

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

MAY 20 3 47 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.**

Department of Commerce, Labor and Environmental Resources
AGENCY: Division of Environmental Protection/OWM TITLE NUMBER: Title 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: Series 35A

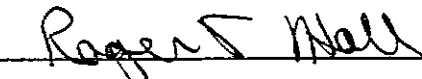
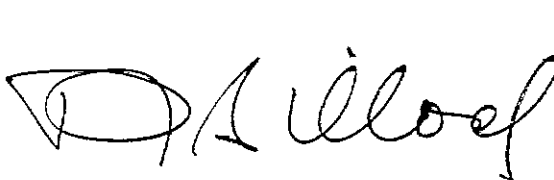
TITLE OF RULE BEING PROPOSED: "Commercial Hazardous Waste Management
Facility Siting Fees"

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

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

SECTION 64-3-17(q), 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
David C. Callaghan
Director, DEP

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 18, 1994

Dale Moncer
Natural Resources
Ofc. of Waste Management
1356 Hansford St.
Charleston, WV 25301

SB 1005 authorizing, Title 47, Series 35A, **Commerical Hazardous Waste Management Facility Siting Fees**, 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(q)**. 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

Commercial Hazardous Waste Management Facility Siting Fees

47 CSR 35A

Division Of Environmental Protection
Office of Waste Management
Hazardous Waste Permitting Section
Rulemaking Coordinator - Dale Moncer 558-5393

Jul 06, 1993 Initial Filing With Secretary of State
Aug 10, 1993 Public Hearing Date
Aug 10, 1993 Close of Public Comment Period
Aug 16, 1993 Agency Approved Rule File With Secretary of State
Aug 16, 1993 Agency Approved Rule Filed With Legislative
Rulemaking Review Committee

Passed by Legislative Rulemaking Review Committee

Jan 09, 1994
 X With Amendments Without Amendments

Jan 21, 1994 Modified Rule Filed With Secretary of State.

1994 REGULAR LEGISLATIVE SESSION

Jan 31, 1994 Introduced in the House of Delegates as HB 4258
Referred to the Committee on Natural Resources, then
Finance then Judiciary
Jan 31, 1994 Introduced in the Senate as SB 173
Referred to the Committee on Natural Resources, then
Finance then Judiciary
Feb 03, 1994 Reported to pass Senate Natural Resources Committee
without amendments, sent to Finance Committee
Feb 23, 1994 Passed Senate Finance Committee as amended, sent to
Judiciary Committee and amended into SB 147
Mar 03, 1994 Passed Senate Judiciary Committee
Mar 04, 1994 SB 147 passed in Senate with Amendments
Mar 05, 1994 Introduced in House and referred to House Judiciary
Committee

Mar 08, 1994 Passed House Judiciary Committee, with amendments
 Mar 10, 1994 Passed House of Delegates, with amendments
 Mar 11, 1994 Senate refused to concur with House amendments and
 requested that House rescind its amendments
 Mar 12, 1994 House declined to rescind the amendments
 Mar 12, 1994 To House and Senate Conference
 Mar 12, 1994 Conference Report passed by Senate
 Mar 12, 1994 House failed to act prior to Midnight deadline for
 session closure; SB 147 failed to pass

1994 EXTENDED SESSION -- MARCH 14, 1994

Mar 14, 1994 SB 1005 Introduced in Senate containing same language
 as HB 4258, which was introduced in the regular
 session on January 31, 1994
 Mar 14, 1994 Committee reference dispensed with
 Mar 15, 1994 Passed the Senate, with Amendments, and ordered to the
 House of Delegates
 Mar 16, 1994 Passed the House of Delegates
 Mar 16, 1994 Legislative action completed
 Apr 05, 1994 Sent to Governor
 Apr 06, 1994 Signed by Governor
 May , 1994 Final Filed with Secretary of State
 May , 1994 Effective date

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 35A
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING FEES

§47-35A-1. General.

1.1. Scope and Purpose. -- This rule establishes fees to be charged each person, as defined in Section 2.5 of 57 C.S.R. 1, applying for a certificate of site approval of a commercial hazardous waste management facility. These fees will recover the reasonable and necessary expenses of the Commercial Hazardous Waste Management Facility Siting Board, the Division of Environmental Protection, and the WV Attorney General's Office which these agencies incur pursuant to the activities under West Virginia Code §20-10-1 et seq.

