

# WEST VIRGINIA

## SECRETARY OF STATE

KEN HECHLER

### ADMINISTRATIVE LAW DIVISION

Form #3

# FILED

AUG 16 4 54 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

#### NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

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"

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

G. Max Robertson by KE, Deputy Chief  
G. Max Robertson, Chief  
Office of Waste Management, DEP

1340

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

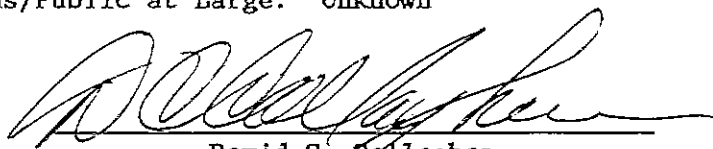
1. Effect of Proposed Rule	ANNUAL			FISCAL YEAR	
	Increase	Decrease	Current	Next	Thereafter
-Personal Services					
-Current Expense			UNKNOWN		
-Repairs and Alterations					
-Equipment					
-Other					

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: August 16, 1993

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Commerce, Labor and Environmental  
Resources; Division of Environmental Resources

LEGISLATIVE RULE TITLE: "Lead Acid Battery Regulations"

1. Authorizing statute(s) citation West Virginia Code 20-11-8(c)

2. a. Date filed in State Register with Notice of Hearing  
July 7, 1993

b. What other notice, including advertising, did you give  
of the hearing?

State wide press release.

c. Date of Hearing(s) August 6, 1993

d. Attach list of persons who appeared at hearing,  
comments received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

August 16, 1993

f. Name and phone number(s) of agency person(s) to  
contact for additional information:

Bill Rheinlander, 558-5929

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

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FILED

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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 for purposes of commerce, recycling or disposal.

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

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

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

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

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

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

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

3.3.2.             Post written notices using at least one inch size letters on a poster clearly visible to all customers and containing the universal recycling symbol and the following language:

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

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

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

3.4. **Dealer's reporting requirements.** Lead acid batteries shall be collected, recycled, or disposed of in a lawful manner, and records of such collection, recycling or disposal shall be kept on file at the facility for a period of not less than three (3) years for inspection. 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 dealers.** Authorized agents of the Division of Environmental Protection may at reasonable times or during normal business hours inspect any lead acid battery storage facility governed by these rules.

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

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

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY W.Va. Code 20-11-8(c)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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G. Max Robertson by KE, Deputy Chief  
G. Max Robertson, Chief  
Office of Waste Management, DEP

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Commerce, Labor and Environmental  
Resources; Division of Environmental Resources

LEGISLATIVE RULE TITLE: "Lead Acid Battery Regulations"

1. Authorizing statute(s) citation West Virginia Code 20-11-8(c)

2. a. Date filed in State Register with Notice of Hearing  
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comments received, amendments, reasons for amendments.  
Attached X No comments received           

e. Date you filed in State Register the agency approved  
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(be exact)  
August 16, 1993

f. Name and phone number(s) of agency person(s) to  
contact for additional information:  
Bill Rheinlander, 558-5929

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

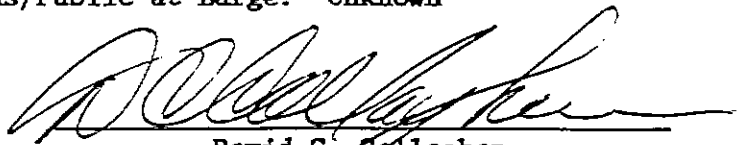
1. Effect of Proposed Rule	ANNUAL			FISCAL YEAR	
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-Current Expense			UNKNOWN		
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3. Objectives of These Rules: To establish requirements and guidelines for the proper storage, handling, recycling and disposal of lead acid batteries.

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- 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: August 16, 1993

## RESPONSIVENESS SUMMARY

### COMMENTS GENERATED BY THE PUBLICATION AND PUBLIC HEARING FOR THE DIVISION OF ENVIRONMENTAL PROTECTION'S PROPOSED LEAD ACID BATTERY REGULATIONS TITLE 47, SERIES 38E

On July 7, 1993, proposed Lead Acid Battery Regulations were filed with the Secretary of State's office. Subsequent to a thirty day review, a public hearing was held at the Office of Air Quality's Conference Room in Charleston, West Virginia. Attendees at the public hearing provided oral and written comments to the Division of Environmental Protection on the proposed regulations. Copies of the written comments, a transcript of the hearing and a list of attendees is attached.

Subsequent to the hearing, the Division of Environmental Protection reviewed the comments and made modifications to the Proposed Lead Acid Battery Regulations and within the authority of the agency. This document summarizes the comments, provides the agency's response to those comments and identifies changes made to the proposed regulations as a result.

Due to the number of written and oral comments, the agency has chosen to categorize the comments by the pertinent sections of the proposed regulations to which they refer, summarize the general intent of the specific comments, and respond accordingly. In the Responsive Summary, the referenced section is noted, comments are summarized and responses are made accordingly. If changes were made to the referenced section, the revised section will then follow.

The agency wishes to express its appreciation to the commentors for providing input to the regulatory process. It is hoped that the modifications made as a result of the many comments have resulted in an equitable, workable regulation that will respond to the Legislative mandate of establishing a statewide storing, handling, recycling, and disposal of acid batteries and be protective of the environment and the citizens of the State of West Virginia.

**COMMENT** - One commentor suggested that the definition of "lead acid battery storage facility" was overly broad in its scope as drafted.

**RESPONSE** - By adding "for purposes of commerce, recycling, or disposal" to the definition narrows down, the scope of definition, in Section 2.2.

**COMMENT** - One commentor suggested that an exemption from the general prohibition on disposal of spent lead acid batteries generated by households and the like should be included in the Lead Acid Battery Regulations.

