

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1988 JUL 15 PM 1:38
OFFICE OF THE SECRETARY OF STATE
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NOTICE OF AN EMERGENCY RULE

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code §20-5F-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38

TITLE OF RULE BEING AMENDED: _____

Solid Waste Management Regulations

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

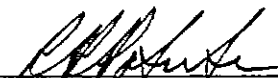
TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

On June 30, 1988, the State Tax Department filed an emergency rule with the Secretary of State to impose solid waste assessment fees pursuant to W. Va. Code §20-5F-5a. Such fees will be imposed upon all individuals who dispose of solid waste at approved solid waste facilities in this State unless the Director of the Department of Natural Resources implements the three fee collection exemptions that are provided under W. Va. Code §20-5F-5a(e). Thus, this amendment to the existing Series 38 legislative rule is being promulgated on an emergency basis in order to prevent the substantial harm to the public interest that would result from the imposition of fees upon individuals whom the Legislature has intended to exempt from such fee collection.

Use Additional Sheets If Necessary.



DATE: July 15, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FILED

FROM: West Virginia Department of Natural Resources

1988 JUL 15 PM 1:38

EMERGENCY RULE TITLE: Solid Waste Management Regulations

OFFICE OF THE SECRETARY OF STATE

1. Date of filing: July 15, 1988
2. Statutory authority for promulgating the emergency rule:
West Virginia Code, Chapter 20, Article 5F, Section 4
3. Date of filing of proposed legislative rule:
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? Amends current rule.
5. Has the same or similar emergency rule previously been filed and expired? No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

On June 30, 1988, the State Tax Department filed an emergency rule with the Secretary of State to impose solid waste assessment fees pursuant to W. Va. Code §20-5F-5a. Such fees will be imposed upon all individuals who dispose of solid waste at approved solid waste facilities unless the Director of the Department of Natural Resources implements the three fee collection exemptions that are provided under W. Va. Code §20-5F-5a(e). Thus, this amendment to the existing Series 38 legislative rule is being promulgated on an emergency basis in order to prevent the substantial harm to the public interest that would result from the imposition of fees upon individuals whom the Legislature has intended to exempt from such fee collection.

PREAMBLE TO EMERGENCY RULE AMENDMENTS

47 C.S.R. 38

DEPARTMENT OF NATURAL RESOURCES
SOLID WASTE MANAGEMENT REGULATIONS

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

On June 30, 1988, the State Tax Department filed an emergency rule with the Secretary of State to impose solid waste assessment fees pursuant to W. Va. Code §20-5F-5a. In order to provide the exemptions allowed by law without delay, the Director of the Department of Natural Resources is today promulgating an emergency rule that amends the Department's Series 38 solid waste management regulations. Two new sections have been added at the end of the existing regulations to implement the exemptions.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 38
SOLID WASTE MANAGEMENT REGULATIONS

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SECRETARY OF STATE

§47-38-1. General.

1.1. Scope. -- These legislative regulations establish the requirements relating to solid waste, open dumps, and the installation, establishment, construction, modification, operation or abandonment of any facility for the processing, recycling or disposal of solid waste that is covered under W. Va. Code §20-5F.

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

1.3. Applicability. -- These regulations shall apply to any person who owns or operates a solid waste facility or who is responsible for processing, recycling or disposal of solid waste.

1.4. Enforcement. -- The enforcement of these legislative regulations is vested with the director of the West Virginia Department of Natural Resources or his authorized representative.

1.5. Filing Date. -- July 15, 1988.

1.6. Effective Date. -- July 15, 1988.

§47-38-2. Definitions.

2.1. "The Act" means the "Solid Waste Management Act", W. Va. Code §20-5F.

2.2. "Approved Solid Waste Facility" means a solid waste facility or practice which has a valid permit under the Act.

2.3. "Class A Sanitary Landfill" means any solid waste facility for the disposal of solid waste on land 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. Class A sanitary landfill does not include solid waste facilities owned or operated by industrial establishments for the disposal of industrial solid waste.

2.4. "Class B Sanitary Landfill" means any solid waste facility for the disposal of solid waste on land which receives

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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 B sanitary landfill does not include solid waste facilities owned or operated by industrial establishments for the disposal of industrial solid waste.

2.5. "Class C Sanitary Landfill" (Reserved).

