

DATE: August 8, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Solid Waste Management Board

EMERGENCY RULE TITLE: Rules and Regulations Governing the Establishment of Fee Schedule and Cost Allocations Applicable to the Issuance of Bonds by the West Virginia Solid Waste Management Board.

1. Date of filing: August 8, 1990
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-26-1 et seq.; 29A-3-15
3. Date of filing of proposed legislative rule:
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts new language.
5. Has the same or similar emergency rule previously been filed and expired?
No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

These rules are necessary for the immediate preservation of public health, safety, and welfare because they provide a method of financing for local governmental agencies to use in the acquisition and construction of necessary solid waste disposal facilities. Many local governmental agencies need to construct new facilities or upgrade existing ones in the immediate future because their existing facilities are close to capacity. These facilities must be constructed in accordance with State and Federal law and must meet additional more stringent standards, meaning that financing methods such as that provided by these regulations are essential.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

These rules are necessary to enable local governmental agencies to comply with the provisions of W. Va. Code §20-5F-1 et seq. and the regulations at 47CSR38 §4.5.4.a.A. This regulation requires that existing landfills meet more stringent requirements by November 1990, which will result in substantial costs to those local agencies.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

These rules are necessary to prevent substantial harm to the public interest by assisting local governments in the construction of new solid waste facilities which are necessary for the protection of public health, safety, and welfare. Further, the construction of such new facilities will prevent the proliferation of unsanitary and unlawful solid waste disposal sites which sites do present a direct harm to the public interest.

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Harold A. Taylor, Chairman
West Virginia Solid Waste
Management Board

TITLE 54
LEGISLATIVE RULES
WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD
SERIES 2
RULES AND REGULATIONS GOVERNING THE ESTABLISHMENT
OF FEE SCHEDULE AND COST ALLOCATIONS APPLICABLE
TO THE ISSUANCE OF BONDS BY THE WEST VIRGINIA
SOLID WASTE MANAGEMENT BOARD

§ 54-2-1. General.

1.1. Scope. - These legislative rules establish fee schedules and cost allocations applicable to the issuance of bonds by the West Virginia Solid Waste Management Board.

1.2. Authority. - West Virginia Code § 16-26-1 et seq.

1.3. Filing Date. - _____,
19__

1.4. Effective Date. - _____,
19__

§ 54-1-2. Definitions.

All capitalized terms used herein shall, unless the context indicates otherwise, have the meanings ascribed to them as set forth below.

2.1. General definitions.

2.1.1. The "Act" means West Virginia Code § 16-26-1 et seq.

2.1.2. "Applicant" means a governmental agency which applies for a loan from the Board for the purpose of obtaining funds to pay the cost of the acquisition, construction and/or equipping of a solid waste disposal facility.

2.1.3. The "Board" means the West Virginia Solid Waste Management Board, established pursuant to West Virginia Code § 16-26-4, or its authorized representatives.

2.1.4. The terms "cost," "governmental agency" and "solid waste disposal facilities", as used in these rules, shall have the meanings ascribed to them in the Act.

§ 54-2-3. Fees.

The Board shall be entitled to receive Fees for originating loans to governmental agencies for the purpose of providing funds for the acquisition, construction and equipping of solid waste disposal projects as set forth below.

3.1. Origination Fee - Each governmental agency or any combination thereof obtaining a loan from the Board for the purpose of constructing, acquiring and/or equipping a solid waste disposal facility shall pay to the Board an origination fee equal to one-quarter of one percent (1/4%) of the original principal amount of the loan, such fee to be deducted from gross loan proceeds and retained by the Board at the time of closing of the loan.

3.1.1. Waiver or reduction of origination fee - The origination fee may be waived or reduced by the Board if the Board decides that the origination fee is not needed for the payment of operating expenses of the Board.

3.2. Annual Fee - Each governmental agency or combination thereof which has obtained a loan from the Board as described in Section 3.1 of these rules shall also pay to the Board an annual fee equal to one-eighth of one percent (1/8%) of the outstanding principal balance of the loan.