**RESPONSE** - The exemption of prohibition on disposal of spent lead acid batteries generated by households has been addressed under the section 3.1 and the Hazardous Waste Regulation which is the other jurisdiction.

**COMMENT** - One commentor suggested that the definition of retailer in section 3.5 is overly broad, and fails to remain within its intended scope; which is to regulate those persons dealing in lead acid batteries for profit.

**RESPONSE** - By deleting the word "retailers" and adding the word "dealers" would define the groups intended to be regulated.

**COMMENT** - A commentor suggested that the language specifying the exchange of spent batteries for new batteries was unclear in the drafted provision in section 3.3.1.

**RESPONSE** - By deleting "a quantity at least to equal to the number purchased" and "in exchange for a new batteries purchased" and adding "when purchases new batteries" would more clearly define the intent of this provision.

**COMMENT** - A commentor suggested that the word "safely" as used in Section 3.6 of the drafted regulations was "very nebulous" in its meaning.

**RESPONSE** - The comment regarding the nebulous word "safely" has been deleted and addressed by the adding "in compliance with all local, state and Federal Regulations".

**COMMENT** - A commentor suggested that the provision in Section 3.3.2. requiring at least one inch size letters in the post written notices would be practical.

**RESPONSE** - To provide an appropriate poster, your comment has been addressed by deleting "at least 8 1/2 inch by 11 inch" from the provision.

**COMMENT** - A commentor suggested that the word "should" as drafted in Section 3.1 was unclear and that the word "must" in its substitution would more clearly define the meaning of the regulation.

**RESPONSE** - To clarify the meaning of the language used in Section 3.1, the word "must" was substituted for the word "should".

**COMMENT** - Some commentors suggested that since under West Virginia Hazardous Waste Management Regulations Transfer Disposal Storage facilities must maintain collection and recycling records for a period of three (3) years, then the timeframe for collection and recycling record keeping under the lead acid battery regulations should also be three (3) years.

**RESPONSE** - The comments regarding keeping of collection records has been taken into consideration and has been changed to three (3) years from five (5) years in order to be persistent with the Hazardous Waste Management Regulations.

**COMMENT** - Some commentors asked how situations where lead acid batteries transported out of West Virginia for collection or recycling, would be addressed in Section 3.2 of the regulations.

**RESPONSE** - Section 3.2 was amended by adding the phrase "or laws of the state where the collection or recycling facility is located".

**COMMENT** - A commentor suggested that Section 3.4 be eliminated entirely because of record keeping and economics.

**RESPONSE** - This section of the regulation can not be deleted as whole, because the Hazardous Waste Mangement Regulation requires the records to be maintained for a period of three (3) years.

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 for purposes of commerce, recycling or disposal.

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

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

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

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

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

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

3.3.1. Accept, at the point of transfer, a quantity at least equal to the number purchased; spent lead acid batteries from customers in exchange for new batteries purchased; when purchases new batteries. 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 a poster clearly visible to all customers and containing the universal recycling symbol and the following language:

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

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

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

3.4. **Dealer's reporting requirements.** Lead acid batteries shall be collected, recycled, or disposed of in a lawful manner, and records of such collection, recycling or disposal shall be kept on file at the facility for a period of not less than ~~three (3)~~ 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 dealers.** Authorized agents of the Division of Environmental Protection may at reasonable times or during normal business hours inspect any lead acid battery storage facility governed by these rules.

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

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

**RHEINLANDER:** Good morning. My Name is Bill Rheinlander. I am a Public Information Officer with the Office of Waste Management with the Division of Environmental Protection. The purpose of this meeting is to give citizens an opportunity to comment on proposed regulations for the management of yard waste and lead acid battery disposal. The DEP developed the regulations at the direction of Senate Bill 400. West Virginia Law requires all municipal solid waste landfills to cease receiving yard waste and lead acid batteries on June 1, 1994. The agency approved regulations must be filed with the Secretary of State's Office by August 15. Advertisement for the meeting ... we sent out a news release statewide, and also it was advertised in the Secretary of State's Register. And I'll introduce the other folks here from the DEP. To my right is Paul Benedim. He's an Engineering Technician with the Solid Waste Management Section. To his right is [pause] Mike Miller is an Environmental Analyst with the Solid Waste Management Section. To his right is Max Robertson. He is the Chief of the Office of Waste Management. And to his right is Dick Cook. He's the Assistant Chief of the Solid Waste Management Section. And at this time, Dick Cook will give a brief summary of the regulations.

**COOK:** [Not speaking into microphone, making it difficult to hear recording] Primarily what we have attempted to do is to prepare what [noise over voice] reasonable requirements [inaudible] yard waste [inaudible] regulations in concert with the Solid Waste Management Board's yard waste composting programs and lead acid battery programs. One thing that I

would like to say, particularly since we have a small crowd here, unlike most hearings, that these proposed regulations are just as important as any of the other regulations. In lieu of the fact that it's a smaller crowd and not as much of a sensational issue; therefore, I would ask that anything in these regulations that are proposed that you feel may go beyond what will reasonably allow the program to have all the assets that are needed [inaudible] bring those concerns to our attention, particularly in light of the fact that these regulations were prepared shortly after [inaudible] sludge management regulations were prepared. And we certainly do not want to over regulate [inaudible] or get burdensome requirements in here that would discourage the activity instead of encourage [inaudible]. Please share your concerns with us on anything, no matter how small it may seem to be so that we have an opportunity to make sure this is what's best for the state and not a [inaudible]. Primarily what we've [inaudible] in the regs is to establish three types of facilities or activities. One being a commercial yard waste compost facility, which primarily would be a facility that accepts waste from sources other than one generator, but from many people generating such material to a facility that's in the business commercially of processing the yard waste. And we did put a maximum limit of 3,000 tons per month on that size facility. And that figure was derived at based on the [inaudible] state wide in communication with the state's office [inaudible]. For non-residential composting activities, we felt were necessary to address

landscape contractors, nurseries, greenhouses, lawn and garden companies [inaudible]. And we feel that it would be in the best interest [inaudible] commercial facility status for those type of people because it's full time generating these materials and [inaudible] the need of service. Back yard. Residential back-yard composting activities is primarily the lowest technology where John Q. Public or the residents of West Virginia would be engaged in yard waste composting. Should point out that neither non-residential activities or residential back-yard activities require a permit. They do not. But they do have some requirements so that we're aware of what's going on in your garden [inaudible] so that [inaudible] regulates those activities to make sure they're not degrading the environment. I believe there are some locations standards in regard to backyard facilities. If you're in an urban area, hopefully your activity will not inconvenience or interfere with adjacent neighbors or property owners.

