

45CSR38

PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH
AIR QUALITY MANAGEMENT RULES

STATEMENT OF CIRCUMSTANCE

This rule is being proposed pursuant to a finding of SIP inadequacy by USEPA with respect to compliance determination requirements or limitations in current state air quality rules. USEPA's notice was contained in a letter of May 16, 1994 (Peter Kostmayer to John Ranson). This rule is also necessary to adequately implement the state operating permit program under 45CSR30. The ambient standards.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

This rule simply clarifies the type of information that may or will be used to determine compliance with or violation of emission standards and does not impose any new requirements upon agency staff or the regulated community.

3. Objectives of these rules:

The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

Appendix B
Fiscal Note For Proposed Rules
Page Two

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

None

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

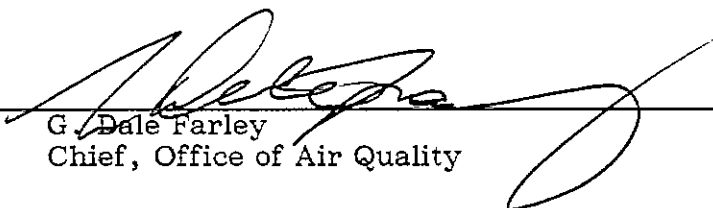
None

C. Economic impact on citizens/public at large.

None

Date: July 6, 1994

Signature of agency head or authorized representative:



G. Dale Farley
Chief, Office of Air Quality

45CSR38

**PROVISIONS FOR DETERMINATION OF COMPLAINEE WITH
AIR QUALITY MANAGEMENT RULE**

SUMMARY

The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

BRIEFING DOCUMENT - RULES AND POLICY
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

45CSR38

**PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH
AIR QUALITY MANAGEMENT RULES**

JULY 6, 1994

- A. AUTHORITY:** W. Va. Code §§22-5-1 et seq.
- B. SCOPE:** The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.
- C. JUSTIFICATION:** This rule is being proposed pursuant to a finding of SIP inadequacy by USEPA with respect to compliance determination requirements or limitations in current state air quality rules. USEPA's notice was contained in a letter of May 16, 1994 (Peter Kostmayer to John Ranson). This rule is also necessary to adequately implement the state operating permit program under 45CSR30. The ambient standards.
- D. CSR CITE:** 45CSR38
- E. FEDERAL CITE:** Sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the Clean Air Act, as amended. There is no federal counterpart rule.

F. TIME SCHEDULE:

Filing with the Secretary of State's office on or about July 6, 1994.

Date of Public Hearing: August 9, 1994

Filing with the LRMRC: on or about August 12, 1994.


Prepared By

Air Quality
Office of

558-3286
Telephone


Approved By (Chief)

Approved By (Director)

FILED

45CSR38

JUL 6 4 37 PM '94

**TITLE 45
LEGISLATIVE RULES
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY**

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

**SERIES 38
PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH
AIR QUALITY MANAGEMENT RULES**

45-38-1. General.

1.1. Scope. -- The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.D

1.2. Authority. -- W. Va. Code §§22-5-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference -- Federal Counterpart Regulation. This rule is intended primarily to formalize and clarify long-standing practice in the application of federal testing and monitoring procedures to sources of air pollutant emissions in West Virginia. It also is intended to clarify the types of data which is to be considered in the determination of compliance or violations of state air pollutant emission standards to conform to sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the federal Clean Air Act. There is no counterpart federal rule.

1.6. Determination of Stringency -- Federal Counterpart Regulation. The Director has determined that this rule is no more or no less stringent than the requirements of the federal Clean Air Act. There is no promulgated counterpart federal rule.

1.7. Constitutional Takings Determination -- The Director has determined that this rule will not result in a constitutional taking of real property.

§45-38-2. Definitions.

2.1. "Air pollutant" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

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2.2. "Director" means the Director of the Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.3. "Division of Environmental Protection", 'DEP' means the Division of Environmental Protection as defined in W. Va. Code §§22-1-1 et seq.

2.4. "Enforceable" means enforceable by the Director and USEPA.

2.5. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source subject to air pollutant emission standards.

2.6. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory, or private corporation or association organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.7. "State Implementation Plan", 'SIP' means a State Implementation Plan approved by USEPA which provides for implementation, maintenance, and enforcement of national ambient air quality standard for each state (or portion thereof).

2.9. "Source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.10. "USEPA" means the United States Environmental Protection Agency.

§45-38.3. Compliance Determination Methods and Procedures.

