

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

1989 AUG -4 AM 10:53

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: STATE TAX DEPARTMENT TITLE NUMBER: 110

CITE AUTHORITY W.VA. CODE §§11-10-5, 20-5F-5a(f) AND 29A-3-1 ET SEQ.

AMENDMENT TO AN EXISTING RULE: YES NO

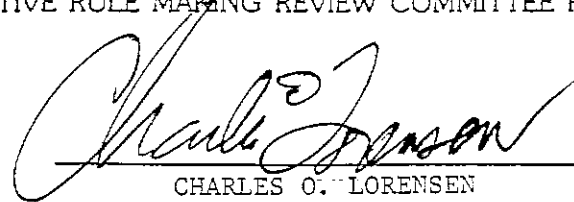
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6A

TITLE OF RULE BEING AMENDED: SOLID WASTE ASSESSMENT FEE

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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.


CHARLES O. LORENSEN
STATE TAX COMMISSIONER

SUMMARY OF RULE AND STATEMENT OF CIRCUMSTANCES

The rule explains and clarifies West Virginia law as it relates to the administration of the solid waste assessment fee imposed by W. Va. Code § 20-5E-5a. The circumstances requiring amendment to the rule is the legislative imposition of an interim solid waste assessment fee which is in addition to the solid waste assessment fee currently being collected. Additionally, the amendments eliminate the possibility of double taxation.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: SOLID WASTE ASSESSMENT FEE

Type of Rule: X Legislative Interpretive Procedural

Agency: Tax Department Address: State Capitol, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

The fiscal impact of this rule, as amended, should not vary from that envisioned by the Legislature when it enacted amendments to the Solid Waste Assessment Fee.

3. Objectives of these rules:

The Legislature, when it enacted Senate Bill 301, imposed an interim solid waste assessment fee of \$1.00 per ton, such fee to be in addition to the solid waste assessment fee currently being collected. Additionally, it is possible that certain solid waste may be subject to double taxation. This emergency rule prevents substantial harm to the public interest through the uniform administration of the additional \$1.00 per ton and eliminating the possibility of double taxation.



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Charleston 25305

CHARLES O. LORENSEN
SECRETARY

M E M O R A N D U M

DATE: AUGUST 4, 1989
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: DEPARTMENT OF TAX AND REVENUE

LEGISLATIVE RULE TITLE: SOLID WASTE TAX

1. Authorizing statute(s) citation: W. Va. Code §§ 11-10-5, 20-5f-5A(f) and 29A-3-1 et seq.
2. a. Date filed in State Register with Notice of Public Comment
June 29, 1989
b. What other notice, including advertising, did you give of the hearing? None
c. Date of public comment period: June 29, 1989 through July 31, 1989
d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X
e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
August 4, 1989
f. Name and phone number of agency person to contact for additional information: John Montgomery - 348-5330

AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT
TITLE 110
SERIES 6A
(1988)

Filed: August 4, 1989

§ 110-6A-1. General.

1.1 Type of Regulation. - These regulations are legislative regulations as defined in W. Va. Code § 29A-1-2(d).

1.2 Scope. - These legislative regulations explain and clarify West Virginia law as it relates to the administration of the solid waste assessment fee imposed by W. Va. Code § 20-5F-5a.

1.3 Authority. - These legislative regulations are issued under the authority of W. Va. Code §§ 29A-3-1 et seq, 11-10-5 and 20-5F-5a(f).

1.4 Filing Date. - These legislative regulations were promulgated and filed as emergency legislative regulations in the State Register on June 29, 1989 and after public comment as agency approved legislative regulations on August 4, 1989.

1.5 Effective Date. - These legislative regulations become effective upon passage by the Legislature.

1.6 Citation. - These legislative regulations may be cited as 110 C.S.R. 6A, § _____ (1988).

§ 110-6A-2. Definitions. - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular or plural.

2.1 "Approved solid waste facility" means a solid waste facility or practice which holds a valid permit issued under the provisions of W. Va. Code § 20-5F-1 et seq.

2.2 "Board" shall mean the State Water Resources Board.

2.3 "Code" shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

2.4 "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and

operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or non-profit basis.

2.5 "Delegate" as used in the phrase "or his delegate" and when used in reference to the Tax Commissioner, means any officer or employee of the Tax Department duly authorized by the Tax Commissioner, directly or indirectly, by one or more redelegations of authority, to perform the function mentioned or described in W. Va. Code § 20-5F-5a or these regulations.

2.6 "Department" shall mean the Department of Natural Resources.

2.7 "Director" shall mean the director of the Department of Natural Resources, or his authorized designee.

2.8 "Exclusive or cost-share solid waste disposal facility" means only those facilities certified by the Department.