**RHEINLANDER:** Thank you. We'll have two parts. We'll receive comments.

When you come up to give your comments, go to the microphone and just let us know whether it's on a battery issue or a yard waste issue. And then afterwards we can have an informal question and answer about the regs. So it's three people who would like to speak. Edgar Hooper, come to the podium.

**HOOPER:** Thank you. I'm with the WVU Extension Service, and I'm here representing Ron Swope, who is chairman of our subcommittee on

composting. Ron is the County Extension Agent in Fairmont, and that's one of those committees that the Extension Service has working in this area. So I'd just like to share the points with [inaudible]. He's in Fairmont today and couldn't come. And I'll be happy to forward these on to you. [Noise over voice.] ... information you all prepared and share it with some folks with the Extension, and this was their concern. The first point Ron mentioned was the term "backyard" should be removed from the regulations. Backyard is not defined and it implies a specific area of a residence. It is a general term commonly used to mean different things to different people and has no place in a legal document without a specific definition. The term "residential composting" conveys about just as much information as residential backyard composting without the possibility of haggling over location. The second point. This refers to Section 3.91 - Other Acceptable Compostable Materials. Also applies to residential and non-residential facilities. Residential composting should permit these items as long as they don't create a nuisance beyond the definition of the regulations. Number 3, Section 2.4. Under definitions, it should be worded in such a way that the mere presence of molds, bacteria, fungi, and other insects do not constitute a violation, since these organisms are part of the composting process. Present wording says, "Results In." These organisms can seem to make their presence constitute a nuisance. And he was concerned about that. Number 4 is the term "seasonal high ground water table," which is Section

25

3.2, 3.21, and 3.42 defined. Is it based on soil maps, soil type and other readily determined criteria, or is it something that can haunt an operator after the facility is built because of one unusually wet season. The operator should be able to determine this information before the facility is built. His last concern: What is the rationale for permitting fish and poultry carcasses/litter under Section 3.91, while prohibiting sludges, what kind, and animal manures, which is Section 3.1. There needs to be a provision for the farmers composting animal manures. That was the end of his concerns.

And I'd just make a comment. I've spent a lot of time in the last two years in this area, and I certainly agree with Mr. Cook. I think it needs to be something that will encourage composting, particularly in residential areas, and not prohibit it. And I think basically that you have that because the waste treatment in this state in yard waste, I think, is greater than we have a tendency to think, and I feel certainly this is an area of properly managing the yard waste area.

**RHEINLANDER:** Steve Hannah.

**HANNAH:** My name is Steve Hannah with the West Virginia Farm Bureau. We have almost in excess of 14,500 members in the state, and many of them have been composting for years, and many of them are in the landscaping and greenhouse business. And we'd like to make a few comments about this. I'm not sure that your statement, Mr. Cook, is ... I'm trying to make them simple is what happens as the end result. First of all, I think it is

*First* absolutely necessary that you withdraw these and redo them simply for the ~~physical~~ <sup>physical note</sup> ~~move~~. I didn't think the unknown statement in the ~~physical~~ <sup>physical note</sup> ~~move~~ meets the requirements of 29-A. I think it's this type of activity and regulations that may be why we have a 12% unemployment rate in the state, when you do not take into consideration what the economic impact on individual businesses, state, and county government. And I just think you have to do that. Providing you don't do that, though. That you don't withdraw them and start over again, we have some comments we'd like to make. In Section 2.9 - Yardways Composting, where I think it's unclear where you use in the definition minimum technology, low-level technology, and thus. I know there's somewhat of an explanation in the supplement, but there probably should be in the regs themselves. As Mr. Hoover mentioned, many people have been composting using animal manure, and 3.11A recommended that they [inaudible]. I'm not sure. I couldn't tell if you differentiated between animal manure and poultry litter, but there is a real need, particularly in poultry litter, to add chips, wood chips, or other carbon material to keep that carbon nitrogen balance there. And so we'd recommend [inaudible] would be added to that. I think that also we all need to be concerned what will happen with this yard waste material, particularly from nurseries, greenhouses, and so forth, once the solid waste authority or facilities will not be able to accept yard waste. Will there be some other facilities available for them at that time? I think that's necessary to have.

We're not sure that there's any need to have backyard and also the definition of backyard. Those need to be in there whatsoever. I think if you do leave them in there, that Section 3.3 on residential backyard and non-residential really needs to be cleaned up considerably. Very unclear. One area in there talks about the distance from a sink hole, as I read it, if you have a compost and it's a mile away from a sink hole in that watershed, you couldn't have it. So you recommended a hundred feet or some specified number of feet. I guess in summary, to put it blunt, these are a very poor set of regulations and we'd like to see you start over on them. Thank you.

**RHEINLANDER:** Avis Ites.

**ITES:** [Speaking from her seat, not into the microphone] I wanted to talk about the <sup>LAR's</sup> [inaudible].

**RHEINLANDER:** You can go ahead.

**ITES:** Well, I'm waiting on my comments; they're being faxed to me.

**RHEINLANDER:** Oh.

**ITES:** Hold on for a few minutes.

**RHEINLANDER:** You're the last speaker.

**UNIDENTIFIED:** Let's open the floor for discussion. If we're not doing [inaudible]

**RHEINLANDER:** That's fine.

**UNIDENTIFIED:** We're a small group here. Appreciate it [inaudible] valuable comments. [inaudible]

**ITES:** Okay, my name is Avis Ites, and I have some comments on your regulations

for lead acid batteries. And I have to apologize. I picked up my lead acid battery folder, but I had left my set of regulations outside that folder. So these were faxed to me, and it's a little difficult reading them.