2.6. "Clean Water Act" means the Federal Water Pollution Control Act, Public Law 92-500, as amended, 33 U.S.C. §1251, et seq.

2.7. "Construction/Demolition Landfill" means any solid waste facility for the disposal of only construction/demolition waste on land.

2.8. "Construction/Demolition Waste" means waste building materials, grubbing waste and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings and other structures and pavements, and may include certain dredging materials.

2.9. "Cover Material" means soil or other material, approved by the Division, and used in a controlled manner to cover solid waste at solid waste disposal facilities.

2.10. "Department" means the West Virginia Department of Natural Resources.

2.11. "Director" means the director of the West Virginia Department of Natural Resources or his authorized representative.

2.12. "Disease Vector" means any insect, rodent or other organism capable of transmitting, directly or indirectly, infectious diseases or pathogenic organisms from one person or animal to another.

2.13. "Division" means the Division of Water Resources of the West Virginia Department of Natural Resources.

2.14. "Endangered Species Act" means the Federal Endangered Species Act, as amended, 16 U.S.C. §1536.

2.15. "Incinerator" means any solid waste facility, including any equipment, machine, device, structure or part of a structure used to burn solid waste.

2.16. "Industrial Waste Landfill" means any solid waste disposal facility which is owned or operated by an industrial

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establishment for the land disposal of industrial solid waste.

2.17. "Industrial Solid Waste" means any solid waste resulting from mining, manufacturing or industrial processes. Manufacturing or industrial processes includes, but is not limited to, those processes and activities carried on in factories, processing plants, refineries, slaughter houses, mills, tanneries, power generating plants, mines or mineral processing operations.

2.18. "Leachate" means any liquid produced or emanating from any solid waste facility. Uncontaminated surface runoff is not leachate.

2.19. "Lower Explosive Limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty five degrees centigrade (25 degrees C) and atmospheric pressure.

2.20. "Open Dump" means any solid waste disposal which does not have a permit under the Act, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

2.21. "Permit" means a written document issued by the Division giving the permit holder permission to install, establish, construct, modify, operate or abandon an approved solid waste facility on a specific tract or parcel of land.

2.22. "Permit By Rule" means approval by the director of the installation, construction, establishment, modification, operation or abandonment of specified solid waste facilities provided that such facilities comply with applicable sections of the regulations.

2.23. "Persistent Violation" means any violation of the Act, these regulations, any permit term or condition, or any order of the Department or Division issued pursuant to the Act or these regulations which is identified during two or more consecutive inspections performed by the Division, or which may, in the opinion of the chief, cause a threat to the environment, health or safety.

2.24. "Recycling Facility" means any solid waste facility for the purpose of reuse or sale of discarded material by salvaging, separating or removing any material from solid waste, at which no land disposal of solid waste occurs, and at which solid wastes are not biologically, chemically or thermally transformed.

2.25. "Resource Recovery Facility" means any solid waste facility at which solid wastes are mechanically, biologically,

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chemically or thermally transformed for the purpose of separating, removing or creating any material or energy for reuse or sale, at which land disposal of solid waste does not occur. Resource recovery facilities shall include composting plants, incinerators equipped with integral or separate heat recovery systems, and other such solid waste facilities not herein specified.

2.26. "Schedule of Compliance" means a list of activities approved or ordered by the Division or Department, which may include dates or specified times for completion of each or all activities which, when completed, will result in a site, facility or practice which is environmentally sound and conforms to the requirements of the Act, these regulations, or permit terms and conditions.

2.27. "Sludge" means any solid, semi-solid, residue or precipitate separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

2.28. "Solid Waste" means any garbage; paper; litter; refuse; cans; bottles; sludge from a waste treatment plant, water supply treatment plant or air pollution control facility; other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter; solid, semi-solid or contained liquid or gaseous material resulting from industrial, commercial, mining, agricultural operations or from community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code §20-5A, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under W. Va. Code §20-5E or refuse, slurry and overburden regulated under W. Va. Code §20-6.

2.29. "Solid Waste Disposal" means the practice of disposing solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

2.30. "Solid Waste Disposal Facility" means any solid waste facility installed, established, constructed, modified or operated for the purpose of solid waste disposal.

2.31. "Solid Waste Facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein

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specified.

