.2.1. Records demonstrating that a person has subscribed to and used a solid waste collection service and has paid the fees established therefor; or

2.2.2. Records, including bills of receipt, demonstrating that a person has delivered his waste to an approved solid waste facility for disposal.

Note: The term "solid waste collection service" means a collection service offered either by a common carrier certificated by the West Virginia Public Service Commission (or similar body of a contiguous state) or by a municipality or other governmental body.

2.3. The owner or operator of each approved solid waste facility in this State must maintain records of each delivery of solid waste made by an individual who is not in the business of hauling or disposing of solid waste. Such records must include:

2.3.1. The name and address of the individual who delivered the waste for disposal;

2.3.2. A description of the origin, type, and estimated amount of the waste delivered for disposal; and

2.3.3. A copy of the bill of receipt for the waste delivered for disposal.

2.4. All records required under these regulations must be maintained for a minimum of three (3) years and be made available for inspection by an authorized representative of the director upon request.