*Deck*  
**UNIDENTIFIED:** Would you like to utilize this?

**ITES:** Well, the regulations came out okay. It's just that my comments. And this was last week when I was going through them. Just a couple of comments that I would like to make on the lead into the regulations. I'm not sure who prepared the [inaudible] ...

*Deck*  
**UNIDENTIFIED:** Solid Waste Management Board.

**ITES:** Okay. Solid Waste Management Board. I just have a couple of points to make right there because I think there are some statements, while they may be true, I don't think they're backed up with anything, and I think going about making statements without any backing can, down the road, lead to precarious situations. The second paragraph says, "Lead acid batteries commonly used in vehicles can create disposal problems." My question is, do they? We can always make statements lots of times that things can do this, but, indeed, we may have most of the people out there in West Virginia that are recycling their batteries or are disposing of them in a proper manner. So, while they can create problems, do we have a problem here in this state? The next difficult sentence I had is, "Landfill presents the risk of groundwater contamination." I would like for that to lead on further to say from what. Because I know that we have monitoring wells set up at our

landfills. They do regularly monitor the groundwater, so what are the results of that groundwater monitoring? Indeed, is there groundwater contamination under the new regulations set up for landfills and what can go into landfills, the liners and the system that is in place. I question just how big a potential of groundwater contamination there is. Given present disposal options. Well, what are the present disposal options? And it says recycling is the only safe solution. My question is why. These are statements. They all make sense, and we all tend to get led by the hand down this road, but I would like them substantiated. On page 2 of the Solid Waste Management Board, it says, "Solid Waste Management Board study indicates batteries of all types make up a small percentage of our waste drain." My question is how small? Small is a relative term. Is it 2%, is it 15%, is it less than 50%? I think knowing how small that percentage is can give us an idea as to the potential if there would be groundwater contamination from batteries being put into landfills. Okay, there is also the statement made, and I'm not a chemist, but I ask the question: When large quantities of sulfuric acid and lead, which are enclosed in the batteries, if the lids come off in the cells, the acid is released to react with other contents of a landfill. That's a true statement, but it goes on to say, because of this, these items should never be permitted into a municipal landfill. And on the surface I would agree, but is it not also true that the sulfuric acid could be reacting with something in the landfill which would

neutralize that sulfuric acid so that we can't always assume that because an acid is released in a landfill that it is going to create an even larger problem. Senate Bill 400 states that effective June 1, 1994, it shall be unlawful to deposit lead acid batteries in a solid waste landfill facility in West Virginia. That is probably a true statement; however, I would like to make a point that since the passage of the Resource Conservation and Recovery Act, lead acid batteries have been deemed a hazardous waste by the federal government, and since the adoption of those regulations by the state of West Virginia, they have been declared a hazardous waste here in West Virginia for quite some time now. And it is illegal to put hazardous waste in solid waste landfills, period. So the premise of my comments on these regulations is going to be dealing with the fact that I recognize lead acid batteries as a hazardous waste under the U.S. EPA law, and therefore, while household hazardous waste and if these regulations are intended for individuals, households and not industry and not business and government, then I think these regulations need to clarify that because industry does something different with the batteries than what is proposed here in these regulations. We treat our batteries as a hazardous waste. Specifically under the regulations, under Section 3.1, where it says certain disposal is prohibited, and I'd just like to reiterate that while these regulations give the date of June 1, 1994, these have already for other than households, these are already declared a hazardous waste by the state of West Virginia under

Hazardous Waste Management laws and by the U.S. EPA. But farther down in 3.1, the last sentence there, the last line, "or a collection or recycling facility authorized under the laws of the State of West Virginia." I know these are new regulations, and I know we have the solid waste management law. We have the hazardous waste laws, so my question is, under which laws are you talking about? Is it solid waste? Is it hazardous waste? Will it be under recycling laws? Okay. Under Section 3.2, where it talks about disposal by dealers, and it says, "no lead acid battery dealer shall dispose of a spent battery" okay, it goes on down. My question with Section 3.2 is, I don't think it takes into account, what if you are taking your batteries to be recycled out of state. Okay? Because you're talking about the laws of West Virginia, but there are instances where people may be recycling out of state. So how can you tie this regulation into situations where the batteries are taken out of state? Under 3.3.1, where it says "the person who is at the point of transfer," and I'm assuming it's sort of like a ... someone who sells batteries, then they must take at least one battery to be recycled in exchange for that. It seems that these are broad enough written that if there is one and someone wants to turn in one, he would have to take it, but what do you do in a situation if someone is not turning a battery in? Simply because this needs to be clarified because later on in the regulations you talk about reports that have to be made and filed and kept on file. So reports dealing with how much you sold as to how much you took in and

how much was recycled may not all be cohesive simply because of people may not be bringing their batteries in to someone where they're buying a battery. Okay. Under 3.3.2(c) it says, "state rules require us" ... and this is the statement that has to be posted at these facilities, "state rules require us to [inaudible] lead acid batteries for recycling in exchange for new batteries purchased from the dealer." If someone brings in batteries and there is this dealer who is accepting those, then under the hazardous waste management laws of West Virginia, are they a TSD facility, which is a treatment storage and disposal facility. Because they will have time frames put on them as to how long they can keep those batteries. So, there appears to be a lapse here between the two. Down under section 3.4, Dealers' Reporting Requirements, it talks about ... records are to be kept on file at the collection facility for a period not less than five years for inspection and maybe there is some rhyme or reason for the five years. Under the hazardous waste management laws, records typically are kept for a period of three years. So, unless you were pulling a figure out of the air, it would seem that industry that deals with hazardous waste and solid waste, if we can keep those record keeping requirements consistent, then we don't have to continually go through and check and make sure we're meeting that time frame. So my recommendation would be for a three-year period. The dealers should also send a copy of the report annually to the local regional solid waste authority in the county or in the region in which the lead acid