2.32. "Solid Waste Processing or Recycling Facility" means any solid waste facility installed, established, constructed, modified or operated for the purpose of physical, chemical or biological processing or recycling of solid waste including recycling facilities, resource recovery facilities, transfer stations and other such solid waste facilities not herein specified.

2.33. "State Water Pollution Control Act" means W. Va. Code §20-5A.

2.34. "Transfer Station" means any fixed or mobile solid waste processing or recycling facility with mechanical equipment or structures used for temporary accumulation or storage, compaction or consolidation of solid waste prior to transportation of solid waste to another solid waste facility. The term transfer station shall not include individual solid waste route collection vehicles or equipment or equipment used for temporary on-site storage of solid waste by individual generators of solid waste.

2.35. "Water Resources Board" means the State Water Resources Board.

2.36. "100-Year Flood" means a flood of a magnitude equalled or exceeded once in one hundred (100) years on the average over a significantly long period.

2.37. The terms "Applicant", "Chief", "Code", "Person", "Persons", "Point Source", "Sewage", "Water", "Waters", and "Water Resources" shall have the meaning prescribed in W. Va. Code §20-5A-2.

§47-38-3. Solid Waste Facilities.

3.1. Requirement. Solid waste shall be disposed only at approved solid waste disposal facilities as described in Section 3.2 of these regulations. Solid waste shall be processed or recycled only at approved solid waste processing or recycling facilities as described in Section 3.3 of these regulations.

3.2. Approvable Solid Waste Disposal Facilities. Final disposal of solid waste shall occur only at approved solid waste facilities. Solid waste disposal facilities for which approval may be granted include the following, or any combination thereof:

3.2.1. Class A Sanitary Landfill;

3.2.2. Class B Sanitary Landfill;

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3.2.3. Class C Sanitary Landfill (Reserved);

3.2.4. Construction/Demolition Landfill;

3.2.5. Incinerator;

3.2.6. Other solid waste disposal facility approved in writing by the Department.

3.3. Approvable Solid Waste Processing or Recycling Facilities. Processing and recycling of solid waste shall occur only at approved solid waste facilities. Solid waste processing or recycling facilities for which approval may be granted include the following, or any combination thereof:

3.3.1. Transfer Station;

3.3.2. Recycling Facility;

3.3.3. Resource Recovery Facility;

3.3.4. Other solid waste processing or recycling facility approved in writing by the Department.

§47-38-4. Permits.

4.1. Requirement. A permit shall be obtained from the Division prior to installation, establishment, construction, modification, operation or abandonment of any solid waste facility.

4.2. Single Permit. Permits issued pursuant to these regulations shall meet the requirements of the Act, these regulations, the State Water Pollution Control Act and applicable regulations which are in effect pursuant to that act, so that only one permit shall be required from the Division for any solid waste facility.

4.3. Permit Term. All permits issued pursuant to these regulations shall have a fixed term not to exceed five (5) years from the date of issuance. The Division may administratively extend any permit expiration date for a period of up to one year.

4.4. Permit Application. Application for a solid waste facility permit shall be submitted to the Division on forms and in the manner prescribed by the Department. The Division shall review each permit application within sixty (60) days of its receipt to determine if it is administratively complete. The applicant shall be notified in writing of administrative completeness of the application. Such notification shall include an itemized list of application deficiencies.

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4.4.1. Upon request of any applicant, the Division shall meet with the applicant for pre-filing review of the application. The Division, with the cooperation of the Solid Waste Authority, shall assist the applicant in preparing a complete and proper application which would not be rejected as incomplete.

4.5. Permit Application Fees.

4.5.1. Application for a solid waste facility permit shall be accompanied by a nonrefundable application fee in accordance with the schedule of fees in Table 1 of these regulations.

4.5.2. Refiling Incomplete Application. A fee equal to ten percent (10%) of the application fee listed in Table 1 of these regulations shall accompany a permit application refiled due to incompleteness.

4.6. Public Participation in Permit Application Process.

4.6.1. Public notice and opportunity for public comment shall be provided by the applicant prior to Division action on a permit for any solid waste facility. Public participation in the permit application process shall be provided in the form and manner prescribed by the Department. The applicant shall maintain a public participation file consisting of the public notice, all written comments received and any resolution of adverse public comment. The public participation file shall be submitted to the Division before final action is taken by the Division on the application.

