

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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MAY 20 3 43 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Environmental Protection TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 38F

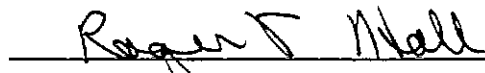
TITLE OF RULE BEING PROPOSED: "Lead Acid Battery Regulations"

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 1005

SECTION 64-3-17(u), PASSED ON March 16, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1994



Authorized Signature
Roger T. Hall
Spec. Asst. to Director

3.60

KEN HECHLER
Secretary of State

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help we can get)

FAX: (304) 558-0900

March 18, 1994

Bill Rheinlander
Natural Resources
Ofc. of Waste Management
1356 Hansford St.
Charleston, WV 25301

SB 1005 authorizing, **Title 47, Series 38F, Lead Acid Battery Regulations**, passed the Legislature on **March 16, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 1005, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 1005** section **64-3-17(u)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

LEGISLATIVE HISTORY ABSTRACT
SOLID WASTE MANAGEMENT
47 CSR 38F

Division of Environmental Protection
Office of Waste Management
Solid Waste Management Section
Rulemaking Coordinator - Richard P. Cooke 558-6350

July 7, 1993 Initial Filing With Secretary of State
Aug. 16, 1993 Public Hearing Date
Aug. 10, 1993 Close of Public Comment Period
Aug. 16, 1993 Agency Approved Rule Filed With Secretary of State
Aug. 16, 1993 Agency Approved Rule Filed With Legislative
Rulemaking Review Committee
Jan. 9, 1994 Passed by Legislative Rulemaking Committee
 X With Amendments Without Amendments
Jan. 21, 1994 Modified Rule Filed With Secretary of State

1994 REGULAR LEGISLATIVE SESSION

SB-177 Authorizing the Division of Environmental Protection to promulgate legislative rules relating to lead acid batteries.

Jan. 31, 1994 Filed for introduction
Jan. 28, 1994 To Natural Resources then Judiciary
Jan. 31, 1994 Introduced in Senate
Jan. 31, 1994 To Natural Resources then Judiciary
Jan. 31, 1994 To Natural Resources
Feb. 14, 1994 Reported do pass, with amendment, but first to Judiciary
Feb. 14, 1994 To Judiciary

1994 EXTENDED SESSION MARCH 14, 1994

Mar. 14, 1994 B-1005 Introduced in Senate containing the Same language as HB-4256 which was introduced in the House of Delegates on January 31, 1994, during the Regular Session

Mar. 14, 1994 Immediate consideration

Mar. 14, 1994 Committee reference dispensed

Mar. 14, 1994 On 1st reading

Mar. 14, 1994 Read 1st time

Mar. 14, 1994 On 2nd reading

Mar. 14, 1994 Suspension of Constitutional Rule (Roll No. 9)

Mar. 14, 1994 Read 2nd time

Mar. 14, 1994 Deferred until conclusion of bills introduced

Mar. 15, 1994 Laid over on 2nd reading 3/14

Mar. 15, 1994 Read 2nd time

Mar. 15, 1994 Floor amendment adopted (Voice vote)

Mar. 15, 1994 On 3rd reading

Mar. 15, 1994 Suspension of Constitutional Rule (Roll No. 3)

Mar. 15, 1994 Read 3rd time

Mar. 15, 1994 Passed Senate with amended title (Roll No. 4)

Mar. 15, 1994 Effective from passage (Roll No. 4)

Mar. 15, 1994 Ordered to House of Delegates

Mar. 16, 1994 Introduced in House of Delegates

Mar. 16, 1994 Reference dispensed

Mar. 16, 1994 Immediate consideration

Mar. 16, 1994 On 1st reading, House Calendar

Mar. 16, 1994 Read 1st time, House Calendar

Mar. 16, 1994 Dispensed with Constitutional Rule (Roll No. 365)
Mar. 16, 1994 On 2nd reading, House Calendar
Mar. 16, 1994 Read 2nd time, House Calendar
Mar. 16, 1994 On 3rd reading, House Calendar
Mar. 16, 1994 Read 3rd time, House Calendar
Mar. 16, 1994 Passed House (Voice vote)
Mar. 16, 1994 Effective from passage (Roll No. 366)
Mar. 16, 1994 Communicated to Senate
Mar. 16, 1994 Completed legislative action
Mar. 16, 1994 House Message received
Apr. 5, 1994 To Governor 4/5/94
Mar. 20, 1994 To Governor 4/5/94 - Senate Journal
Mar. 20, 1994 To Governor 4/5/94 - House Journal
Apr. 6, 1994 Approved by Governor 4/6/94
Mar. 20, 1994 Approved by Governor 4/6/94 - Senate Journal
Mar. 20, 1994 Approved by Governor 4/6/94 - House Journal

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38F
LEAD ACID BATTERY RULE

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TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38F
LEAD ACID BATTERY RULE

47-38F-1. GENERAL

1.1. Scope and Purpose. This legislative rule establishes requirements for the proper storage, handling, recycling, and disposal of lead acid batteries.

