

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

JUL 7 3 19 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Department of Commerce, Labor and Environmental Resources
AGENCY: Division of Environmental Protection TITLE NUMBER: 47

RULE TYPE: _____; CITE AUTHORITY _____

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 6, 1993 AT 12:00 a.m. (midnight). ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Division of Environmental Protection
Office of Waste Management
Attn: Bill Rheinlander
1356 Hansford Street
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUL 7 3 22 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

Department of Commerce, Labor and Environmental Resources
AGENCY: Division of Environmental Protection TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code 20-11-8(c)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

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

DATE OF PUBLIC HEARING: August 6, 1993 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street, East

Charleston, West Virginia 25311-2599

COMMENTS LIMITED TO: ORAL ___ , WRITTEN ___ , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Waste Management, DEP

Attn: Bill Rheinlander

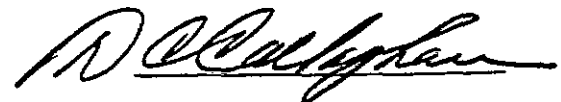
1356 Hansford Street

Charleston, WV 25301

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

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



6.04



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 7, 1993

David C. Callaghan
Director
Division of Environmental Protection
#10 McJunkin Road
Nitro, West Virginia 25143-2506

Re: Proposed Rule - Title 47, Series 38F - Lead Acid Battery
Regulations

Dear Director Callaghan:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR\lab
cc: Bill Rheinlander

t:\leadacid.rul

FISCAL NOTE FOR A PROPOSED RULE

Rule Title: Title 47, Series 38F, "Lead Acid Battery Regulations"

Type of Rule: XX Legislative Interpretive Procedural

Agency: Department of Commerce, Labor and Environmental Resources
Division of Environmental Protection

Address: 1356 Hansford Street, Charleston, West Virginia 25301

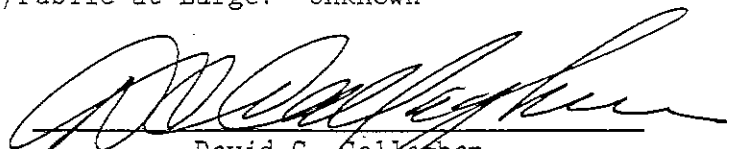
1. Effect of Proposed Rule	ANNUAL			FISCAL YEAR	
	Increase	Decrease	Current	Next	Thereafter
-Personal Services					
-Current Expense			UNKNOWN		
-Repairs and Alterations					
-Equipment					
-Other					

2. Explanation of Above Estimates: The promulgation of these rules should not result in the need of additional personnel, equipment and other related costs to efficiently and orderly regulate the proper handling of lead acid batteries.

3. Objectives of These Rules: To establish requirements and guidelines for the proper storage, handling, recycling and disposal of lead acid batteries.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government: Unknown.
- B.
 - 1. Economic Impact on Political Subdivisions: Unknown
 - 2. Economic Impact on Specific Industries: Unknown
 - 3. Economic Impact on Specific Groups of Citizens: Unknown
- C. Economic Impact on Citizens/Public at Large: Unknown


David C. Callaghan
Director

Date: July 2, 1993

PREAMBLE TO A PROPOSED RULE CONCERNING A
COMPREHENSIVE LEAD ACID BATTERY PROGRAM

AGENCY: Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection

REGULATION: Title 47, Series 38F, "Lead Acid Battery Regulations"

AUTHORITY: West Virginia Code §20-11-8(c)

ACTION: Filing of a Propose Rule

SUMMARY: During the 1993 Legislative Session, Senate Bill No. 400 became effective April 9, 1993. This bill created Section c under existing Article 11 Chapter 20 of the West Virginia Code. The rules promulgated with this filing are necessary for implementation of a comprehensive program for the efficient and necessary regulation of lead acid batteries in the State of West Virginia.

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
SERIES 38F
LEAD ACID BATTERY REGULATIONS

TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.0	GENERAL.....	1
2.0	DEFINITIONS.....	2
3.0	LEAD ACID BATTERY HANDLING, STORAGE AND DISPOSAL REQUIREMENTS.....	2
3.1	Certain Disposal Prohibited.....	2
3.2	Disposal by Dealers.....	2
3.3	Collection for Recycling and Public Notice Requirements.....	2
3.4	Dealer's Reporting Requirements.....	3
3.5	Inspection of Automotive Battery Retailers.....	3
3.6	Storage.....	3
3.7	Public Information and Education.....	3

FILED

JUL 7 3 19 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38F
LEAD ACID BATTERY REGULATIONS

47-38F-1. GENERAL

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

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

1.3. **Filing Date.**

1.4. **Effective Date.**

47-38F-2. DEFINITIONS

All definitions in Chapter 20 Article 5F Section 2, including all amendments thereto, are fully incorporated into these regulations by reference. The following additional definitions shall apply to these rules unless otherwise specified herein:

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

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

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

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

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

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

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

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

3.3.1. Accept, at the point of transfer, a quantity at least equal to the number purchased, spent lead acid batteries from customers in exchange for new batteries purchased. It is not necessary to exchange a used battery in order to purchase a new one.