battery storage facility is located. I know you all anticipate action being taken by county or region solid waste authorities. And maybe for some of those authorities they may be far enough along in their regulations and in their set-up that they would do something with these reports, but I also know that we have solid waste authorities that are just struggling to maintain an office in the county that they work in. So it seems to me that we are not only burdening a dealer with reporting requirements to an agency, a quasi-agency that has no jurisdiction or no authority of enforcement on ... and you are in turn burdening that quasi-agency with receiving these reports, but you don't say what they're supposed to do with them. Now, maybe the intent was to let those solid waste authorities decide what to do with those reports, but it seems that we are creating report writing for the sake of creating report writing. Under Section 3.6 for Storage, "new lead acid batteries and spent lead acid batteries shall be stored safely." Safely to a dealer may not be safely to a solid waste inspector. It may also may not be safely to a hazardous waste inspector. There is criteria for storage of hazardous waste. If they are stored in drums, it's a weekly inspection and a record of those. Lead acid batteries can create a safety hazard if they're stored in drums. So "safely" there is a very nebulous word. And I think there should be some guidance as to what safely is. Under Section 3.7, you talk about buy-back centers, and a dealer who is out in one of the rural areas of the state may only receive four or five

batteries a month or a year. The buy-back center may be several miles away. What is the storage limitation that he can safely store those spent batteries until the trip to the buy-back center is cost-effective for him? So, overall I think these regulations need to be tied very closely to the hazardous waste regulations. Or these regulations need to be made clear up front because households, individual households, are not regulated by the hazardous waste management regulations, then these regulations apply to individuals, not to government agencies, not to industry, not to any other type of business because they are conflicting and some of the requirements need to be tied down more closely. Those are my comments.

**RHEINLANDER:** Thank you. Anybody else want to make a comment for the record, come forth.

**CHUCK:** [Not speaking directly into microphone; very difficult to understand] My <sup>Forth</sup> name is Chuck [inaudible] with Sycamore Landfill. I would like to address the section where it has the amount of tonnage of 3,000 tons of [inaudible]. I believe that should be changed [inaudible] technologies [inaudible] is contaminated soils can be composted, but the main reason would be is the seal situation rather than by the month totally, if was set up where it was something by the year [inaudible]. But I'm also concerned, too, about the contaminated soil being excluded from the composting with yard waste.

There is a possibility that they can compliment each other. That's all I have.

**RHEINLANDER:** Anyone else? Just state your name into the microphone, please.

**BUMGARDNER:** My name's Rodney Bumgardner, and I have comments concerning the yard waste disposal. One thing I see in there by law, come June first of next year, nothing can go into an existing landfill, yard waste. For a commercial facility to be operational by June first of next year. First of all, these regulations will have to be finalized. As to when that will be, I don't know if anybody really knows that. Then the counties, wherever they're wanting to construct a commercial facility would have to be notified and all of their disposal plans would have to include siting for yard waste facilities. They may or may not have those in place. The Public Service Commission will have to be brought into it to obtain a certificate of need. I don't know what process they have in place or how long it will take them to set up their procedures for handling this specific certificate of need. Then you have all the reports that have to be prepared. All the engineering reports, distribution plans, operation and maintenance manuals, and then again you have to worry about the [inaudible]. If you can go through an existing permitted facility, you may not have a problem. But if a commercial facility is going to have to obtain a DES permit to discharge any [inaudible], the time frame with that should be taken into account. Then it has to go to the DEP for review process, and typically goes back and forth with any application, a couple of times anyway, to get everything ... the i's dotted and t's crossed. Then we come to the public comment period, public hearings, which may or may not drag out, and then the appeals, and the finally you're able to begin

3.1.2.

construction. Site grading, setting a new foundation in where the compost would be placed. And then also you have to get the people trained to be able to work a facility, that's the operator. I have real concern whether any commercial facility can be operational by June first of next year. It seems that many of these steps to go through aren't nailed down, aren't finalized to where they can be processed easily. Another area of concern I have with these. There doesn't seem to be any discussion in there as to whether an existing landfill can begin a composting operation on an area that wasn't used as landfill and what procedures would have to be followed for an existing permanent facility. No discussion as to whether it would be minor or major modifications to get a permit to allow that. I would like to suggest that since many of the operating requirements, location standards are similar, or not exactly the same as the solid waste facilities to begin with, that it would be a minor modification to their permit, describing what locations they plan to use and general discussion of what procedures they will follow and how they will comply with regulations, rather than go through the full major modification procedures. And that's all I have at this time.

Permit  
not  
K

**RHEINLANDER:** Thank you. Anyone else?

**UNIDENTIFIED:** I'd like to raise a question, Bill. I guess one of the things I forgot to mention ... [not speaking into the microphone; impossible to hear well enough to get more than a word here and there]

**UNIDENTIFIED:** [Not speaking into microphone] I may be wrong, but you guys [inaudible] I don't think these particular regulations address those at all. I don't think they address the use, in other words, we certainly want to make sure they're not addressed ... that they certainly do not restrict the use of this compost. [inaudible]

**UNIDENTIFIED:** ... commercially and from the homeowner's standpoint, too. Because, you know, there's some pretty devoted home gardeners in this state out there anyway, who in the course of a year generate a lot of compost. And I'm doing it in the backyard now, been doing it for years. So I guess that was the key fix, [inaudible]. Whenever he goes out to give a program, he always encourages the use of composting. He raises the question, why are you gonna do this if you're not going to use your property again. So I think that is a very possible ... particularly, I think with the homeowners. The commercial people, I believe that's not going to be a concern. [inaudible].