2.9 "Open dump" means any solid waste disposal which does not have a valid permit under W. Va. Code § 20-5F-1 et seq. or which is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

2.10 "Person", "persons" or "applicant" shall mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

2.11 "Point source" shall mean any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

2.12 "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party undertakes activities for another in any but an arm's length transaction. In the case of related parties, the Tax Commissioner may apportion or allocate responsibilities between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect transactions.

2.13 "Residential solid waste" when used in describing disposal activities exempt from the solid waste assessment fee pursuant to W. Va. Code § 20-5F-5a(e) shall mean only that waste disposed of by those not in the business of hauling

or disposing of solid waste on such days and times as designated by the Director:

2.14 "Reuse or recycling operation" means an operation at which reusable or recyclable waste is processed into a commercially salable form or where such waste is collected for shipment and sale to a commercial, municipal or industrial enterprise processing such waste.

2.15 "Reused or recyclable waste" means only that waste which meets the definition and standards of the Department for fee exempt disposal of such waste.

2.16 "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present.

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

2.18 "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining activity or from community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code § 20-5A-1 et seq. or source, special nuclear or by product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under W. Va. Code § 20-5E-1 et seq. or refuse, slurry and overburden regulated under W. Va. Code § 22A-3-1 et seq.

2.19 "Solid waste assessment fee" means that fee imposed upon the disposal of solid waste pursuant to W. Va. Code § 20-5F-5a.

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

2.21 "Solid waste disposal shed" means the geographical area which the West Virginia Resource Recovery-Solid Waste Disposal Authority so designates on either a temporary or permanent basis and files as such in the State Register pursuant to W. Va. Code § 16-26-8.

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

2.23. "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or his delegate.

2.24 "Transfer Station" means any location where solid waste is accumulated on a temporary basis for subsequent removal to a landfill or other solid waste disposal facility.

2.25 "Water resources", "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this State, or bordering this State and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands.

§ 110-6A-3. Imposition of tax. - Beginning July 1, 1988, and continuing until such time as it is repealed by the legislature, the solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in West Virginia.

3.1 The solid waste assessment fee shall be collected from the person disposing of solid waste at a solid waste disposal facility in West Virginia, at the time such solid waste is disposed of, by the operator of the solid waste disposal facility. The fee collected shall be remitted to the State Tax Commissioner.

3.2 Any person creating, contributing to or operating an open dump shall be subject to the solid waste assessment fee, upon any solid waste disposed at such open dump. Any landowner who fails to cooperate with the Department in stopping unauthorized dumping upon his land may, in the discretion of the Tax Commissioner and upon notice from the Department that said landowner has failed to cooperate with the Department, be issued an assessment for unpaid solid waste assessment fees which shall be imposed upon the solid waste disposed of on that landowner's property.

3.3 Any person or persons owning, operating or leasing a solid waste disposal facility shall be personally and jointly and severally liable for any solid waste assessment fees which are due but not collected from the person disposing of solid waste.

3.4 ~~The solid waste assessment fee shall be collected both from persons disposing of solid waste at a transfer station and again upon the subsequent disposal of solid waste from the transfer station at another solid waste disposal facility. This pyramiding provision shall not apply, however, where the transfer station is operated by the same person operating the solid waste disposal facility to which the solid waste is subsequently removed. Provided, That nothing in this section shall result in an assessment of this fee upon waste disposed of at a transfer station except where solid waste is disposed of at such transfer station by a person in the business of hauling or disposing of solid waste who does not subsequently dispose of that solid waste at a solid~~

waste-disposal-facility-for-indefinite-disposal;-- In-those-instances-where-a transfer-station-accepts-solid-waste-from-a-person-in-the-business-of-hauling-or disposing-of-solid-waste;- the-transfer-station-must-collect-and-remit-the-solid waste-assessment-fee-for-that-portion-of-the-solid-waste-disposed-of-at-such transfer-station-by-persons-in-the-business-of-hauling-or-disposing-of-solid waste-who-do-not-subsequently-remove-their-solid-waste-from-the-transfer-station to-a-solid-waste-disposal-facility-for-indefinite-disposal; The solid waste assessment fee shall not be collected at a transfer station where solid waste is accumulated for subsequent disposal at a solid waste disposal facility for an indefinite period of time; Provided, That where solid waste is disposed of at a solid waste disposal facility which is located within the same solid waste shed as the transfer station, the transfer station must record the amount of solid waste received from without the solid waste shed and remit the additional one dollar per ton solid waste assessment fee for out of shed solid waste at the time the transfer station disposes of that solid waste at a solid waste disposal facility for an indefinite period of time. The transfer station may use the conversion factors provided in Section 4.4 of these regulations in lieu of scales if less than 1,000 tons of solid waste are received per month from outside of the solid waste shed by the transfer station.

The transfer station shall record the number of tons of residential solid waste received at the transfer station which are exempt from the solid waste assessment and interim fees pursuant to Section 6.3 of these regulations and report that portion as exempt at the time the solid waste accumulated at the transfer station is disposed of at the solid waste disposal facility where the solid waste is to remain for an indefinite period of time.