4.6.2. The Division may conduct a public hearing concerning any application for a solid waste facility permit. Persons may request such public hearing by submitting a written request for a public hearing to the Division in a form and manner prescribed by the Department.

4.7. Permit Denial.

4.7.1. The chief may deny an application for a solid waste facility permit if:

4.7.1.a. The applicant refuses to clearly identify all measures to be provided at the solid waste facility to comply with the Act, these regulations, or other specific requirements established by the director under the Act;

4.7.1.b. The application contains false or misleading information;

4.7.1.c. The chief determines that the site soils, geologic, hydrologic, or other site conditions are unacceptable;

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4.7.1.d. The chief determines that the proposed measures and practices included in the application will not meet the requirements of the Act, these regulations, the State Water Pollution Control Act or its applicable regulations or will not otherwise minimize environmental impact, health and safety hazards.

4.8. Transfer of Permit.

4.8.1. Any permit issued by the Division under the Act and these regulations may be transferred to another person if:

4.8.1.a. The permittee notifies the Division on forms and in a manner prescribed by the Department at least forty-five (45) days prior to the proposed transfer date provided in Section 4.8.1.b of these regulations.

4.8.1.b. The notification shall include a written agreement between the person and permittee containing a specific date for transfer and a description of permit responsibility, coverage and liability between them;

4.8.1.c. The Division does not notify the permittee and person that a new application for permit is required; and

4.8.1.d. The Division approves the transfer of the permit in writing.

4.8.2. The Division may refuse to transfer any permit and require that an application for a solid waste facility permit be submitted prior to any transfer of permit responsibility, coverage and liability. Such refusal shall be made in writing giving reasons therefor.

§47-38-5. Existing Approved Solid Waste Facilities.

5.1. Existing Department of Health Permits.

5.1.1. All existing permits of the Department of Health for solid waste facilities under W. Va. Code §16-1-9 shall continue in full force and effect until a permit is issued for that approved solid waste facility under the Act. All such existing permits of the Department of Health shall expire within five (5) years of the effective date of the Act (June 10, 1983).

5.1.2. Within four (4) years of the effective date of the Act (June 10, 1987), all persons holding such Department of Health permits shall apply to the Division for a permit under the Act.

5.1.3. The chief may require persons holding such existing

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Health Department permits to apply for a permit prior to four (4) years from the effective date of the Act if persistent violations of the Act, any permit term or condition, orders or these regulations exist at that facility.

5.2. Division of Water Resources Industrial Waste Landfill Permits.

5.2.1. All existing industrial waste landfill permits issued by the Division under the State Water Pollution Control Act shall continue in full force and effect until permits are issued for those approved solid waste facilities under the Act. Industrial waste landfills are exempt from the permitting requirements of these regulations until the Department promulgates a program consistent with the requirements of the Act and the State Water Pollution Control Act.

5.2.2. The Department will develop a program for issuance of solid waste facility permits for industrial waste landfills so that the requirements of the Act and the State Water Pollution Control Act are consolidated and a single permit will be issued by the Division for any industrial waste landfill.

5.2.3. Nothing in Section 5.2 of these regulations shall exempt industrial waste landfills from the permitting provisions of the State Water Pollution Control Act. The program developed by the Department pursuant to Section 5.2.2 of these regulations will include provisions for the orderly transition of permits issued under the State Water Pollution Control Act for industrial waste landfills into permits which will comply with both the Act and the State Water Pollution Control Act.

§47-38-6. Compliance.

6.1. Requirement. All solid waste facilities shall be installed, established, constructed, modified, operated and abandoned in accordance with the Act, these regulations, permit terms and conditions, and any orders of the Division or Department.

6.2. Compliance Orders. If the director or chief, upon inspection or investigation by an authorized representative or through other means observes, discovers or learns of a violation of the Act, these regulations, the State Water Pollution Control Act or its regulations, or any permit or order issued under the Act, he may issue an order requiring compliance within a specified time.