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

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

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

3.3.2.c. State rules require us to accept used or spent lead acid batteries for recycling in exchange for new batteries purchased from the dealer.

3.4. **Dealer's reporting requirements.** Lead acid batteries shall be collected, recycled, or disposed of in a lawful manner, and records of such collection, recycling or disposal shall be kept on file at the facility for a period of not less than five (5) years for inspection. The dealer also shall send a copy of the report annually to the local or regional solid waste authority in the county or region in which the lead acid battery storage facility is located.

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

3.6. **Storage.** New lead acid batteries and spent lead acid batteries shall be stored safely and in accordance with applicable USEPA rules and regulations to prevent contamination or injury from acid spillage or leakage.

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

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 400

(SENATORS CRAIGO, BRACKENRICH AND BOLEY,
original sponsors)

[Passed April 9, 1993; in effect from passage.]

AN ACT to amend and reenact section eight, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the deadline for prohibition on the disposal of yard waste, lead-acid batteries and tires in solid waste facilities.

Be it enacted by the Legislature of West Virginia:

That section eight, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WEST VIRGINIA RECYCLING PLAN.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

- 1 (a) Effective the first day of June, one thousand nine
- 2 hundred ninety-four, it shall be unlawful to deposit

3 yard waste, including grass clippings and leaves, and
4 lead-acid batteries in a solid waste facility in West
5 Virginia; effective the first day of June, one thousand
6 nine hundred ninety-five, it shall be unlawful to
7 deposit tires in a solid waste facility in West Virginia:
8 *Provided*, That such prohibitions do not apply to a
9 facility designed specifically to compost such yard
10 waste or otherwise recycle or reuse such items:
11 *Provided, however*, That reasonable and necessary
12 exceptions to such prohibitions may be included as
13 part of the rules promulgated pursuant to subsection
14 (c) of this section.

15 (b) No later than the first day of May, one thousand
16 nine hundred ninety-three, the solid waste manage-
17 ment board shall design a comprehensive program to
18 provide for the proper handling of yard waste and
19 lead-acid batteries. No later than the first day of May,
20 one thousand nine hundred ninety-four, a comprehen-
21 sive plan shall be designed in the same manner to
22 provide for the proper handling of tires.

23 (c) No later than the first day of August, one
24 thousand nine hundred ninety-three, the division of
25 environmental protection shall promulgate rules, in
26 accordance with chapter twenty-nine-a of this code, as
27 amended, to implement and enforce the program for
28 yard waste and lead-acid batteries designed pursuant
29 to subsection (b) of this section. No later than the first
30 day of August, one thousand nine hundred ninety-
31 four, the division of environmental protection shall
32 promulgate rules, in accordance with said chapter, as
33 amended, to implement and enforce the program for
34 tires designed pursuant to subsection (b) of this
35 section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

.....*Ernest C. Moore*.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

.....*[Handwritten Signature]*.....
Clerk of the Senate

.....*[Handwritten Signature]*.....
Clerk of the House of Delegates

.....*[Handwritten Signature]*.....
President of the Senate

.....*[Handwritten Signature]*.....
Speaker House of Delegates

The within *is approved* this the *21st*
day of *April*, 1993.

.....*[Handwritten Signature]*.....
Governor

RECEIVED

1993 APR 22 AM 10:44

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. 400

(By Senator *Craig, et al.*)

PASSED April 9, 1993

In Effect from Passage

***PROGRAM FOR THE
PROPER HANDLING OF
LEAD ACID BATTERIES***

THE SOLID WASTE MANAGEMENT BOARD

May 1, 1993



PRINTED ON RECYCLED PAPER

WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD

CHAIR

Mrs. Joyce Manyik
1146 Summit Drive
St. Albans, WV 25177
Term Ending: June 30, 1995

VICE CHAIR

Mr. Mark Nesselroad
1369 Stewartstown Road
Morgantown, WV 26505
Term Ending: June 30, 1996

MEMBERS

Mrs. Martha Moore
928 Riverside Drive
Welch, WV 24801
Term Ending: June 30, 1993

Mr. John H. Martin
Rt. 5, Box 194
Morgantown, WV 26505
Term Ending: June 30, 1994