3.2.1. Payment of annual fee - The initial annual fee shall be payable at the time of closing of the loan and all subsequent annual fees shall be paid on the anniversary date of such loan, calculated as of the date thirty (30) days immediately preceding said anniversary date.

3.2.2. Waiver or reduction of annual fee - The annual fee may be waived or reduced by the Board if the Board determines that the annual fee is not needed for the payment of the

operating expenses of the Board.

§ 54-2-4. Allocation of costs applicable to issuance of bonds of the Board.

4.1. All costs incurred by the Board that can be directly attributed to a bond issue pending before the Board may be allocated by the Board to that bond issue and such costs so allocated shall be payable at closing by the governmental agency obtaining a loan financed from such proceeds. If more than one governmental agency obtains a loan from such proceeds, such costs shall be allocated pro-rata between or among such governmental agencies. All such costs so allocated shall be in addition to the fees established in Section 3 of this Rule.

4.2. Without limiting in any manner the costs that may be allocated pursuant to Section 4.1 of this Rule, all legal and other professional fees incurred by the Board that can be directly attributed to a bond issue may be allocated by the Board to the governmental agency obtaining loans from proceeds of that bond issue and such legal and other professional fees so allocated shall be payable at closing out of the proceeds of that bond issue. If more than one governmental agency obtains a loan from such proceeds, such fees shall be allocated pro-rata between or among such governmental agencies. All such costs so allocated shall be in addition to the fees established in Section 3 of this Rule.

§ 54-2-5. Amendment of Fee Schedule.

The Board may amend, in accordance with law, the fee schedule by the affirmative vote of four (4) board members and any such amendment shall be binding and applicable to all subsequent bond issues.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 12, 1990
ADMINISTRATIVE LAW DIVISION

September 12, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Solid Waste Management Board

RULE: New Rules, Series 2; Establishment of Fee Schedule and
Cost Allocations Applicable to the Issuance of Bonds by
the West Virginia Solid Waste Management Fund

DATE FILED AS AN EMERGENCY RULE: August 8, 1990

DECISION NO. 38-90

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

A handwritten signature in cursive script, reading "Ken Hechler".

KEN HECHLER
Secretary of State

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Secretary of State

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DECISION EMERGENCY RULE DECISION (ERD 38-90)

AGENCY: Solid Waste Management Board
RULE: New Rules, Series 2, Establishment of Fee Schedule and
Cost Allocations Applicable to the Issuance of Bonds
by the West Virginia Solid Waste Management Board
FILED AS AN EMERGENCY RULE: August 8, 1990

- par. 1 The Solid Waste Management Board (Board) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board has filed this emergency rule with supporting documents with the Secretary of State on August 8, 1990 and with the LRMRC on August 8, 1990.

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

par. 8 (B) Statutory Authority -- WV Code §16-26-6(a) reads:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business, and rules and regulations, promulgated pursuant to the provisions of §29A-1-1 et seq. of this code, to implement and make effective its powers and duties.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

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

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

These rules are necessary for the immediate preservation of public health, safety and welfare because they provide a method of financing for local governmental agencies to use in the acquisition and construction of necessary solid waste disposal facilities. Many local governmental agencies need to construct new facilities or upgrade existing ones in the immediate future because their existing facilities are close to capacity. These facilities must be constructed in accordance with state and federal law and must meet additional more stringent standards, meaning that financing methods such as that provided by these regulations are essential.

- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . . "immediate preservation of public peace, health safety or welfare," "time limitation" and "prevent substantial harm to public interest."
- par. 14 This decision shall be cited as Emergency Rule Decision 38-90 or ERD 38-90 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with Division of the Solid Waste Management Board, the Attorney General and the Legislative Rule Making Review Committee.

Ken Hechler

KEN HECHLER

SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Sept. 12, 1990

Entered _____

ADMINISTRATIVE LAW DIVISION