6.3. Permit Suspension or Revocation.

6.3.1. Suspension. A solid waste facility permit may be

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suspended by order of the director or chief for any of the following reasons:

6.3.1.a. Violation of the Act, these regulations or any order of the Division or Department issued thereunder;

6.3.1.b. Interference with a representative of the Department in the performance of his duties;

6.3.1.c. Failure to adhere to the terms and conditions of the permit or any order issued by the Division or Department under the Act or these regulations;

6.3.1.d. The permittee's failure in the application or during the permit issuance process to fully disclose all significant facts, or the permittee's misrepresentation of any significant facts at any time.

6.3.2. Revocation. A solid waste facility may be revoked by order of the director or chief for any of the following reasons:

6.3.2.a. Any deficiency at the solid waste facility constituting a imminent pollution, health or safety hazard;

6.3.2.b. Persistent violation of these regulations, permit terms and conditions, or orders issued by the Division or Department under the Act or these regulations;

6.3.2.c. The permittee's failure in the application or during the permit issuance process to fully disclose all significant facts, or the permittee's misrepresentation of any significant facts at any time.

6.3.3. Effect of Permit Suspension or Revocation.

6.3.3.a. Suspension. All solid waste processing, recycling or disposal activities and receipt of any solid waste at the solid waste facility shall cease within fifteen (15) days of receipt of an order of suspension. Receipt of solid waste and operations at the solid waste facility may continue beyond fifteen (15) days only after expiration of the order of suspension, or upon revocation of the order of suspension, by the Division.

6.3.3.b. Revocation. All solid waste processing, recycling, or disposal activities and receipt of any solid waste at the solid waste facility shall cease immediately upon receipt of an order of revocation. The solid waste facility owner shall submit an application for a permit to abandon or close the facility or a new application for solid waste facility permit

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within the time specified in an order of revocation.

6.3.3.c. Environmental Monitoring and Control. Environmental monitoring and control activities specified in an order or permit suspension or revocation shall continue at the solid waste facility for the duration of such order or until the Division approves their cessation.

§47-38-7. Open Dumps.

7.1. Prohibition.

7.1.1. Creation, contribution of solid waste to, or operation of an open dump is prohibited unless such open dump is under a compliance schedule approved by the Division.

7.1.2. No landowner shall allow an open dump to exist on his property unless such open dump is under a compliance schedule approved by the Division.

7.1.3. The provisions of Sections 7.1.1 and 7.1.2 of these shall not prevent a person from disposing of solid waste from his own household upon his own private, rented or leased property as long as such solid waste disposal does not create a public nuisance, hazard to health, or violate the terms of W. Va. Code §20-5A-15 or any other provision of the Code.

7.2. Minimum Performance Standards.

7.2.1. General. Solid waste facilities which do not comply with the standards established in this subsection are open dumps.

7.2.2. Valid Permit. Solid waste facilities shall have a valid permit from the division.

7.2.3. State Law. Solid waste facilities shall comply with state law.

7.2.4. Site and Operating Standards. Solid waste facilities which do not comply with the following standards constitutes solid waste disposal in a manner that does not protect the environment, and shall be classified as open dumps.

7.2.4.a. Solid waste disposal facilities shall apply cover material at the end of each operating day or other approved frequency and in such a manner as to impede disease vector access to the waste and reduce risk of fire or other techniques appropriate to protect public health and approved in writing by the Division.

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7.2.4.b. Solid waste facilities shall not contribute or cause discharge of pollutants to the waters of the State in violation of the State Water Pollution Control Act or regulations pursuant to that act. Solid waste facilities shall not cause a discharge of dredged or fill material to the waters of the State in violation of the requirements of Section 404 of the Clean Water Act.

7.2.4.c. Solid waste facilities shall not engage in open or uncontrolled burning of solid wastes. This requirement shall not apply to infrequent burning in the field of agricultural or silvicultural wastes, land-clearing debris, diseased trees, or debris from emergency clean-up operations, provided that no such burning shall be permitted without the express consent of the West Virginia Air Pollution Control Commission and Division of Forestry of the Department of Agriculture.

7.2.4.d. Groundwater (Reserved).

7.2.4.e. The concentration of explosive gases generated by solid waste facilities shall not exceed twenty-five percent (25%) of the lower explosive limit for the gases in facility structures, excluding gas control or recovery structures; nor one hundred percent (100%) of the lower explosive limit for the gases at the property boundary.

7.2.4.f. Solid waste facilities shall limit public access to minimize potential health and safety hazards.