1.2. Authority. -- West Virginia Code §20-10-5(b).

1.3. Filing Date. -- May 20, 1994

1.4. Effective Date. -- June 1, 1994

§47-35A-2. Definitions.

2.1. "Board" means the Commercial Hazardous Waste Management Facility Siting Board established pursuant to West Virginia Code §20-10-3.

2.2. "Commercial Hazardous Waste Management Facility" or "Commercial Facility" means any hazardous waste treatment, storage, or disposal facility, which accepts hazardous waste, as identified or listed by the director of the Division of Environmental Protection under the "Hazardous Waste Management Regulations" 47 C.S.R. 35, generated by sources other than the owner or operator of the facility and shall not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous waste created by that person or other persons on a cost-sharing or nonprofit basis (ie., captive facility).

2.3. All other terms shall have the meaning prescribed in the "Hazardous Waste Management Regulations" 47 C.S.R. 35.

§47-35A-3. Application Fees.

3.1. Any person who submits an application to the Board, pursuant to the "Certification Requirements" of 57 C.S.R. 1, shall include a certified cashier's check in the amount of one hundred thousand dollars (\$100,000) that is made payable to "The Commercial Hazardous Waste Management Facility Siting Fund" of the State Treasury pursuant to West Virginia Code §20-10-5.

3.2. The application fee shall underwrite the necessary expenses of the Board, and the administrative, professional, and the support services provided by the Division of Environmental Protection and other participating State agencies. In addition to the fee, the applicant will be responsible for all legal expenses incurred by the Board in response to a challenge to the issuance of a Certificate of Site Approval, but the applicant is not responsible for compensating the Board for the legal costs associated with processing the application in excess of the application fee, or any action or suit brought by the applicant against the state.

3.3. An additional fee of two thousand five hundred dollars (\$2,500) shall be paid by the applicant for each incomplete application that must be resubmitted to the Board, or for any subsequent major modifications offered by the applicant after the Board has determined the application to be complete pursuant to the "Commercial Hazardous Waste Management Facility Siting Board Regulations".

47-38E-2. DEFINITIONS

All definitions in W. Va. Code 20-5F-2 and all definitions in 47 CSR 38D are fully incorporated into this rule by reference. The following additional definitions apply to this rule:

2.1. "Buffer zone" means the distance between the composting operation and the adjacent property boundaries.

2.2. "Commercial yard waste composting facility" means any solid waste facility which is authorized to handle or accept up to thirty-six thousand (36,000) tons per year of yard waste and/or other compostable solid waste materials generated by sources other than the owner or operator of the facility, provided that, a commercial yard waste composting facility shall not include an approved solid waste facility owned and operated by a person for the sole purpose of composting yard waste created by that person or other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished compost is applied for use as a soil amendment/soil conditioner.

2.3. "Non-residential composting activities" means a composting activity by persons such as landscape contractors, nurseries or greenhouses, lawn and garden companies, solid waste authorities and municipalities which are authorized to compost up to twelve thousand (12,000) tons per year of yard waste materials consisting of grass clippings, weeds, leaves, brush/shrub or tree prunings and other acceptable compostable materials which have been approved in writing by the Chief to produce a safe product for use as a soil amendment/soil conditioner.

2.4. "Nuisance" means any practice or condition created by a composting facility or activities which results in dust, dirt, mud, infectious molds, bacteria or fungi, or offensive odor, or attracts vectors such as insects, rodents, snakes or in any way interferes with the normal use of any properties or causes harm or injury to any person or the environment.

2.5. "Runoff" means any flowing water and associated contaminants originating from any part of the solid waste facility or activity that drains over the land.

2.6. "Run-on" means any rainwater, snowmelt, wastewater, leachate or other liquid that drains over land onto any part of the compost facility.

2.7. "Soil amendment/soil conditioner" means an organic matter source or yard waste compost that when added to the soil improves the general physical, chemical and biological properties of the soil.