3.1. If any rule enforceable by the Director, including any rule which has been incorporated in the State Implementation Plan by the United States Environmental Protection Agency (USEPA) does not contain definitive compliance determination procedures or if a related rule establishing such compliance determination procedures has not been authorized and adopted, reference test methods and continuous emission monitoring requirements promulgated by USEPA pursuant to the federal Clean Air Act under 40 CFR Part 60, 40 CFR Part 61, 40 CFR Part 63, 40 CFR Part 75, and other relevant parts of Title 40 of the Code of Federal Regulations applicable to a specific type or category of source or for a similar source, in conjunction with any other credible evidence shall be employed in determining whether a particular source complies with or violates the applicable emission limitation. The averaging provisions of Section 2.5 of Method 9 in Appendix A of 40 CFR part 60 shall only apply when specifically stated to be applicable in an effective rule.

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§45-38.4. Compliance Certification by a Source Owner or Operator.

4.1. For the purpose of submitting compliance certifications to the Director pursuant to any applicable rule or permit, an owner or operator of a source may use the following in addition to any compliance determination method applicable under any rule:

a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

b. Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and 45CSR30 and incorporated into an enforceable operating permit.

§45-38-5. Enforcement of Emission Standards or Limitations by the Director.

5.1. In enforcing emission limitations in any rule, including any rule which has been incorporated into the State Implementation Plan by USEPA, any credible evidence may be used by the Director for the purpose of establishing whether a person has violated or is in violation.

5.2. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

b. A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and 45CSR30 and incorporated in an enforceable operating permit.

c. Compliance test methods specified in applicable rules or used in accordance with Section 3 of this rule.

5.3. The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

a. Any enforceable monitoring or testing methods, including those contained in 40 CFR Parts 51, 60, 61, 63 and 75.

b. Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method listed in subsection 5.2 or 5.3.a.

§45-38.6. Inconsistency Between Rules.

In event of any inconsistency between this rule and any other existing rule of the Director, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term condition, method, or rule.

FILED

AUG 22 9 42 AM '94

August 14, 1994
Tom Degen
HC 75 Box 324
Chloe, WV 25235

OFFICE OF WEST VIRGINIA
WV DEP/Office of Waste Management SECRETARY OF STATE
1356 Hansford Street
Charleston, WV 25301
Attn: Ken Ellison

Comments on Title 47 Series 38 Solid Waste Management Regulations revisions concerning Class D Solid Waste Facilities

My major concern with these revisions is that by removing the size and time limits that were on D-2 and D-3 facilities, there is now going to be a tremendous incentive for large, continuously operating facilities to cloak themselves as "noncommercial", in order to escape the more stringent permit requirements for a Class D-1 facility. That more stringent application process includes such things as prohibitions (47-38- 3.1), location standards (47-38- 3.2), pre-siting requirements (47-38- 3.4), public comment and hearings (47-38- 3.22-3.26), and appeals (47-38- 3.29). These requirements are all mandated by the legislature because the legislature finds that inadequately controlled disposal of solid waste results in a public nuisance, a clear and present danger to the citizens of West Virginia, and the degradation of the state's environmental quality (22-15-1.b.). The existing rule is far more protective of the public health and safety and the environment than this revision because there is a size and time limit on the Class D-2 and Class D-3 facilities that precludes large, continuously operating facilities from trying to evade the legislatively mandated permitting requirements. Section 3.16.5.c.A.(d) of the Series 38 rule provides the chief with enough discretionary power to modify the requirements for a particular facility without throwing the door open to every half baked justification of why a facility is "non-commercial."

The proposed revision for Class D facilities is also very unclear and contradictory. For example:

No definition is given for "General Permit", "Individual Permit", "non-commercial", or the type of facility that is to be regulated under this "general permit." There is a definition of Class D Solid Waste Facility, which means any solid waste facility for the disposal of only construction/demolition waste, and there is a definition for a Class D-1 Solid Waste Facility, but no definition of the new type of facility that is being created.

In this proposed revision, the definition of "Class D Solid Waste Facility" (Section 2.10., pg 2) contains the following addition: "... and shall not include the legitimate beneficial reuse of clean waste concrete/masonry substances for the purpose of structural fill or roadbase material." This practically identical to the

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language that the legislature removed from the definition of "Commercial solid waste facility" in 1993 to plug a recycling loophole. Rather than add this language, the revised rule should delete it from the definition of "Commercial solid waste facility" to make the definition consistent with the Code.

There is no definition or explanation of "best management practices." Whatever they may be, are they to be substituted for the requirements of the solid waste management regulations that were promulgated at the request of the legislature in order to "... establish a comprehensive program of controlling all phases of solid waste management."?