**UNIDENTIFIED:** Are you suggesting that if we don't find anything in here at all dealing with use, that we should leave it as such or add a section that directs uses? I would think that having a section that addresses uses would cause more harm than good.

**UNIDENTIFIED:** Yeah, for the homeowners, but not the commercial people. I think it's another state charges of regulation, if you self-compost, it's got to meet a certain standard and be [inaudible].

*pick* UNIDENTIFIED: Yes, I believe that holds true in regard to sewage sludge regulation. I believe we do have some sections that deal with labeling requirements, restricting use of sewage sludge.

UNIDENTIFIED: So I think it raises the question, who has the authority. Do you all have the authority to do that, or is that part of Agriculture's [inaudible].

*pick* UNIDENTIFIED: I think the way that works is the legislature will direct us, just like the way they [inaudible]. You've brought up some very interesting points. We were directed to do this, and we did share these with the other section leaders, but they were donned only to maybe get down to the nitty gritty as far as the drafting of the table with specialists and [inaudible]. We'll follow up on use, and if it's not in there, I think we'll leave it as such.

UNIDENTIFIED: There is stated in there under the commercial facilities in the permit application requirements, saying that there has to be a distribution plan for yard waste compost. And so that's stated that the commercial facilities have to have a plan for it up front.

*pick* UNIDENTIFIED: The primary reason for that is so we don't end up with someone in the business commercially who is only wanting to stick dollars in their pocket from people who no longer can take this to the landfill and have to get rid of it in a lawful manner and after so many years walk away and leave a mountain of composted yard waste or other type of material without really intending [inaudible]. We appreciate your comments [inaudible] and not having the revisions and modify systems facilities permit to allow

composting [inaudible].

**RHEINLANDER:** Anyone else? If you'd like a copy of the tape, I've got business cards, you can send me a \$10 check, and we'll send you a copy. At this time we'll close out the hearing. Thank you for coming.

[End of recording].

*[Transcriptionist's note: The original recording was very low quality, with several participants not speaking directly into the microphone. As a result, much of what was recorded was choppy and inaudible. I have attempted to transcribe everything that was understandable. Also, names were not spelled, and I have transcribed them the way they sounded.]*

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

PUBLIC HEARING

The Division of Environmental Protection asks for your cooperation in recording these proceedings. By completing this form, you will help us determine who attended and who would like to make a statement. PLEASE PRINT CLEARLY.

Name Rodney Bumgardner

Address 26 Lee Drive  
St. Albans WV 25177

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

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Name AVA Zeitz

Address 1700 MacCorkle Ave SE  
Chas

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

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Name Edgar Hooper  
Address 2104 Agricultural Sciences Building  
West Virginia University  
Morgantown, WV

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

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Name STEVE HANNAY  
Address W.V FARM BUREAU  
1-RED ROCK RD  
BERKHAMPTON, WV 26201

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

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Name Kelli Wolfe Bright  
Address Robinson & McElwee  
PO Box 1791  
Charleston, WV 25326

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

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Name GLENN JARRELL

Address 1615 Washington Street East  
CHARLESTON, WV 25311

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

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Name CHARLES A. FORTL  
Address 4301 SYCAMORE RIDGE RD  
HURRICANE WV 25526  
SLI

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

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Name James Endicot  
Address Box 191  
Red Jacket WV 25692

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

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Name Jimmie Cisco  
Address Rt-1 Box 17  
Meadow WV 25682

Do you wish to make a statement?  Yes  No

Aug. 6, 1993

RE: Proposed Yard Waste and Lead Acid Battery Regulations

**WEST VIRGINIA INDEPENDENT  
TIRE DEALERS AND AUTOMOTIVE SERVICE ASSOCIATION**

P. O. Box 1335 + Charleston WV 25325 + (304)342-4441

August 6, 1993

Bill Rheinlander, Information Representative  
Office of Waste Management  
Division of Environmental Protection  
1356 Hansford Street  
Charleston, West Virginia 25301

Re: Comments concerning proposed rule additions 38F "Lead Acid Battery Regulations" of Title 47 - Legislative Rules.

Dear Mr. Rheinlander;

We would like to address our comments to §47.38F (Lead Acid Battery Regulations), a proposed rule addition. Our comments and suggestions are designed to help in successfully implementing the intent of the rule addition.

In 38F.3.2, a problem could develop in rural areas where volume sales are small. Consideration needs to be written into the rules for intermediate facilities to facilitate movement of spent batteries to a collection or recycling facility. In some cases the distance could be a considerable mileage away. A sub-collection station may be in order.

Item 38F.3.3.1 needs to be made clear. Does this mean that a dealer can not increase inventory if the dealer does not have a spent battery to exchange? Does this mean that a customer who is starting a new project must locate a spent battery in order to buy a new one? We see problems in the verbage.

A problem occurs in 38F.3.3.2, 2a, 2b and 2c. The intent is necessary, however, can not be done (see attached exhibit A). A more practical way is shown in exhibit B.

A major problem occurs in 38F.3.4. The reporting requirements are too difficult and not workable. While we are not privy to the exact reporting forms or future reporting forms we can expect time and effort to be involved. At best, most battery dealers are marginal with limited paperwork time. One additional straw will just make it harder to stay in business. The more rural the area the truer it is.


Five years retention of records is much too long to maintain the files. A shorter period of, say, two years should meet your goal.

Mr. Rheinlander  
August 6, 1993  
Page 2

One additional item under 38F.3.4 is that we feel that to keep a better handle on batteries is to keep the recordkeeping at a higher level than dealers. It is well known that there is a high turnover in the types of business that sell batteries. For example, five years is a long time for a service station to stay in business with the same owner. A new owner at that site will usually start a new business from scratch. A guess would be that as much as 50% of your records will be thus lost.