2.8. "Yard waste composting" means the controlled decomposition of yard waste to produce a stable and beneficial humus-like material.

2.9. "Yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that, such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste.

2.10. "Windrow" means an elongated pile created by the placement of yard waste.

47-38E-3. YARD WASTE COMPOSTING AND PERMITTING REQUIREMENTS

3.1 Applicability.

3.1.1. This rule applies to all persons who handle or manage yard waste to produce compost and requires that:

3.1.1.a. Methods employed for yard waste composting must be consistent with Section 4 of the Solid Waste Management Board's Program for the Proper Handling of Yard Waste, dated May 1, 1993.

3.1.1.b. Yard wastes are not combined with sludge, as defined in 47 CSR 38 Section 2.52. of the "Solid Waste Management Regulations", petroleum contaminated soil or other solid waste materials specified by the Chief.

3.1.1.c. A yard waste composting facility is not situated atop a partially or fully closed solid waste disposal unit at a permitted solid waste disposal facility; provided that, an existing solid waste facility may modify the permit to include yard waste composting operations. The Chief in cooperation with the county or regional solid waste authority shall determine if a major or minor permit modification is required.

3.1.2. After the first day of June 1994, it is unlawful to willfully deposit yard waste in a solid waste facility other than a designated (approved) yard waste composting facility or activity in the State of West Virginia: Provided, That a solid waste facility which has entered into a compliance schedule containing a sequence of actions leading to complete compliance and approved by the Chief, prior to the first day of June, 1994, shall be considered to have obtained a reasonable and necessary exception to this section of this rule.

3.2. Location Standards for Siting a Commercial Yard Waste Composting Facility.

3.2.1. The following location standards apply to commercial yard waste composting facilities, unless otherwise approved by the chief:

3.2.1.a. A yard waste composting facility shall be located in an area which has been authorized for composting facilities by the county and/or regional solid waste authority approved siting plan;

3.2.1.b. Yard waste composting facilities shall not be sited or constructed in areas subject to a one hundred year flood plain and no facility shall be closer than three hundred (300) feet to any regularly flowing stream, perennial stream, pond, lake, wetland or spring;

3.2.1.c. Yard waste composting facilities shall not be located in areas which are geologically unstable or where the site topography exceeds six (6) percent grade;

3.2.1.d. Acceptable sites must have sufficient area and terrain to allow for proper management of run-on, runoff and leachate;

3.2.1.e. A yard waste composting facility shall not be located within two thousand (2000) feet of any health care facility, school, church, or similar type of institution. The chief may reduce this set-back distance if the owner or operator can successfully demonstrate that a nuisance will not be created due to the operation of the facility;

3.2.1.f. A yard waste composting facility shall not be located within two-hundred (200) feet of drinking water supply wells and occupied dwellings;

3.2.1.g. A yard waste composting facility shall not be located within fifty (50) feet of a federal or state highway right-of-way or within twenty-five (25) feet of a city street right-of-way;

3.2.1.h. The operational area of a yard waste composting facility shall not be located within one-hundred (100) feet of an adjacent property owner's boundary line;

3.2.1.i. A yard waste composting facility shall not be located on land where runoff drains into a sinkhole;

3.2.1.j. A yard waste composting facility shall not be located on land that has a seasonal high groundwater table (based on soil maps) less than two (2) feet from the land surface;

3.2.1.k. A yard waste composting facility shall not be located on land that has less than twenty (20") inches of soil over bedrock or on an impervious pan; and

3.2.1.l. A yard waste composting facility shall not be located within ten thousand (10,000) feet to the closest point of any airport runway used or planned to be used by turbojet aircraft or within five thousand (5,000) feet to the closest point of any airport runway used only by piston type aircraft or within other areas where a substantial bird hazard to aircraft would be created.

3.3. Location Standards for Siting Non-Residential Composting Activities.

3.3.1. The following location standards apply to non-residential composting activities:

3.3.1.a. Non-residential composting activities shall not be sited or constructed in areas closer than one hundred (100) feet to any regularly flowing stream, perennial stream, pond, lake, wetland or spring;

3.3.1.b. Non-residential composting activities shall have sufficient area and terrain to allow for the proper management of run-on, runoff and leachate;

3.3.1.c. Non-residential composting activities shall not be located within one hundred (100) feet of an adjacent property owner's boundary line without obtaining prior written permission from the adjacent property owner;

3.3.1.d. Non-residential composting activities shall not be located within one hundred (100) feet of a sinkhole; and

3.3.1.e. Non-residential composting activities shall not exceed five (5) acres in size without written approval from the Director.