Section 3.16.5.d.B.(a) of the proposed revision provides that any interested person may petition the chief to require any person authorized by general permit to apply for an individual permit. Cases are listed where an individual permit may be required, one of which is that the permittee is not in compliance with the conditions of the general permit. However, Section 5.4.3.a. provides that access shall be controlled in such a manner as to discourage unauthorized entry and shall be limited to those authorized to deposit waste material and only during scheduled hours. The upshot of this is that it is impossible for "any person" to know what is happening at the facility, thereby rendering 3.16.5.d.B.(a) worthless.

Section 3.17.3. provides that the chief shall send fact sheets to any other person on request, yet 3.16.5.d.B.(d). does not provide for public notification until the permit is issued. There is no mechanism for "any other person" to be aware of an application in order for them to request a fact sheet! This is inexcusable; currently, a Class D-2 facility with a two acre, 180 day limit has to notify the public prior to permit issuance, but now an undefined Class D facility with no size or time limitation needs no public notification or hearing prior to permit issuance at all!

Section 5.4.3. of the proposed revision is Class D-2 Requirements. The definition of Class D-2 facility was stricken, as were most other references to that type of facility. I have to assume that 5.4.3. is requirements for the undefined Class D facility that operates under an undefined "general permit". In any case, the facilities regulated under 5.4.3. are exempted from the requirements of Section 4 of the rule, which is Landfill Performance Standards. This is a broad area of regulation that is simply dismissed. Such things as Minimum Design Criteria, Operational Requirements, Acceptable Wastes, Leachate Management, Monitoring, Reporting and Assessment Fees are included in Section 4. West Virginia Code §22-15-11. imposes a solid waste assessment fee on "... the disposal of solid waste at any (emphasis added) solid waste disposal facility in this state ..." It does not appear that the division has the authority to ignore the provisions of the Code and dismiss a class of facilities from the requirement of paying the assessment fees. Besides, at a time when the monies from the assessment fees are declining and impacting on the various programs that they fund, such as enforcement/inspection activities, the Solid Waste Management Board, the local solid waste authorities, and recycling grants, why would the

division want to exempt a class of facilities from the fees?

In summary, the Legislature has stated that the purpose of the Solid Waste Management Act is to establish a program of controlling all phases of solid waste management because it finds that inadequately controlled disposal of solid waste results in a public nuisance, a clear and present danger to the citizens of West Virginia, and the degradation of the state's environmental quality [22-15-1.(a) and (b)]. While it is understandable that the division would regulate small, temporary facilities in a more lax fashion than larger, continuously operating facilities, there is an abdication of responsibility in exempting facilities with no such limitations from the basic requirements of the series 38 regulations through the use of an undefined permit and undefined practices. Of great concern to me is that this revision shifts the burden of requiring adequate regulation onto "any other person" who may be lucky enough to learn of the application process and request the chief to issue an "individual permit." The current rule requires the "individual permit" of any Class D facility that will be larger than two acres and be in operation for longer than one year, but does allow the chief discretionary power in Section 3.16.5.c.A.(d) to modify requirements for a particular facility.

This revision concerning Class D facilities should not be approved or filed. The existing rule is more protective of the public health and safety and the environment, it is more reflective of the legislative intent and I have heard of no outcry concerning this aspect of the rule that would justify the revision.

Thank you for this opportunity to comment on these regulations.

Sincerely,



Tom Degen

cc: Norm Steenstra, Environmental Director Citizens Action Group
Ken Hechler, Secretary of State
Senator Don Macnaughton
Senator David Grubb
Delegate Brian Gallagher
Jim Kotcon, legislative chair Sierra Club
Tom Michael, Esq.
Wendy Radcliff, Environmental Advocate DEP
Larry Harless, Esq.

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FILED

Jul 13 3 23 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

Water Resources - Waste Mgmt.

 AGENCY: Bureau of Environment, Division of Environmental Protection TITLE NUMBER: 47

 RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §22-18-1

 AMENDMENT TO AN EXISTING RULE: YES XX NO

 IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38

 TITLE OF RULE BEING AMENDED: "Solid Waste Management Regulations"

IF NO, SERIES NUMBER OF NEW F

TITLE OF RULE BEING

Post-it" Fax Note 7671		Date <u>8/12</u>	# of pages <u>14</u>
To <u>Tom Degen</u>		From <u>Missy Phalen</u>	
Co./Dept.		Co. <u>Admin. Law</u>	
Phone #		Phone #	
Fax # <u>354-6150</u>		Fax #	

 DATE OF PUBLIC HEARING: August 15, 1994 TIME: 11:00

 LOCATION OF PUBLIC HEARING: Division of Environmental Protection
10 McDunkin Road
Nitro, WV 25143
Directors Conference Room

 COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH XX

 COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV DEP/Office of Waste Management
1356 Hansford Street

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Charleston, WV 25301
Attn: Ken Ellison

The issues to be heard shall be limited to the proposed rule.

 ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Peggy T. Hall
Authorized Signature

24.90

FILED

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

JUL 13 3 22 PM '94

SERIES 38
SOLID WASTE MANAGEMENT REGULATIONS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§47-38-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes requirements for the siting, bonding, installation, establishment, construction, modification, operation, and abandonment of any facility that processes, recycles, or disposes of solid waste pursuant to W. Va. Code §20-5F. This rule applies to any person who owns or operates a solid waste facility or who is responsible for the processing, recycling, or disposal of solid waste.

1.2. Authority. -- W. Va. Code §§20-5F-4, 20-5F-5, 20-5F-5b, 20-5F-5c, and 20-5F-5d.

1.3. Filing Date. -- March 29, 1990.

1.4. Effective Date. -- May 1, 1990.

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces 47 C.S.R. 38 "Solid Waste Management Regulations" as filed and became effective on April 1, 1988.

1.6. Lawful Disposal of Solid Waste Required. -- Solid waste shall be disposed, processed, or recycled only at permitted solid waste facilities as described in section 3 of these regulations.

1.7. Incorporation by Reference. -- Whenever federal or State statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on November 4, 1988.

1.8. Determination of Stringency/Incorporation by Reference.
There is no federal counterpart regulation.

1.9. Constitutional Takings Determination. No constitutional takings of real property are anticipated as a result of this rule.

§47-38-2. Definitions.

2.1. "Access Road" means all roads providing access to a solid waste facility from a road that is under federal, State, or local authority.

2.2. "Act" means the Solid Waste Management Act, W. Va. Code §20-5F, et seq.

2.3. "Approved Solid Waste Facility" means a solid waste facility which has a valid permit under the Act or which is otherwise authorized to conduct solid waste activities under the Act.

2.4. "Bond" means any performance bond or other form of financial assurance contemplated by W. Va. Code §20-5F-5b.

2.5. "Bulky Goods" means any stoves, washers, water heaters, or other large, discarded appliances or metal products which are introduced on a solid waste landfill for disposal.

2.6. "Chief" means the chief of the Division of Water Resources of the West Virginia Department of Natural Resources or his authorized representative.

2.7. "Class A Solid Waste Facility" means a commercial solid waste disposal facility which is authorized to handle an aggregate of ten thousand (10,000) tons or more of solid waste per month at one or more commercial solid waste disposal facilities in the county (or region if said county participates in a regional solid waste authority pursuant to W. Va. Code §20-9) in which the solid waste disposal facility is to be located.

2.8. "Class B Solid Waste Facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred (100) tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand (40,000) persons, but which does not receive or is expected to receive solid waste exceeding an aggregate of ten thousand (10,000) tons per month. Class B solid waste disposal facilities do not include construction/demolition facilities.

2.9. "Class C Solid Waste Facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste of less than one hundred (100) tons each working day, and serves or is expected to serve a population of less than forty thousand (40,000) persons. Class C solid waste disposal facilities does not include construction/demolition facilities.

2.10. "Class D Solid Waste Facility" means any solid waste facility for the disposal of only construction/demolition waste and shall not include the legitimate beneficial reuse of clean waste concrete/masonry substances for the purpose of structural fill or roadbase material. Such facilities are further defined as follows:

2.10.1. "Class D-1 Solid Waste Facility" means a commercial or noncommercial facility other than a Class D ~~those classified D-2 or D-3~~ solid waste facility permitted pursuant to section 3.16.5.d.

~~2.10.2. "Class D-2 Solid Waste Facility" means a noncommercial facility less than two (2) acres in area and where the waste to be disposed of is created by the applicant.~~

~~2.10.3. "Class D-3 Solid Waste Facility" means a noncommercial facility not more than one half (1/2) acre in area and located on land owned by the applicant.~~

2.11. "Class E Solid Waste Facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical, or thermal transformation of solid waste occurs.

2.12. "Class F Solid Waste Facility" means any industrial solid waste disposal facility.

2.13. "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act, as amended; 33 U.S.C. §1251 et seq.

2.14. "Coal Combustion By-Product Facility" means a facility for the disposal of coal combustion by-products, including coal combustion by-product landfills and coal combustion by-product disposal surface impoundments, and shall not include the legitimate beneficial use of coal combustion by-products.