1.2. Authority -- West Virginia Code 20-11-8(c)

1.3. Filing Date -- May 20, 1994

1.4. Effective Date -- June 1, 1994

47-38F-2. DEFINITIONS

All definitions in W. Va. Code 22-15-2 , are fully incorporated into this rule by reference. The following additional definitions apply to this rule unless otherwise specified herein:

2.1. "Lead acid battery" means an encasement which contains or contained lead and sulfuric acid to produce an electrical charge.

2.2. "Lead acid battery storage facility" means any facility used for the storage of lead acid batteries, including any wholesale or retail business, automotive service or repair garages or other persons that handle lead acid batteries for purposes of commerce, recycling or disposal.

2.3. "Lead acid battery dealer" means any person selling, collecting, disposing, storing, recycling or otherwise handling new or spent lead acid batteries on a wholesale or retail basis.

2.4. "Spent lead acid battery" means an encasement which contains or contained lead and sulfuric acid which will no longer produce an electrical charge.

47-38F-3. LEAD ACID BATTERY HANDLING, STORAGE AND DISPOSAL REQUIREMENTS

3.1. **Certain disposal prohibited.** After the first day of June 1994, it shall be unlawful to deposit lead acid batteries in a solid waste disposal facility in West Virginia. Spent lead acid batteries must be delivered to an automotive battery dealer, or wholesaler, a secondary lead smelter permitted by the United States Environmental Protection Agency (USEPA), or a collection or recycling facility authorized under the Hazardous Waste laws of the State of West Virginia, or other jurisdiction.

3.2. **Disposal by dealers.** No lead acid battery dealer shall dispose of a spent lead acid battery except by delivery to a secondary lead smelter permitted by the USEPA, or to the agent of a battery manufacturer or wholesaler for delivery to a secondary lead smelter permitted by the USEPA, or to a collection or recycling facility authorized under the laws of the State of West Virginia or laws of the state where the collection or recycling facility is located.

3.3. **Collection for recycling and public notice requirements.** Any person selling or offering lead acid batteries for sale at retail or wholesale shall:

3.3.1. Accept, at the point of transfer, spent lead acid batteries from customers when purchases new batteries. It is not necessary to exchange a battery in order to purchase a new one.

3.3.2. Post written notices on at least 8 1/2 inch by 11 inch poster clearly visible to all customers and containing the universal recycling symbol and the following language:

3.3.2.a. It is unlawful to dispose of a lead acid battery in a W. Va. landfill.

3.3.2.b. Please **RECYCLE** your used batteries.

3.3.2.c. State rules require us to accept used or spent lead acid batteries for recycling in exchange for new batteries purchased from the dealer. Note: It is not necessary to exchange a used battery in order to purchase a new one.

3.4. **Dealer's reporting requirements.** Lead acid batteries shall be collected, recycled, or disposed of in a lawful manner, and records of such collection, recycling or disposal shall be kept on file at the facility for a period of not less than three (3) years for inspection.

3.5. **Inspection of automotive battery dealers.** Authorized agents of the Division of Environmental Protection may at reasonable times or during normal business hours inspect any lead acid battery storage facility governed by these rules.

3.6. **Storage.** New lead acid batteries and spent lead acid batteries shall be stored in compliance with all local, state and Federal Regulations to prevent contamination or injury from acid spillage or leakage.

3.7. **Public information and education.** The Division of Natural Resources' Recycling Program shall prepare a list of the names and locations of buy-back centers in West Virginia who will accept spent lead acid batteries; this list shall be disseminated by the DNR Recycling Program to the Solid Waste Management Board, lead acid battery dealers, the Division of Environmental Protection, and all county or regional solid waste authorities.

1 SENATE BILL NO. 177

2 (By Senators Anderson, Grubb, MacNaughtan and
3 Minard)
4 ~~[Introduced January 31, 1994; referred to the
Committee on~~

5 ~~NATURAL RESOURCES~~

6
7
8
9
10 A BILL to amend and reenact section seventeen, article three,
11 chapter sixty-four of the code of West Virginia, one thousand
12 nine hundred thirty-one, as amended, relating to authorizing
13 the division of environmental protection to promulgate
14 legislative rules relating to lead acid batteries.

15 **Be it enacted by the Legislature of West Virginia:**

16 That section seventeen, article three, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred thirty-one,
18 as amended, be amended and reenacted, to read as follows:

19 **ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND**
20 **ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

21 **§64-3-17. Division of environmental protection.**

22 (a) The legislative rules filed in the state register on the
23 eleventh day of October, one thousand nine hundred ninety-one,
24 modified by the division of environmental protection to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the ninth day of November, one
3 thousand nine hundred ninety-two, relating to the division of
4 environmental protection (operator's designation of bona fide
5 future use of oil and gas wells - qualification for inactive
6 status), are authorized.

7 (b) The legislative rules filed in the state register on the
8 third day of September, one thousand nine hundred ninety-two,
9 modified by the division of environmental protection to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the nineteenth day of February,
12 one thousand nine hundred ninety-three, relating to the division
13 of environmental protection (oil and gas wells and other wells),
14 are authorized.