7.2.4.g. Solid waste facilities in floodplains shall not restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the one hundred (100) year floodplain, or result in the carrying away of solid waste by waters of the one hundred (100) year flood so as to pose a hazard to human life or wildlife or land or water resources.

7.2.4.h. Solid waste facilities shall not cause or contribute to the taking of any endangered or threatened species of plant, fish or wildlife; nor cause or contribute to the destruction or adverse modification of a critical habitat of endangered or threatened species of plants, fish or wildlife as identified by the Endangered Species Act or regulations pursuant to it. For the purposes of this subsection "taking" means harrassing, harming, pursuing, wounding, killing, capturing, collecting or attempting to engage in such conduct.

7.2.4.i. Solid waste facilities shall not receive solid waste which may be designated as hazardous or infectious waste under the provisions of the State Hazardous Waste Management Act or regulations pursuant to that act.

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7.2.4.j. Solid waste disposal facilities shall employ methods to minimize bird attraction when any part of the facility is within five thousand (5000) feet of any airport runway.

7.3. Schedules of Compliance for Open Dumps.

7.3.1. Schedules of compliance for open dumps shall contain a sequence of enforceable actions, with specific times or dates for completion of each action.

7.3.2. Time schedules of compliance for open dumps shall not exceed a total time period for all compliance actions of three (3) years from the date of issuance of the compliance schedule by the Division or Department.

§47-38-8. Permits By Rule.

8.1. Applicability.

8.1.1. Recycling facilities existing on the effective date of these regulations shall be considered to have a valid permit from the Department if the requirements of Sections 8.2 and 8.3 of these regulations.

8.1.2. Recycling facilities which are developed after the effective date of these regulations shall be considered to have a valid permit from the Department upon fulfilling the requirements of Sections 8.2 and 8.3 of these regulations.

8.2. Notification of Activity.

8.2.1. Existing Qualifying Recycling Facilities.

8.2.1.a. Notification. Any existing recycling facility which qualifies for a permit by rule shall notify the Division of its existence within ninety (90) days of the effective date of these regulations.

8.2.1.b. Certification. Within six (6) months of the effective date of Section 8.3 of these regulations existing qualifying recycling facilities shall certify to the Division in writing that the provisions of that subsection have been fulfilled.

8.2.2. New Qualifying Recycling Facilities.

8.2.2.a. Notification. Any new recycling facility which qualifies for a permit by rule shall notify the Division of its existence prior to installation, establishment, construction, modification or operation of the recycling facility.

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8.2.2.b. Certification. Any new recycling facility which qualifies for a permit by rule and is established prior to the promulgation of Section 8.3 of these regulations shall certify to the Division in writing, within six (6) months of the effective date of that subsection, that the requirements under Section 8.3 of these regulations have been fulfilled.

8.2.2.c. Certification. Any new recycling facility which qualifies for a permit by rule and is established after the effective date of Section 8.3 of these regulations shall certify to the Division in writing that the requirements of that subsection have been fulfilled prior to installation, establishment, construction, modification or operation of the recycling facility.

8.2.3. Form of Notification and Certification. Notification and certification required by Section 8.2 of these regulations shall be made to the Division on forms and in the manner prescribed by the Department.

8.3. Recycling Facility Standards (Reserved).

§47-38-9. Permit Review By The Director.

9.1. Ability to Review Permit Issuance. The director may commence review of the issuance of solid waste facility permit within thirty (30) days of issuance of such permit by the Division. Any review of issuance of a solid waste facility permit undertaken by the director shall be complete and an order issued by the director under Section 9.3 of these regulations within ninety (90) days of the issuance of such permit by the Division.

9.2. Basis of Permit Review by the Director. The director, in reviewing a permit issued, may use any information available to him concerning such solid waste facility permit including, but not limited to:

9.2.1. Information in the application for a solid waste facility permit;

9.2.2. Public comment;

9.2.3. Other information supplied by the applicant for such permit;

9.2.4. Information from any Division of the Department of Natural Resources;

9.2.5. Other information not herein specified;

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9.2.6. Information acquired at a public hearing. A public hearing may be conducted by the Department during review of issuance of a permit by the director. A physical record of a public hearing shall be made part of the Department's order of permit review required in Section 9.3 of these regulations.