2.15. "Coal Combustion By-Products" means the residuals, including fly ash, bottom ash, bed ash, and boiler slag produced by coal-fired or coal/gas-fired electrical or steam generating units. For non-electrical steam generating units burning a combination of solid waste and coal, a carbon monoxide (CO) level of less than or equal to one hundred parts per million (100 ppm) on a 24-hour average basis is required for the by-products to meet this definition. The carbon monoxide level shall be calculated on a dry gas basis corrected to seven percent (7%) oxygen.

2.16. "Commercial Solid Waste Facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include the legitimate beneficial use of coal combustion by-products or the reuse or recycling of materials for structural fill, road base, mine reclamation, and similar applications.

chief of its existence within ninety (90) days of the effective date of these regulations.

3.16.4.b.B. New Qualifying Recycling Facilities. Any new recycling facility which qualifies for a permit under section 3.16.4.a of these regulations shall notify the chief of its existence prior to installation, establishment, construction, modification, or operation of the recycling facility.

3.16.4.b.C. Form of Notification. Notification required by section 3.16.4.b of these regulations shall be made to the chief on forms and in the manner prescribed by the director.

3.16.3.c. Recycling Permitting Requirements. (Reserved)

3.16.3.d. Other Recycling Requirements. (Reserved)

3.16.3.e. Resource Recovery Permitting Requirements.
(Reserved).

3.16.5. Requirements for Construction/Demolition Landfills.

3.16.5.a. General Requirements. All construction/ demolition landfills shall apply for and receive approval from the chief prior to operation unless otherwise specified by section 3.16.5 of these regulations. Notwithstanding the provisions of section 3.16.5 of these regulations, a Class D solid waste facility which qualifies as a commercial solid waste facility pursuant to W. Va. Code §20-5F shall be required to meet all appropriate landfill requirements specified by these regulations.

3.16.5.b. Exemptions. The disposal of trees, stumps, woodchips, and yard waste generated from land clearing when generation and disposal occurs on the same property is exempt from the requirements of these regulations. A landowner using construction/demolition waste material to improve the grade of his land if the area of that land does not exceed one-half acre is exempt from the requirements of these regulations, provided that the landowner does not fill wetlands, adheres to best management practices for construction and maintains cover over the material. The construction/demolition waste material exemption for landowners does not apply to multiple one-half acre sites on the same parcel of land.

3.16.5.d. Class D-1 Solid Waste Facilities. A Class D-1 solid waste/facility permit shall be obtained for the disposal of construction/demolition waste in cases where a noncommercial Class D-2 solid waste facility general permit specified by section 3.16.5.d. or Class D-3 certificate of approval for disposal is not applicable.

3.16.5.c.A. Except as provided in sections 3.16.5.c.A.(a) through 3.16.5.c.A.(d) of these regulations, an applicant for a Class D-1 solid waste facility permit shall meet all of the requirements in section 3 of these regulations.

3.16.5.c.A.(a). In lieu of the test corings required in section 3.8.3 of these regulations, available literature and field reconnaissance may be used to obtain the information required in section 3.8.3 of these regulations.

3.16.5.c.A.(b) A minimum of one (1) downgradient monitoring well shall be drilled to intersect the uppermost significant aquifer. If the permit area is between five (5) to ten (10) acres, a minimum of two (2) downgradient monitoring wells will be drilled. If the permit area is greater than ten (10) acres, a minimum of three (3) monitoring wells will be drilled.

3.16.5.c.A.(c) Class D-1 solid waste facilities are exempted from the requirements of section 3.8.4.d.A, 3.8.3.a.C.(d), and 3.8.3.a.C.(i) of these regulations.

3.16.5.c.A.(d) Upon written request, the chief may exempt a Class D-1 solid waste facility from compliance with a specific requirement in section 3 of these regulations that he deems to be inappropriate or he may modify such requirement for that particular facility..

3.16.5.d. Class D General Permit ~~-2 Solid Waste Facilities.~~

~~3.16.5.d.A. A person may apply for a Class D-2 solid waste facility permit in lieu of a Class D-1 solid waste facility permit if:~~ Coverage. The chief may issue a general permit to regulate noncommercial construction/demolition solid waste facilities except those covered by individual permits.

3.16.5.d.B. Administration. General permits may be modified, revoked, reissued or suspended in accordance with the applicable requirements of section 3.18. of this series.

3.16.5.d.B.(a) The chief may require any person authorized by a general permit to apply for and an individual permit. Any interested person may petition the chief to take action under this subparagraph. Cases where an individual permit may be required include the following:

3.16.5.d.B.(a)(A) The permittee is not in compliance with the conditions of the general permit.