3.3.2. Compliance with any of the location standards for yard waste composting facilities or activities in this rule does not relieve the owner or operator from compliance with all other codes, ordinances or rules.

3.4. Design and Construction of Commercial Yard Waste Composting Facility.

3.4.1. A handling area and proper equipment shall be provided to segregate waste other than yard waste and non-compostable components in the yard waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

3.4.2. If the yard waste composting facility is located in any area where the seasonal high water table (based on soil maps) lies within five (5) feet of the ground surface, the composting and handling areas shall be hard-surfaced in a manner acceptable to the chief and diked to prevent entry of run-on or escape of runoff and other liquids, and a sump with an adequately sized pump located at the low point of the hard-surface area shall be provided to convey liquids to a wastewater treatment, disposal or holding facility.

3.4.3. Accepted engineering practices shall be incorporated into the design of facilities located on sites with:

3.4.3.a. Springs, seeps, and other groundwater intrusions;

3.4.3.b. Gas, water, phone, sewage lines or other utilities under the active areas; or

3.4.3.c. Electrical transmission lines above or below the active areas;

3.4.3.d. Additional Design and Construction Considerations.

3.4.3.d.A. Areas used for mixing, curing, and storing of compost shall be graded to prevent run-on, collect runoff, and provided with a drainage system to route the collected runoff to a wastewater storage, treatment, or disposal facility.

3.4.3.d.B. A buffer zone with the minimum width of one hundred (100) feet shall be incorporated in the facility design between facility adjacent property boundaries and the operational areas of the facility.

3.4.3.d.C. Roads serving the unloading, handling, composting, and storage areas shall be of all-weather construction and the design features for each shall be shown on drawings submitted to the division in the application.

3.4.3.d.D. The design of a commercial yard waste composting facility shall be signed and sealed by a W. Va. registered professional engineer.

3.5. Permits Required.

3.5.1. Applicability. No person may establish, install, construct or operate the following:

3.5.1.a. A commercial yard waste composting facility without obtaining a solid waste facility permit from the division, provided that first, the applicant fulfills the pre-siting requirements of section 3.4 of the West Virginia Solid Waste Management Regulations, 47 CSR 38; or

3.5.1.b. A non-residential composting activity without the property owner/operator obtaining a registration number from the Division of Environmental Protection, Office of Waste Management, Solid Waste Management Section.

3.5.2. Exemptions. Residential and non-residential composting activities are exempt from obtaining a commercial solid waste facility permit, however the non-residential activity shall be located and operated in compliance with the location standards and the operational requirements as set forth in Sections 3.3 and 3.8 of this rule.

3.6. Permit Application Requirements.

3.6.1. The applicant for a permit to establish, install, construct, operate and close a commercial yard waste composting facility shall include in the permit application the following:

3.6.1.a. A copy of the certificate of convenience and necessity (CON);

3.6.1.b. A copy of the certificate of siting approval;

3.6.1.c. The name, address, and location of the proposed facility;

3.6.1.d. The proposed operator's and owner's name, address, telephone number, ownership status, and status as a federal, state, private, public or other entity;

3.6.1.e. A copy of legal documents demonstrating that the applicant has legal right to enter and conduct commercial yard waste composting operations on the property including a copy of the deed description or lease agreement;

3.6.1.f. A safety program designed to prevent hazards and accidents at the proposed facility;

3.6.1.g. Proof of liability insurance to cover the operations of the proposed facility; and

3.6.1.h. A detailed description of the activities to be conducted by the applicant at the facility.