EX OFFICIO MEMBERS

William T. Wallace, MD, MPH
Commissioner,
Bureau of Public Health
Bldg. 3, Room 519
Capitol Complex
1900 Kanawha Blvd. East
Charleston, WV 25305

(Proxy) Joseph P. Schock
Dept. of Health & Human
Resources
Environmental Health
815 Quarrier St. Ste. 418
Charleston, WV 25301

David C. Callaghan
Director
Division of Environmental
Protection
#10 McJunkin Road
Nitro, WV 25143-2506

(Proxy) Max Robertson/
Dick Cooke
Division of Environmental
Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301



LEAD ACID BATTERIES

During the 1993 session the Legislature passed Senate Bill 400 amending W. Va. Code § 20-11-8 regarding the disposal of lead acid batteries in solid waste facilities. That legislation also directed the Solid Waste Management Board to prepare a comprehensive program to provide for the proper handling of this item. The program presented in this document is intended to fulfill this requirement. The Division of Environmental Protection (DEP) is to subsequently promulgate rules for implementation.

Lead acid batteries commonly used in vehicles, can create disposal problems. Landfilling presents the risk of ground water contamination. Given present disposal options, recycling is the only safe solution. Recycling these batteries not only conserves natural resources and energy, it reduces risks to human health and the environment.

These batteries use lead as both electrodes and sulfuric acid as the electrolyte. The average lead acid battery weighs approximately 35 pounds. Approximately half of this weight is lead and the remainder about a gallon of sulfuric acid, the battery case, and fittings. These batteries are 100% recyclable (including the plastic casing). According to the United States Environmental Protection Agency (USEPA), the current U.S. recycling rate is over 80%; the recovered lead represents 60% of the overall U.S. market demand for lead according to the Washington, DC Recycling Plan.

Most lead acid batteries are collected at local automotive service or repair garages. Some of these are collected through local household hazardous-waste collection programs operated by local governments. Overall, the collection and recycling efforts for



lead acid batteries tends to be successful because collection and recycling programs operated by automotive garages and repair centers serve as centralized collection points with very little inconvenience to the consumer. Ultimately, the primary motivation for the recovery of automobile batteries is the profit from the sale of lead.

A West Virginia Solid Waste Management Board (SWMB) study indicates batteries of all types only make up a small percentage of our waste stream. But batteries are one of the most toxic items which find their way into the municipal solid waste stream. When the large quantities of sulfuric acid and lead, enclosed in relatively inert plastic cases crack under compaction, or the lids come off the individual cells, the acid is released to react with other contents of the landfill. Because of this, these items should never be permitted into a municipal solid waste landfill.

Senate Bill 400 states that effective June 1, 1994, it shall be unlawful to deposit lead acid batteries in a solid waste facility in West Virginia. The DEP is mandated to promulgate regulations regarding the proper handling and disposal.

These proper handling and disposal rules should address the following:

- (a) **Certain disposal prohibited.** After the effective date of the bill, no person may place a lead acid battery in mixed municipal solid waste for disposal in a landfill. Used batteries should be delivered to an automotive battery retailer or wholesaler, a secondary lead smelter permitted by the United States Environmental Protection Agency (USEPA), or a collection or recycling facility authorized under the laws of the state of West Virginia.



(b) **Disposal by dealers.** No automotive battery retailer shall dispose of a used lead acid battery except by delivery to a secondary lead smelter permitted by the USEPA , or to the agent of a battery manufacturer or wholesaler for delivery to a secondary lead smelter permitted by the USEPA, or a collection or recycling facility authorized under the laws of the state of West Virginia.

(c) **Collection for recycling.** Any person selling or offering lead acid batteries for sale at retail shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number purchased, used lead acid batteries from customers in exchange for new batteries purchased. It is not necessary to exchange a used battery in order to purchase a new one.

(2) Post written notice which must be at least 8½ inches by 11 inches in size and must contain the universal recycling symbol and the following language:

- (i) "It is illegal to dispose of a motor vehicle or other lead acid battery in a landfill."
- (ii) "Recycle your used batteries."
- (iii) "State rules require us to accept used motor vehicle or other lead acid batteries for recycling in exchange for new batteries purchased."



- (d) **Lead acid battery wholesalers.** Any person selling new lead acid batteries at wholesale shall accept at the point of transfer used lead acid batteries from customers in a quantity at least equal to the number purchased.
- (e) **Inspection of automotive battery retailers.** All notices required by subsection (c) should be printed and distributed by the DEP to all places where lead acid batteries are offered for sale at retail. The DEP may inspect any place, building or premises governed by these rules. Authorized employees of the Division may issue warnings and citations to persons who fail to comply with the requirements of this section.