3.16.5.d.B.(a)(B) A change has occurred in the availability of the best management practices or demonstrated

technology for the control or abatement of problems applicable to the facility.

3.16.5.d.B.(a)(C) Specific regulations are promulgated for solid waste facilities covered by the general permit.

3.16.5.d.B.(b) The director may require any owner or operator authorized by a general permit to apply for an individual permit as provided in paragraph 3.16.5.d.B.(a) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date the individual permit the general permit as it applies to the individual permittee shall automatically terminate. The director may grant additional time upon request of the applicant.

3.16.5.d.B.(c) Any owner or operator authorized by a general permit may request to be excluded from the coverage of a general permit by applying for an individual permit. The owner or operator shall submit an application under section 3.5. with reasons supporting the request, to the director, no later than ninety (90) days after the general permit notice in accordance with section 3.21.

3.16.5.d.B.(d) Upon issuance of a general permit, the director shall cause to be published a notice of issuance as a Class I legal advertisement in a qualified daily or weekly newspaper and by any other means reasonably calculated to give notice of issuance to the persons affected by it.

~~3.16.5.d.A.(a) The disposal area does not exceed two (2) acres in size;~~

~~3.16.5.d.A.(b) The site preparation, disposal of construction/demolition material, regrading and revegetation can be completed within one hundred eighty (180) days from the date of permit issuance. Upon expiration of the permit only one (1) permit renewal may be granted by the chief. Such permit renewal period may not exceed one hundred eighty (180) days.~~

~~3.16.5.d.A.(c) The landfill site is not prohibited under section 3.2 of these regulations.~~

~~3.16.5.d.B. Except as provided in sections 3.16.5.d.B.(a) and 3.16.5.d.B.(b) of these regulations, Class D-2 solid waste facilities may be exempted by the chief from compliance with the requirements of section 3 of these regulations.~~

~~3.16.5.d.B.(a) An application for a Class D-2 solid waste facility permit shall comply with the requirements in section 3.5 and 3.6 of these regulations.~~

~~3.16.5.d.B.(b) Upon written notice from the chief, the applicant for a Class D-2 solid waste facility permit must publish notice of the draft permit in the form of a Class I legal advertisement in a newspaper of general circulation in the county or region in which the facility is proposed to be located. The advertisement must provide a minimum of ten (10) days for public review and comment upon such application. The applicant must meet all other requirements of section 3.20 of these regulations.~~

~~3.16.5.e. Class D-3 Solid Waste Facilities.~~

~~3.16.5.e.A. A landowner may apply for a Class D-3 solid waste facility certificate of approval for disposal in lieu of a Class D-1 or Class D-2 solid waste facility permit in order to use construction/demolition waste material to improve the grade of his land if the area of that land does not exceed one-half (1/2) acre.~~

~~3.16.5.e.A.(a) A class D-3 landfill certificate of approval for disposal shall be valid for one hundred eighty (180) days from the date of its issuance.~~

~~3.16.5.e.A.(b) The chief or the director may limit the number of Class D-3 solid waste facility certificates of approval for disposal issued in a particular area of any county.~~

3.17. Draft Permit.

3.17.1. Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

3.17.1.a. If the director tentatively decides to issue a general permit, he or she shall prepare a draft general permit that shall contain the following information:

3.17.1.a.A. All conditions under sections 3.5. and 3.6. and Subsection 5.4.3.;

3.17.1.a.B. Permit application requirements;

3.17.1.a.C. All compliance schedules;

3.17.1.a.D. All limitations, standards, prohibitions and conditions, and all variances that are to be included.

3.17.2. If the chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

3.17.2.a. All conditions under section 3 of these regulations;

3.17.2.b. All compliance schedules; and

3.17.2.c. Standards for treatment, storage, and disposal and other permit conditions under section 4 or 5 of these regulations.

3.17.3. A fact sheet shall be prepared by the chief for every draft permit for each solid waste facility or activity and for every general permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The chief shall send this fact sheet to the applicant and, on request, to any other person.

3.17.4. The fact sheet shall include, when applicable:

3.17.4.a. A brief description of the type of facility or activity which is the subject of the draft permit.

3.17.4.b. The type and quantity of wastes which are proposed to be or are being recycled, treated, stored, or disposed of, injected, emitted, or discharged. A description of the type of wastes shall include, but not be limited to, the characteristics of the waste materials and the potential effects on public health and the environment.

3.17.4.c. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.

3.17.4.d. A rationale explaining why any requested variances or alternatives to required standards do or do not appear justified.