3.6.2. An engineering report for an application to obtain a permit to construct shall contain, at a minimum, the following:

3.6.2.a. A regional map, or maps, (of appropriate scale) that delineate the entire service area of the proposed facility (both existing and proposed); existing and proposed collection, processing, and disposal operations; the location of the closest population centers; and the transportation systems including highways, airports, railways and waterways;

3.6.2.b. A vicinity map (minimum scale of 1"=2000') that delineates the area within one mile of the facility boundaries, zoning and land uses, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the project;

3.6.2.c. A site plan (minimum scale of 1"=200') with five foot contour intervals that delineates property boundaries, the location of existing and proposed soil boring, monitoring wells, buildings and appurtenances, fences, gates, roads, parking areas, drainage, culverts, storage facilities or areas, loading areas; existing and proposed elevation contours and direction of prevailing winds; and the location of residences, potable wells, surface water bodies, wetlands, and drainage swales located within the site and in the site plan area;

3.6.2.d. A detailed description of the operation of the facility including precautions or procedures for operation during heavy winds, thunderstorms, snowstorms, prolonged freezing conditions and an operational narrative describing the following:

3.6.2.d.A. Collection methods to be employed;

3.6.2.d.B. Methods to be utilized in constructing compost piles or windrows, including equipment;

3.6.2.d.C. Proposed dimensions of compost piles or windrow;

3.6.2.d.D. A source of supplemental water to maintain an optimal moisture content of compost piles or windrows;

3.6.2.d.E. Proposed turning frequency, including the method for determining that frequency;

3.6.2.d.F. Proposed duration of the composting process, including curing or storage time, and the term of compost distribution;

3.6.2.d.G. A distribution plan for the yard waste compost;

3.6.2.d.H. A residue disposal plan including the location of disposal site(s);

3.6.2.d.I. Provisions for emergency response; and

3.6.2.d.J. A public information and education program;

3.6.2.e. A schedule of operation, including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;

3.6.2.f. Anticipated daily traffic flow to and from the facility;

3.6.2.g. A description of the ultimate use for the finished yard waste compost, method for removal from the site, and a plan for use or disposal of any yard waste compost that cannot be used in the expected manner due to poor quality or change in market conditions;

3.6.2.h. Identification of the personnel required to operate and maintain the facility and their job descriptions and responsibilities;

3.6.2.i. A detailed description of the origin, quality, quantity, and type of yard waste anticipated to be received at the proposed facility. The quantity of yard waste anticipated to be received shall be estimated in both cubic yards and tonnage, and the maximum amount of compost estimated to be produced daily, monthly and annually shall be stated;

3.6.2.j. Contingency plans detailing corrective (or remedial) action to be taken in the event of equipment breakdown; air pollution (odors); unacceptable waste delivered to the facility; groundwater contamination; spills; and undesirable conditions such as fires, dust, noise, vectors, lack of a market for the yard waste compost product and unusual traffic conditions;

3.6.2.k. The procedures for the development of an Operations Manual. The manual must contain general design information, detailed operational information and instructions including methods of monitoring for moisture, temperature, and other quality control measures during the composting process. In addition, the manual must outline the specific procedures to be used in monitoring, sampling and analyzing finished compost material, which must be acceptable to the chief, provided that, as a minimum the finished compost material shall be analyzed by an approved EPA method for the concentration levels of heavy metals prior to its use. If any heavy metal concentration level exceeds regulatory standards, the finished compost material must be disposed of in an approved landfill; and

3.6.2.l. A detailed description of the yard waste composting technology to be utilized at the proposed facility.

3.6.3. Six copies of the application, including all supporting documents shall be submitted as follows: four copies shall be filed with the Division of Environmental Protection, Office of Waste Management, Solid Waste Management Section, one copy shall be submitted to the Solid Waste Management Board, and one copy shall be submitted to the county or regional solid waste authority for the area in which the proposed facility is to be located.

3.7. Permit Application Fees.

3.7.1. Each application filed for a commercial yard waste composting facility permit must be accompanied by a non-refundable application fee made payable to the Division of Environmental Protection in the amount of five hundred (\$500.00) dollars.

3.7.2. The division may require a fee of fifty (\$50.00) dollars or ten (10) percent of the application fee for any application refiled due to incompleteness.

3.8. Operational Requirements For Commercial Yard Waste Composting Facilities and Non-Residential Composting Activities.

3.8.1. The addition of any other solid waste including but not limited to hazardous, sludges, infectious, construction debris, demolition, industrial or other municipal solid waste to the yard waste is strictly prohibited.