STORAGE

Lead acid batteries should be stored properly in accordance with USEPA regulations to prevent contamination or injury from acid spillage or leakage.

Batteries abandoned or stored in garages for which no new replacement would be purchased should be taken to one of the many buy-back centers that exist in the state. The SWMB will disseminate a current list of these buy-back centers prior to June 1, 1994.

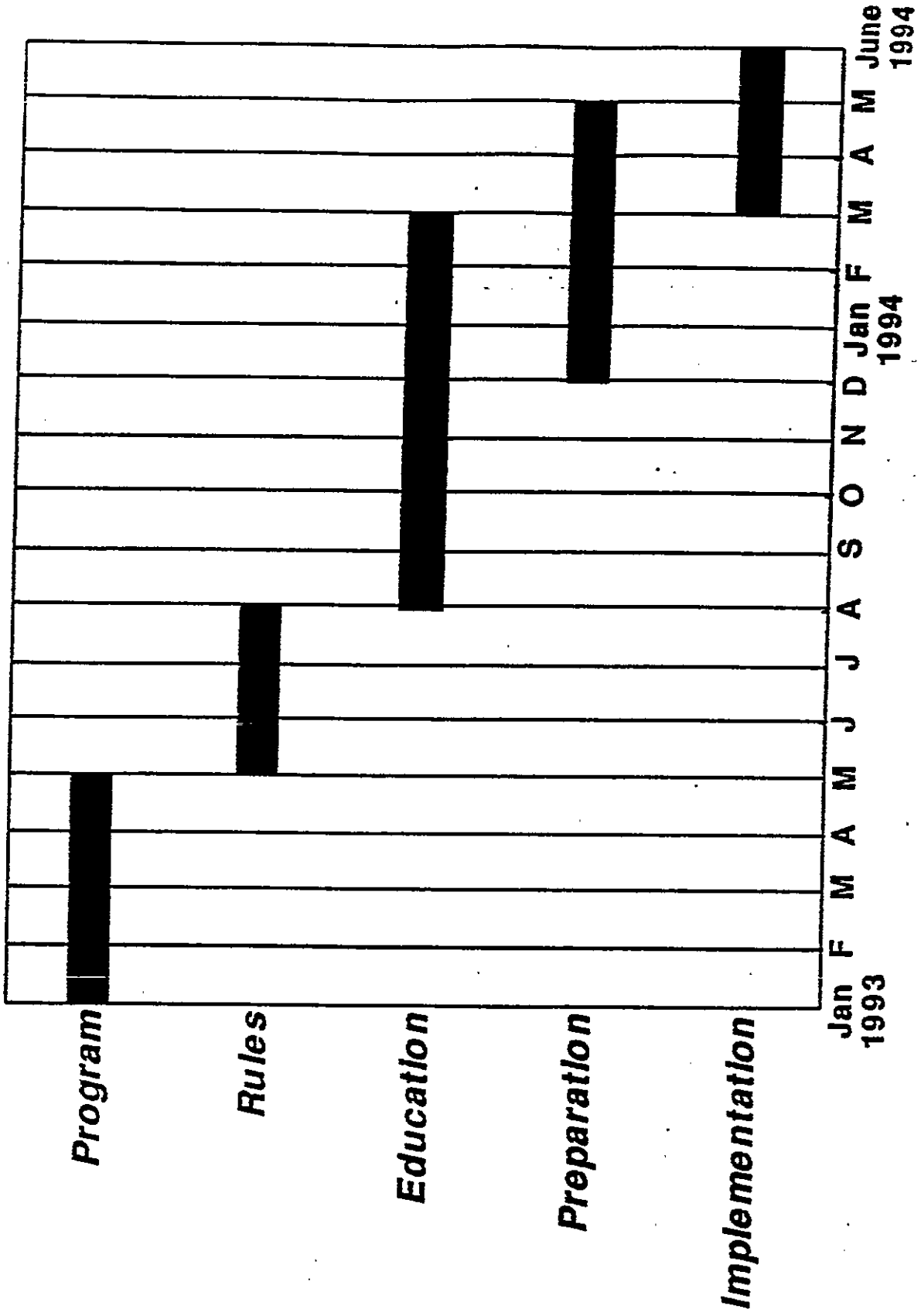
PUBLIC INFORMATION

The SWMB will establish a public information program regarding this prohibition in accordance with the Table of Milestones on page 5.



WV Solid Waste Management Board BATTERY PROGRAM

Table of Milestones



SWMB - 4/1/93

MONTH



PRINTED ON RECYCLED PAPER