3.17.4.e. A description of the procedures for reaching a final decision on the draft permit including:

3.17.4.e.A. The beginning and ending dates of the comment period and the address where comments will be received;

3.17.4.e.B. The procedures for requesting a hearing and the nature of that hearing; and

3.17.4.e.C. Any other procedures by which the public may participate in the final decision.

4.1. Enforcement of Landfill Performance Standards. Enforcement of the performance standards in section 4 of these regulations shall be conducted in accordance with the provisions of W. Va. Code §20-5F.

4.2. Assessment Fees. Permittees are required under the provisions of W. Va. Code §20-5F-5a and 110 C.S.R. 6A to pay solid waste assessment fees.

4.3. Operator Training and Certification. ~~(Reserved).~~

4.3.1. Operation of every commercial solid waste disposal facility "landfill", must be conducted under the direction of an individual who has authority and knowledge to make and implement decisions regarding operating conditions at the facility (called in this subsection a "individual in responsible charge") and who has attended and successfully completed a course of instruction in solid waste management procedures and practices. Such course of instruction must be approved in writing by the director.

4.3.2. Individuals in responsible charge of new landfills and new individuals in responsible charge of existing landfills must attend and successfully complete a course of instruction within twelve (12) months from the effective date of this rule.

4.3.3. An approved course of instruction shall include at a minimum, the role of sanitary landfills in integrated solid waste management, basics of site selection, complying with design requirements, waste acceptance and screening, leachate management, landfill gas management, landfill operational techniques, environmental/operational and permit compliance inspections, field exercise and homework assignment, landfill economics, closure and post-closure care, state/federal regulations, permitting requirements and a written examination sanctioned by an internationally recognized certification organization or an accredited college of university program.

4.3.4. Successful completion of an approved course of instruction by an individual in responsible charge must include passing the written examination and the award of a certificate as a certified manager, and

4.3.4.a. The individual must demonstrate that he or she has remained current in the field of solid waste management by attending at least thirty (30) contact hours of continuing education every three years and providing proof thereof upon request.

4.4. Operations Manual. Every facility must develop and maintain, on site, an operations manual. Existing facilities must develop such a manual within ninety (90) days of the effective date of these regulations, unless granted a written extension of

perimeter of the leachate detection piping system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the piping system by water jet flushing or an equivalent method; and

5.4.2.d.G.(h) The leachate collection system shall be cleaned and maintained as necessary.

5.4.2.d.H. The leachate collection zone construction certification and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of solid waste.

~~5.4.2.e. Asbestos may be disposed at a Class D-1 solid waste facility if all the requirements of section 4.13.2 of these regulations are met.~~

5.4.3. Class D-2 Facility Requirements. Except as herein specified Class. D-2 solid waste facilities are exempt from the requirements of section 4 of these regulations unless otherwise required by the director, but must comply with the requirements in sections 5.4.3.a through 5.4.3.g of these regulations.

5.4.3.a. Access shall be controlled in such a manner as to discourage unauthorized entry and shall be limited to those authorized to deposit waste material and only during scheduled hours.

5.4.3.b. Construction/demolition and cover material must not be placed into a stream channel and must be placed in such a way to prevent erosion and sedimentation.

5.4.3.c. Cover material shall be graded and maintained to prevent ponding and minimize erosion.

5.4.3.d. Erosion and sediment controls must be installed as necessary to prevent sedimentation.

5.4.3.e. The disturbed area shall be revegetated to prevent erosion and sedimentation in accordance with section 4.5.6 of these regulations.

5.4.3.f. Except when extended by the chief director, within one hundred and eighty (180) days from issuance of a Class D-2 solid waste facility permit all operations for a Class D solid waste facility shall have been completed including covering with a minimum of twenty four (24) inches of soil, regrading, dressing up, seeding, mulching and fertilizing prior to the expiration date of the permit.

5.4.3.g. The permittee shall notify the chief ~~within sixty (60) days prior to the expiration date of the permit~~ to arrange for a final inspection prior to removing equipment from the

site. All site reclamation must be completed before equipment removal.

5.4.3.h. The chief may require a Class D-2 solid waste facility to meet any specific requirement in section 4 of these regulations.