3.8.2. Waste other than yard waste and non-compostable solid wastes shall be segregated from the compostable yard waste and promptly removed from the site for proper disposal at an approved facility. Segregated solid waste shall be removed from the facility at the end of each working day unless it is stored in containers specifically designed for storage of solid waste, provided that the material shall not remain at the facility more than thirty days.

3.8.3. Screening and removal of non-compostable solid wastes from the windrows or compost piles shall occur after the composting process is completed.

3.8.4. Access to a yard waste composting facility is allowed only when an attendant is on duty.

3.8.5. Any nuisance created by a commercial yard waste composting facility or a non-residential composting activity which causes harm or injury to any person or the environment shall be abated or the composting facility or activity may be required by the chief to cease and desist operations.

3.8.6. Shrubs, brush, tree prunings or any other bulky, woody type materials shall be shredded, ground or otherwise reduced in size prior to being mixed with other yard wastes to be composted.

3.8.7. The operator of a yard waste composting facility shall implement, and enforce a safety program designed to prevent hazards and accidents.

3.8.8. Open burning is prohibited.

3.8.9. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances and the operator must immediately abate any nuisances.

3.8.10. Leachate or other runoff from a compost facility shall not be permitted to drain or discharge into surface waters except when authorized under a West Virginia NPDES permit issued by the division.

3.8.11. A one hundred (100) foot buffer zone shall be provided and maintained in a manner acceptable to the chief.

3.9. Other Acceptable Compostable Materials.

3.9.1. Other acceptable compostable materials may include, but are not limited to, coffee grounds, kitchen scraps, pet and human hair, shredded newspapers, lint and sweepings, wood ashes, fish and poultry carcasses/litter, and animal manures.

3.10. Incorporation By Reference.

3.10.1. The following sections of the West Virginia Solid Waste Management Regulations, 47 CSR 38, are hereby incorporated and implemented as a part of this yard waste composting rule and apply only to commercial yard waste composting facilities:

- 3.10.1.a. Section 3.4 "Pre-Siting Requirement for Commercial Solid Waste Facilities";
- 3.10.1.b. Section 3.13 "Bonding and Financial Assurance";
- 3.10.1.c. Section 3.17 "Draft Permit";
- 3.10.1.d. Section 3.18 "Permit Modification, Suspension and Revocation";
- 3.10.1.e. Section 3.19 "Transfer of Permit";
- 3.10.1.f. Section 3.20 "Permit Renewal";
- 3.10.1.g. Section 3.21 "Public Notice";
- 3.10.1.h. Section 3.22 "Public Comments and Request for Public Hearings";
- 3.10.1.i. Section 3.23 "Public Hearings";
- 3.10.1.j. Section 3.24 "Reopening of the Public Comment Period";
- 3.10.1.k. Section 3.25 "Public Participation File";
- 3.10.1.l. Section 3.26 "Public Availability of Information";
- 3.10.1.m. Section 3.27 "Issuance and Effective Date of Permit";

- 3.10.1.n. Section 3.28 "Permit Review by the Director";
- 3.10.1.o. Section 3.29 "Appeals";
- 3.10.1.p. Section 4.5.5 "Quality Assurance and Quality Control" (applicable subsections only);
- 3.10.1.q. Section 4.8 "Leachate Management"; and
- 3.10.1.r. Section 4.12 "Reporting".

47-38E-4. CLOSURE REQUIREMENTS FOR A COMMERCIAL YARD WASTE COMPOSTING FACILITY.

4.1. Maintenance Minimization. The owner or operator shall close the facility in a manner that minimizes the need for further maintenance. All solid waste, compost, and residues shall be removed and disposed in a permitted solid waste disposal facility.

4.2. Closure Plan and Closure Plan Amendments. The owner or operator of a commercial yard waste composting facility shall have a written closure plan.

4.2.1. Closure plan inclusions.

4.2.1.a. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive or operating at peak capacity. The closure plan shall include, at a minimum, a schedule for final closure, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

4.2.1.b. The closure plan shall be submitted to the division as a part of the application for a permit. If the Chief finds the closure plan is deficient, the closure plan shall be amended by the owner or operator within ninety (90) days of the chief's finding. The permit will not be issued by the division until the amended plan meets the closure requirements.