15 (c) The legislative rules filed in the state register on the
16 third day of September, one thousand nine hundred ninety-two,
17 modified by the division of environmental protection to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the nineteenth day of February,
20 one thousand nine hundred ninety-three, relating to the division
21 of environmental protection (abandoned wells), are authorized.

22 (d) The legislative rules filed in the state register on the
23 eighteenth day of September, one thousand nine hundred
24 ninety-two, modified by the division of environmental protection
25 to meet the objections of the legislative rule-making review

1 committee and refiled in the state register on the nineteenth day
2 of February, one thousand nine hundred ninety-three, relating to
3 the division of environmental protection (underground storage
4 tank assessment fees), are authorized.

5 (e) The legislative rules filed in the state register on the
6 eighteenth day of September, one thousand nine hundred
7 ninety-two, relating to the division of environmental protection
8 (underground storage tanks), are authorized.

9 (f) The legislative rules filed in the state register on the
10 eighteenth day of September, one thousand nine hundred
11 ninety-two, modified by the division of environmental protection
12 to meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the nineteenth day
14 of February, one thousand nine hundred ninety-three, relating to
15 the division of environmental protection (hazardous waste
16 management), are authorized.

17 (g) The legislative rules filed in the state register on the
18 third day of March, one thousand nine hundred ninety-two,
19 modified by the division of environmental protection to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the eighteenth day of February,
22 one thousand nine hundred ninety-three, relating to the division
23 of environmental protection (groundwater protection act fee
24 schedule), are authorized.

1 (h) The legislative rules filed in the state register on the
2 sixteenth day of August, one thousand nine hundred ninety-three,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-first day of January,
6 one thousand nine hundred ninety-four, relating to the division
7 of environmental protection (lead acid battery), are authorized.

8

9 NOTE: The purpose of this bill is to authorize the Division
10 of Environmental Protection to promulgate legislative rules
11 relating to lead acid batteries.

12

13 Strike-throughs indicate language that would be stricken from
14 the present law, and underscoring indicates new language that
15 would be added.

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H. B. 4260

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on the Judiciary)

A BILL to amend and reenact section seventeen, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of environmental protection to promulgate legislative rules relating to lead acid batteries.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-17. Division of environmental protection.

(a) The legislative rules filed in the state register on the eleventh day of October, one thousand nine hundred ninety-one, modified by the division of environmental protection to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the ninth day of November, one
3 thousand nine hundred ninety-two, relating to the division of
4 environmental protection (operator's designation of bona fide
5 future use of oil and gas wells - qualification for inactive
6 status), are authorized.

7 (b) The legislative rules filed in the state register on the
8 third day of September, one thousand nine hundred ninety-two,
9 modified by the division of environmental protection to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the nineteenth day of February,
12 one thousand nine hundred ninety-three, relating to the division
13 of environmental protection (oil and gas wells and other wells),
14 are authorized.

15 (c) The legislative rules filed in the state register on the
16 third day of September, one thousand nine hundred ninety-two,
17 modified by the division of environmental protection to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the nineteenth day of February,
20 one thousand nine hundred ninety-three, relating to the division
21 of environmental protection (abandoned wells), are authorized.

22 (d) The legislative rules filed in the state register on the
23 eighteenth day of September, one thousand nine hundred
24 ninety-two, modified by the division of environmental protection
25 to meet the objections of the legislative rule-making review

1 committee and refiled in the state register on the nineteenth day
2 of February, one thousand nine hundred ninety-three, relating to
3 the division of environmental protection (underground storage
4 tank assessment fees), are authorized.

5 (e) The legislative rules filed in the state register on the
6 eighteenth day of September, one thousand nine hundred
7 ninety-two, relating to the division of environmental protection
8 (underground storage tanks), are authorized.

9 (f) The legislative rules filed in the state register on the
10 eighteenth day of September, one thousand nine hundred
11 ninety-two, modified by the division of environmental protection
12 to meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the nineteenth day
14 of February, one thousand nine hundred ninety-three, relating to
15 the division of environmental protection (hazardous waste
16 management), are authorized.

17 (g) The legislative rules filed in the state register on the
18 third day of March, one thousand nine hundred ninety-two,
19 modified by the division of environmental protection to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the eighteenth day of February,
22 one thousand nine hundred ninety-three, relating to the division
23 of environmental protection (groundwater protection act fee
24 schedule), are authorized.

1 (h) The legislative rules filed in the state register on the
2 sixteenth day of August, one thousand nine hundred ninety-three,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-first day of January,
6 one thousand nine hundred ninety-four, relating to the division
7 of environmental protection (lead acid battery), are authorized.

8

9 NOTE: The purpose of this bill is to authorize the Division
10 of Environmental Protection to promulgate legislative rules
11 relating to lead acid batteries.

12

13 Strike-throughs indicate language that would be stricken from
14 the present law, and underscoring indicates new language that
15 would be added.