~~5.4.4. Class D-3 Facility Requirements. Except as herein specified Class D-3 solid waste facilities are exempt from the requirements of section 4 of these regulations but must comply with the requirements in sections 5.4.4.a through 5.4.4.f of these regulations.~~

~~5.4.4.a. Construction/demolition and cover material must not be placed into a stream channel.~~

~~5.4.4.b. The entire site must be constructed to prevent ponding and minimize erosion.~~

~~5.4.4.c. Erosion and sediment control structures must be installed as necessary to prevent sedimentation.~~

~~5.4.4.d. The disturbed area must be revegetated in accordance with section 4.5.6 of these regulations.~~

~~5.4.4.e. Within one hundred and eighty (180) days from issuance of a certificate of approval for disposal all operations on a Class D-3 solid waste facility shall have been completed including final disposal, covering with a minimum of twenty four (24) inches of soil, grading, dressing up, seeding, mulching and fertilizing.~~

~~5.4.4.f. The chief may require a Class D-3 solid waste facility to meet any specific requirement in section 4 of these regulations.~~

5.5. Requirements for Class F Solid Waste Facilities. Except as provided in sections 5.5 of these regulations, all requirements of these regulations shall be applicable to Class F solid waste facilities.

5.5.1. Waivers and Modifications. During the permit issuance process or upon written request or appropriate notation on the application by the permittee, the chief may waive or modify the requirements of the subsections of section 3 of these regulations that are listed in section 5.5.1.a of these regulations and the requirements of the subsections of section 4 of these regulations that are listed in section 5.5.1.b of these regulations. Failure of the applicant to supply documentation requested by the chief, which is necessary to justify the requested waiver or modification, shall be grounds for waiver or modification denial. Each request for waiver or modification of a requirement of section 3 or 4 of

basis by the chief based upon an evaluation of the information from groundwater monitoring and assessment programs. Evidence of groundwater contamination, as determined by section 4.11 of these regulations, may require a corrective action program as described in section ~~4.11.6~~ 4.11.5 of these regulations.

~~Editor's Note: The amendment of section 4.11.5 and 4.11.6 by Senate Bill 243 (passed March 10, 1990) replaced 4.11.5 and 4.11.6 with a new 4.11.5.~~

5.5.2.c. Leachate Analysis. The requirements of section 4.8.4 of these regulations apply to coal combustion by-product landfills and surface impoundments with the exception that the requirements in section 4.8.4.B of these regulations shall be replaced by the following:

5.5.2.c.A. On a semi-annual basis, the chemical composition of the leachate flowing into a leachate treatment system from a coal combustion by-product facility shall, unless waived by the chief, be determined through the analysis of the leachate for the following parameters: alkalinity, arsenic, barium, bicarbonate, hardness, boron, cadmium, calcium, chloride, total and hexavalent chromium, iron, lead, manganese, magnesium, sulfate, total dissolved solids, total organic carbon (TOC), specific conductance, zinc, and any other parameter which is specifically known to be associated with the wastes in question and specified by the chief in writing.

5.5.2.c.A.(a) The monitoring parameters listed in section 5.5.2.c.A of these regulations shall be reported as total metals unless otherwise specified by the chief.

5.5.2.d. Beneficial Use of Coal Combustion By-Products. The following uses of coal combustion by-products are deemed to be beneficial and do not require a permit under these regulations so long as such uses are consistent with the requirements of section 5.5.2.d of these regulations:

5.5.2.d.A. Coal combustion by-products used as a material in manufacturing another product (e.g., concrete, flowable fill, lightweight aggregate, concrete block, roofing materials, plastics, paint) or as a substitute for a product or natural resource (e.g., blasting grit, filter cloth precoat for sludge dewatering);

5.5.2.d.B. Coal combustion by-products used for the extraction or recovery of materials and compounds contained within the coal combustion by-products;

5.5.2.d.C. Coal combustion by-products used as a stabilization/solidification agent for other wastes. This use of coal combustion by-products shall be considered a beneficial use

APPENDIX A

Schedule of Solid Waste Facility Permit Application Fees

Type of Solid Waste Facility	Application Fee
Class A Solid Waste Facility	\$7,500.00
Class B Solid Waste Facility	\$5,000.00
Class C Solid Waste Facility	\$3,000.00
Class D1 Solid Waste Facility	\$3,000.00
Class D2 Solid Waste Facility	\$250.00
Class D3 Solid Waste Facility	\$0.00
<u>Class D General Permit</u>	<u>\$100 per acre</u>
Class E Solid Waste Facility	(Reserved)
Class F Solid Waste Facility	\$5,000.00
Renewal of Permit	\$1,000.00
Solid Waste Facility Closure	\$2,500.00
Modification to Approved Solid Waste Facility	\$500.00
Non-Disposal Solid Waste Facility (Recycling, materials recovery, processing, resource recovery, transfer station, and any other non-disposal facility not herein mentioned)	\$2,500.00
Background Investigation of Prospective Permittees	\$1,000.00*

* Fee for each person listed in the disclosure statement required pursuant to section 3.14.5.a of these regulations.