We sincerely hope our comments will be useful. If you would like to meet with a group of our members to discuss the rule addition or any other point, please contact us.

Sincerely,

  
Floyd M. Sayre, Jr., CAE, CMP  
Executive Director

**IT IS UNLAWF**

**UL TO DISPO**

**SE OF A LEAL**

**ACID BATTER**

aA

A<sub>80</sub> A A A A A

A<sub>110</sub>

Bill - This was just  
whipped up fast as a whip  
1. Used flag - don't have  
a recycle symbol.  
Line 2 - needs larger point  
and center

Line 4 - larger point

Line 5 - " " "

When I get a chance  
I'll put together what  
I think it really  
should look like

Flopf Sample

# IT IS UNLAWFUL

USE OF A LEAD ACID BATTERY IN A W.Va.  
LANDFILL

## PLEASE RECYCLE YOUR USED BATTERIES

PLEASE RECYCLE YOUR USED BATTERIES  
REQUIRE US TO ACCEPT USED OR SPENT LEAD ACID  
BATTERIES FOR RECYCLING IN EXCHANGE FOR NEW BATTERIES  
PURCHASED FROM THE DEALER.

Appalachian Power Company  
PO Box 2021  
Roanoke, VA 24022-2121  
703 985 2300



Mr. Bill Rheinlander  
West Virginia Division of  
Environmental Protection  
Office of Waste Management  
1356 Hansford Street  
Charleston, West Virginia 25301

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

August 4, 1993

Dear Mr. Rheinlander:

Appalachian Power Company supports the State of West Virginia in its effort to control the introduction of hazardous materials to the state's landfills as part of its environmental protection plan. We commend the DEP Office of Waste Management for drafting a set of regulations dealing with the reuse of lead acid batteries that is equitable and appears to set reasonable goals. Appalachian Power for some time has had a lead acid battery recycling program which will meet the requirements of this new regulation.

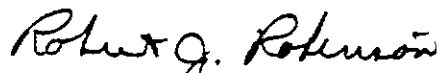
The Company would, however, appreciate the clarification of one section of the proposed rule. In Section 47-38F-3.1, it is stated, "Spent lead acid batteries should be delivered to an automotive battery retailer or wholesaler, a secondary lead smelter permitted by the United States Environmental Protection Agency (USEPA), or a collection or recycling facility authorized under the laws of the State of West Virginia." We understand that by using the word "should" instead of "must," the regulation does not prohibit other methods of battery disposal, however, we feel that this section would be clearer if specific recognition were to be given to other acceptable methods of recycling. The Company is particularly concerned that in specifically mentioning "a collection or recycling facility authorized under the laws of the State of West Virginia," the regulation is precluding the use of such facilities that may be located in some other state. While the Company may use collection and recycling facilities located within the state, we must retain the option to dispose of our spent batteries with the business concern that best fulfills our needs.

To accomplish this, the Company suggests that Section 47-38F-3.1 be modified by adding the words "or other appropriate jurisdiction" to the end of the section (following the words "West Virginia").

Mr. Bill Rheinlander  
August 4, 1993  
Page Two

We appreciate this opportunity to offer comments on the proposed regulations and stand ready to discuss this issue if you so desire.

Sincerely,

Handwritten signature of Robert J. Robinson in cursive script.

Robert J. Robinson  
Environmental Affairs Director

RJR:d

Zeit's Community

FOIA HW info. They can and do create problems with improper handling and disposal

Lead acid batteries can be a hw but if they are ~~going to a recycling~~ are from a household they are exempt as such.

Section 9.7 of WWHWR deals with facilities that store lead acid batteries prior to recycling

Safely and in compliance with <sup>all</sup> state and federal regulation

Division of ENV. Protection  
Office of Waste MGT.  
1356 HANSFORD ST.  
CHAS, WV. 25301

Marty's Tire Store  
1341 Plaza East  
Chas, WV. 25301

Dear Sirs:

Regarding proposed Rule 38F,  
dealing with "Lead Acid Battery Regulations", please  
allow me to express my concern for the "record-  
keeping" requirement in section 3.4.

Currently, scrap batteries are  
worth about \$3.00 each when traded in to our  
battery wholesaler. As a matter of economics  
we are forced to trade in junk batteries, or  
we would not be competitively priced.

Therefore, I suggest you do  
away with section 3.4 entirely.

Thank you,  
William T. Keppel  
President



WEST VIRGINIA  
MANUFACTURERS ASSOCIATION

SUITE 503  
405 CAPITOL STREET  
CHARLESTON, WV 25301  
TELEPHONE (304) 342-2123

August 6, 1993

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

Re: Comments on Proposed  
Lead Acid Battery Regulations

Dear Mr. Rheinlander:

Enclosed, please find for filing the comments of the West Virginia Manufacturers Association ("WVMA") regarding the Division of Environmental Protection's proposed lead acid battery regulations filed on July 7, 1993.

Thank you for according the WVMA the opportunity to comment on these proposed rules. Please do not hesitate to contact me at your convenience should you wish to discuss any of these comments.

Very truly yours,

Robert L. Foster  
WVMA, Chairman, Environment,  
Safety & Health Committee

RLF/EJG:asb  
Enclosure

cc: Karen S. Price, President (w/encl.)

bcc: KBP (w/o encl.)

**COMMENTS OF  
THE WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING THE PROPOSED  
LEAD ACID BATTERY REGULATIONS**

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**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING THE PROPOSED  
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**I. INTRODUCTION**

On July 7, 1993, the West Virginia Division of Environmental Protection ("DEP") filed with the Secretary of State proposed legislative rules pertaining to the implementation of a comprehensive program for the regulatory management of lead acid batteries as authorized by the recent amendments to the West Virginia Recycling Act at Chapter 20, Article 11 of the West Virginia Code ("the Act"). This rule, which purports to establish the requirements for, among other things, the proper storage, handling, recycling and disposal of lead acid batteries, is proposed for inclusion in the Code of State Regulations at Title 47, Series 38F.