9.3. Decision by the Director.

9.3.1. Order of Permit Review. The director shall issue an order of permit review upon completion of any review of a permit issued. The director may, upon completion of permit review, deny issuance of such permit, concur with issuance of such permit or remand the permit issued to the Division for further consideration or modification with specific instructions concerning any issue included in Section 9.3.2 of these regulations.

9.3.1.a. The order of permit review shall include, at a minimum, a description of all sources of information used in review of the permit issued, a description of the action ordered by the director, and all reasons for ordering such action.

9.3.2. Basis for Permit Denial by the Director. The director may deny issuance of a solid waste facility permit when he determines that issuance of such permit:

9.3.2.a. Would adversely affect natural resources under his supervision;

9.3.2.b. Would cause irreparable damage to the environment near the proposed solid waste facility;

9.3.2.c. Would result in endangerment of property of others;

9.3.2.d. Would result in permanent aesthetic degradation on or near the proposed solid waste facility;

9.3.2.e. Is significantly adverse to the sentiment of the public in the area of the proposed solid waste facility location.

§47-38-10. General Administration and Enforcement.

10.1. General Supervision.

10.1.1. The Department and Division shall exercise general supervision over the administration and enforcement of the Act, these regulations, existing permits and any permits and orders issued pursuant to the Act and these regulations.

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10.1.2. Whenever necessary to carry out the objectives of the Act and these regulations the Division may require any person responsible for an open dump, solid waste facility or other place where solid waste is present to:

10.1.2.a. Establish and maintain such records;

10.1.2.b. Make such reports;

10.1.2.c. Install, use and maintain such monitoring equipment, facilities or methods;

10.1.2.d. Take and analyze samples of soils, water, wastes or air at such locations and intervals, and in such manner as the Division shall prescribe; or

10.1.2.e. Provide such other information as the Division may reasonably require.

10.1.3. Whenever necessary to carry out the objectives of the Act and these regulations an authorized representative of the Division:

10.1.3.a. Shall have the right to enter, at reasonable times, upon or through any premises in which solid waste is present or any records required to be maintained under Section 10.1.2 of these regulations are located;

10.1.3.b. May, at reasonable times, have access to and copy, at the expense of the department, any records required to be maintained under Section 10.1.2 of these regulations.

10.1.3.c. May inspect, at reasonable times, any monitoring equipment, facilities or methods required under Section 10.1.2 of these regulations.

10.1.3.d. May inspect, at reasonable times, any open dump, solid waste facility or other place where solid waste is present; and

10.1.3.e. May sample any soils, water, wastes or air at any open dump, solid waste facility or other place where solid waste is present.

10.2. Permit Administration and Inspections.

10.2.1. The Division may require prior submission of plans, specifications and other data pertaining to installation, establishment, construction, modification, operation or abandonment of a solid waste facility or solid waste disposal in connection with issuance, suspension or revocation of such

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permits as are required by the Act and these regulations.

10.2.2. The Division shall inspect every approved solid waste facility in this State at least three (3) times in each calendar year in order to implement and enforce the provisions of the Act, these regulations and any permits or orders issued pursuant to the Act and these regulations.

10.3. Enforcement.

10.3.1. If the Division has reasonable cause to believe that a potential for environmental, aesthetic or property value degradation, or hazards to health or safety exist at any open dump, solid waste facility or other place where solid waste is present the Division may require any person responsible for such open dump, solid waste facility or place to conduct such tests and to furnish such information as may be reasonably required to determine whether such open dump, solid waste facility or place where solid waste is present is, or may be causing such degradation or hazard; and the Division may conduct any test or tests deemed necessary or useful by the Division in making an investigation or determination.

10.3.2. The Department or Division may perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of the Act and these regulations.

§47-38-11. Appeals.

11.1. Appeals to the Water Resources Board. Any person having an interest which is or may be affected, or who is aggrieved by any order of the Division or Department, issuance or denial of any permit, or any permit terms or conditions may appeal such action to the Water Resources Board in the same manner as appeals are taken under W. Va. Code §20-5A-15.

§47-38-12. Proof of Proper Solid Waste Disposal.

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

12.2. Proof of proper solid waste disposal includes:

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

12.2.2. Records, including bills of receipt, demonstrating that a person has delivered his waste to an approved solid waste

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facility for disposal.