4.2.2. Closure plan amendments.

4.2.2.a. The owner or operator shall update the closure plan with any changes in operation or facility design that affects the closure plan. The updated plan shall be submitted to the division for approval fifteen (15) days prior to such changes. The chief may require modifications to any updated plan which does not meet the closure requirements.

4.2.2.b. At any time during the operating life of the facility, the amended closure plan shall be made available to the division or the county or regional solid waste authority upon request.

4.3. Time Allowed for Closure. The owner or operator shall complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The chief may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he or she has taken all necessary steps to eliminate any threat to human health and the environment from the unclosed but inactive facility.

4.3.1. At least thirty (30) days prior to the beginning of closure activities, the owner or operator shall post a sign at all points of access to the facility notifying all persons of the closing, and state that further receipt of waste materials is prohibited. Further, upon closure, suitable barriers shall be installed at all former access points to prevent new waste from being deposited.

4.3.2. Notice of the upcoming closure is a Class II legal

advertisement which must be published in a local newspaper at least thirty (30) days prior to closure and a copy of the notice must be provided to the chief within ten (10) days of the date of publication.

4.4. Site Reclamation Responsibilities. A uniform and compacted layer of soil that is at least six (6") inches in thickness and capable of supporting revegetation shall be placed over all disturbed land surface areas within the facility's boundaries. A revegetation plan shall be a part of the closure plan requirements and must conform with the provisions of Section 4.5.6. of 47 CSR 38 Solid Waste Management Regulations.

4.5. Evidence of Proper Closure. A compost facility shall be considered properly closed when the actions required by section 4.4. of this rule have been taken by the owner or operator and duly authorized representatives of the chief verify compliance by an on-site inspection and provide a written confirmation that closure has been completed properly.

47-38E-5. COMMERCIAL YARD WASTE COMPOSTING OPERATOR TRAINING AND CERTIFICATION PROGRAM.

5.1. Experience, Training and Education. In order to ensure the proper, safe and efficient composting of yard waste, operators of commercial yard waste composting facilities must have a minimum of two years on the job experience in yard waste composting or receive training and education in yard waste composting. The training and education shall consist of but not be limited to forty (40) classroom hours. Topics should include:

5.1.1. Proper and safe equipment operation and equipment preventive maintenance; and

5.1.2. Composting science technology which encompasses the composting process, composting methods, composting operations, site and environmental considerations, facility design and use, compost quality control, using and marketing compost, composting economics, record keeping and reporting, worker safety, business math and volumetric calculations.

5.2. Approved Training and Education Programs. Training and education for yard waste composting shall include programs sponsored by, but not limited to, colleges and universities, agricultural extension services, and county or regional solid waste authorities: Provided that all training and education programs must be approved by the Division of Environmental Protection, Office of Waste Management. A list of approved training and education programs shall be made available by the DEP, Office of Waste Management.

5.3. Certification. Any person who meets the requirements as listed in Section 5.1. of this rule is considered a certified yard waste composting operator, provided that, written verification of on the job experience or training and education is properly submitted to the division on application forms provided by the chief.

8977

1
2
3
4
5
6
7
8
9

H. B. 4258

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

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 commercial hazardous waste
15 management facility siting fees.

16 Be it enacted by the Legislature of West Virginia:

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

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

22 §64-3-17. Division of environmental protection.

23 (a) The legislative rules filed in the state register on the
24 eleventh day of October, one thousand nine hundred ninety-one,

4258

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

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

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

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

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

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

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

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

9

10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to commercial hazardous waste management facility siting
13 fees.

14

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

SENATE BILL NO. 173

(By Senators Anderson, Crubb, MacNaughton and
Mead)

[Introduced January 31, 1994; referred to the
Committee on

~~NATURAL RESOURCES~~

Lawrence
- 10/11/91

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 commercial hazardous waste management facility siting fees.

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,

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

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

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

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

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

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

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

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

9

10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to commercial hazardous waste management facility siting
13 fees.

14

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