The West Virginia Manufacturers Association ("WVMA") represents a broad cross-section of large, medium and small industrial concerns in West Virginia. Because many of its members must comply with the provisions of the Act, and because certain issues regarding the management of lead acid batteries are yet to be resolved, the WVMA pledges its assistance in the development of these regulations promulgated to implement the Act. It is in furtherance of this active and supportive role that the WVMA offers these comments.

**II. COMMENTS**

1. Section 2.2 (page 2): Storage Facility.

This section defines the term "lead acid battery storage facility" and, as drafted, is overly broad in its scope and what it may encompass. Defining such term to include any

person that "handles" lead acid batteries may too easily lead to inconsistent regulatory interpretation of the term itself, while failing to provide the regulated community with sufficient notice of the applicability of such term. As proposed, a person's home driveway, upon which a vehicle containing a lead acid battery is parked, could constitute a regulatory storage facility.

Thus, in order to narrow the applicability of this term, and to conform it to the scope of the U.S. Environmental Protection Agency's regulatory program for lead acid batteries, the WVMA suggests the deletion of the current proposed definition and the substitution of the following language in its place:

- 2.2. **"Lead acid battery storage facility" means any facility used for the storage of spent lead acid batteries, including any wholesale or retail business, automotive service, or repair garages which store such spent lead acid batteries for a period exceeding one year.**

2. Section 3.1 (page 2): Prohibition on Disposal

As proposed, this section would prohibit the disposition of lead acid batteries in West Virginia solid waste disposal facilities after June 1, 1994. Although this section is clearly intended to implement the statutory mandate for such prohibition found at Section 8(a) of the Act, this provision fails to reflect the Legislature's obvious desire that the prohibition on disposal not be strict, comprehensive and without exception. It is important to note that West Virginia Code §20-11-8(a) states, in pertinent part, that "reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated [to implement the Act]."

Similarly, under the federal regulatory program, in certain instances spent lead acid batteries fall into the category of "household waste." By definition, household waste is deemed to be solid waste which is not hazardous waste. Under United States Environmental

Protection Agency ("EPA") regulations, "household waste" means "any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)." 40 CFR §261.4(b)(1). As household waste is exempted from the definition of hazardous waste, and thus merely constitutes solid waste, the requirements of the federal hazardous waste management program do not apply. Based on this exemption for those items, such as lead acid batteries, no prohibition exists within the federal regulatory program for their disposal in properly permitted solid waste disposal facilities.

By developing this exemption, it is clear that EPA recognizes the realities of certain types of waste generation and disposal practices, and the realities attendant to regulatory enforcement. Similarly, this proposed rule should recognize the virtual impossibility of regulating and enforcing the generation and disposal of spent lead acid batteries by "households" and should, pursuant to the exception language provided for under the Act, exclude from the otherwise comprehensive prohibition on disposal spent lead acid batteries which meet the definition of "household waste" (a term which could easily be incorporated into the rule by reference.)

The WVMA fully supports all programs designed to promote recycling within all of our State's communities. However, the DEP should recognize, as does EPA, the virtual impossibility of enforcing the lead acid battery disposal prohibition on householders and the like. In fact, the unfortunate reality which can all too readily be anticipated is that such a comprehensive prohibition will likely result in the random open dumping of lead acid batteries

over the sides of roads and/or anywhere else more convenient than transporting such items to locations specifically required and qualified to accept them. Based on this, the WVMA urges the adoption of an exemption from the general prohibition on disposal of spent lead acid batteries generated by households and the like.

3. Section 3.5 (page 3): Inspections.

This section is entitled "Inspection of Automotive Battery Retailers" (emphasis added). However, and as drafted, the substantive language contained in this section would allow authorized agents of the DEP to inspect "any lead acid battery storage facility." Thus, the WVMA suggests that, as proposed, this provision is overly broad and fails to remain within its intended scope which is to regulate those persons dealing in lead acid batteries for profit.

In order to narrow the scope of this particular provision, the WVMA suggests the deletion of the word "retailers" from this section and substituting it with the term "lead acid battery dealer" (a term actually defined within the regulations at Section 2.3) and substituting the words "storage facility" with the word "dealer" in the second to last line of this section.

Should the DEP see fit to adopt the above recommendation, the definition of the term "lead acid battery storage facility" would then be gratuitous within the context of these regulations, as such term fails to appear in any other section contained in these regulations. In such instance, the WVMA would suggest the deletion of Section 2.2 in its entirety.

4. Section 3.3.1 (page 2): Collection Requirements.

This provision which, as drafted, would require retailers or wholesalers of lead acid batteries to accept equal numbers of spent lead acid batteries from customers "in exchange for" the purchase of new batteries is vague in that it does not make it sufficiently clear that such

exchange is not a condition precedent to selling new batteries. Moreover, although this section states that purchasers need not exchange "used" lead acid batteries (and here it is unclear whether or not DEP actually intends to employ the term "used" as opposed to the defined term "spent") in order to purchase new ones, this entire provision creates a nebulous interstice as to how retailers and wholesalers will procure "equal quantities" of spent batteries for actual numbers of new batteries sold. In order to clarify the intent and practical effect implementation of this section may have on the regulated community, the WVMA urges the deletion from this section of the language requiring retailers and wholesalers to accept equal quantities of spent batteries in exchange for the sale of new ones. To this end, the WVMA urges the deletion from this section of the following phrase: "a quantity at least equal to the number purchased,".

### III. CONCLUSION

The WVMA appreciates the opportunity to comment on the DEP's proposed lead acid battery regulations and offers its full cooperation and assistance in refining the current regulatory proposal to as much a position of mutual acceptance as possible.