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

12.3.1. The name, address, and telephone number of the individual who delivered the waste for disposal;

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

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

12.4. All records required under Section 12 of these regulations must be maintained for a minimum of three (3) years and be made available for inspection by an authorized representative of the director upon request.

§47-38-13. Solid Waste Assessment Fee Collection Exemptions.

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

13.1.1. In order to obtain a certificate of exemption under Section 13.1 of these regulations, a person must submit the following information to the Department:

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

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

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

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

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

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

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

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

13.2.1. In order to obtain a certificate of exemption under Section 13.2 of these regulations, a person must submit the following information to the Department:

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

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

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

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

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

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

13.3.1. Days and times for the exempt disposal of residential solid waste must be designated by the owner or operator of each approved facility in the State and submitted to the director for approval by August 1, 1988. The owner or operator must designate at least ten (10) hours per week for the exempt disposal of residential waste.

13.3.2. If the owner or operator of an approved facility

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fails to submit the days and times for the exempt disposal of residential waste in accordance with Section 13.3.1 of these regulations, the director will set such days and times for that facility.

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

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

13.4. After reviewing the information submitted by a person seeking an exemption under Section 13.1 or 13.2 of these regulations, Department personnel will recommend to the director that:

13.4.1. A certificate of exemption be granted;

13.4.2. A certificate of exemption be denied; or

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

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

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

13.6. Whenever a change occurs which modifies the information submitted under Section 13.1 or 13.2 of these regulations, the person granted a certificate of exemption must, within fourteen (14) days, submit written notice to the Department detailing the change.

13.6.1. Failure by a person granted a certificate of exemption to submit the change of information notice required under Section 13.6 of these regulations constitutes cause for revoking the certificate.

TABLE 1

Schedule of Solid Waste Facility Permit Application Fees

Type of Solid Waste Facility	Application Fee
Class A Sanitary Landfill	\$5,000.00
Class B Sanitary Landfill	\$3,000.00
Transfer Station	\$2,000.00
Construction/Demolition Landfill	\$2,500.00
Other Solid Waste Facilities not herein specified	\$2,500.00
Renewal of Permit	\$1,000.00
Solid Waste Facility Closure	\$2,500.00
Modification to Approved Solid Waste Facility	\$500.00
Resource Recovery Facility	(Reserved)
Class C Sanitary Landfill	(Reserved)



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Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

August 26, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Natural Resources

RULE: Amendments to Series 38, Solid Waste Management

DATE FILED AS AN EMERGENCY RULE: July 15, 1988 and amended
August 11, 1988

DECISION NO. 12-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 26, 1988
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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DECISION EMERGENCY RULE DECISION (ERD 12-88)

AGENCY: Department of Natural Resources
RULE: Amendments to Series 38, Solid Waste Management
FILED AS AN EMERGENCY RULE: July 15, 1988 and amended August 11, 1988

- par. 1 The DNR has filed the above amendments to Series 38 as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The DNR has filed this emergency rule with supporting documents with the Secretary of State on July 15, 1988 and with the LRMRC on August 12, 1988.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §20-5F-4 reads in part:

(a) The director shall adopt rules and regulations in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and regulations and establishing permit application fees up to an amount sufficient to defray the costs of permit review.

par. 9 WV Code 20-5F-5a reads in part:

§20-5F-5a reads in part:

(e) Exemptions. -- The following transactions shall be exempt from the fee imposed by this section:

(1) Disposal of solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the department of natural resources by regulation as exempt from the solid waste assessment fee.

par. 10 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:


(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the DNR are as follows:

On June 30, 1988, the State Tax Department filed an emergency rule with the Secretary of State to impose solid waste assessment fees pursuant to W. Va. Code §20-5F-5a. Such fees will be imposed upon all individuals who dispose of solid waste at approved solid waste facilities in this State unless the Director of the Department of Natural Resources implements the three fee collection exemptions that are provided under W. Va. Code §20-5F-5a(3). Thus, this amendment to the existing Series 38 legislative rule is being promulgated on an emergency basis in order to prevent the substantial harm to the public interest that would result from the imposition of fees upon individuals whom the Legislature has intended to exempt from such fee collection.

- par. 14 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.
- par. 15 This decision shall be cited as Emergency Rule Decision 12-88 or ERD 12-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the DNR, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 26, 1988
ADMINISTRATIVE LAW DIVISION

Entered _____