3-4-1-----Example-1:---Big-Guy-Garbage-Company-is-a-commercial-hauler and-disposer-of-solid-waste;---Big-Guy-Garbage-Company-operates-a-transfer station-where-its-collection-trucks-assemble-the-garbage-and-compact-it-before sending-it-to-a-solid-waste-disposal-facility-where-it-will-be-indefinitely disposed;---Big-Guy-Garbage-Company-is-not-required-to-remit-the-solid-waste assessment-fee-from-its-temporary-disposal-of-the-solid-waste-at-the-transfer station;---Instead-Big-Guy-Garbage-Company-would-pay-the-solid-waste-assessment fee-once-at-the-time-it-is-disposed-of-indefinitely-at-the-solid-waste-disposal facility;

3-4-2-----Example-2:---Big-Guy-Garbage-Company-is-a-commercial-hauler and-disposer-of-solid-waste-operating-a-transfer-station;---In-addition-to packing-its-own-solid-waste;-Big-Guy-Garbage-Company-allows-another-commercial hauler-and-disposer-of-solid-waste;-Leave-It-To-Us-Garbage-Company;-to-use-its transfer-station;---Should-Leave-It-To-Us-Garbage-Company-dispose-of-its-solid waste-at-the-transfer-station-for-Big-Guy-Garbage-Company-to-take-to-a-solid waste-disposal-facility-where-it-will-be-indefinitely-disposed;-Big-Guy-Garbage Company--must--collect--and--remit--the--solid--waste--assessment--fee--from Leave-It-To-Us-Garbage-Company-at-the-time-Leave-It-To-Us-Garbage-Company disposes-of-its-solid-waste-at-their-transfer-station;---Should-Leave-It-To-Us Garbage-Company-merely-use-Big-Guy-Garbage-Company's-transfer-station-to-compact its-solid-waste-and-then-removes-its-solid-waste-in-its-own-vehicles-to-the solid-waste-disposal-facility-where-it-will-be-indefinitely-disposed;-then-Big Guy-Garbage-Company-does-not-have-to-collect-and-remit-the-solid-waste

assessment-fee-at-its-transfer-station.-- In-either-event,-all-solid-waste-from the-transfer-station-is-to-be-subject-to-the-solid-waste-assessment-fee-at-the time-it-is-disposed-of-at-a-solid-waste-disposal-facility-on-an-indefinite basis.--The-solid-waste-coming-from-a-transfer-station-is-to-be-accounted-for-as to-its-origin-prior-to-its-stay-at-the-transfer-station-for-purposes-of determining-whether-the-in-shed-or-out-of-shed-rate-applies,-except-where Leave-It-To-Us-Garbage-Company-disposes-of-the-solid-waste-at-the-transfer station-and-pays-the-assessment-fee-to-Big-Guy-Garbage-Company.---In-that instance,-Big-Guy-Garbage-would-report-its-disposal-of-that-solid-waste-as originating-at-the-transfer-station-when-Big-Guy-Garbage-Company-disposes-of that-solid-waste-at-a-solid-waste-disposal-facility-on-an-indefinite-basis.

3-4-3-----Example-3:- Big-Guy-Garbage-Company-operates-a-transfer station.-- In-addition-to-compacting-the-solid-waste,-it-collects-in-its-own commercial-solid-waste-hauling-and-disposing-business,-Big-Guy-Garbage-allows residents-who-cannot-afford-collection-service-to-bring-their-solid-waste-to-the transfer-station.--Big-Guy-Garbage-Company-would-not-collect-and-remit-the-solid waste-assessment-fee-upon-the-solid-waste-they-collect-from-persons-not-in-the business-of-hauling-and-disposing-of-solid-waste.--All-solid-waste-coming-from-a transfer-station-will-be-subject-to-the-solid-waste-assessment-fee-at-the-time it-is-disposed-of-at-a-solid-waste-disposal-facility-on-an-indefinite-basis.

§ 110-6A-4. Rate. - The solid waste assessment fee shall be imposed at a rate of one dollar and twenty-five cents per ton or part thereof on solid waste disposed of at a solid waste disposal facility located within the same solid waste disposal shed as the point of origin of the solid waste.

The solid waste assessment fee shall be imposed at a rate of two dollars and twenty-five cents per ton or part thereof on solid waste disposed of at a solid waste disposal facility when the point of origin of the solid waste is outside of the solid waste disposal shed in which the solid waste disposal facility is located.

4.1 Solid waste disposal sheds shall be those areas as finally designated in the State Register by the West Virginia Resource Recovery-Solid Waste Disposal Authority. In the absence of a final designation, the most recent designation published by the West Virginia Resource Recovery-Solid Waste Disposal Authority in the State Register shall constitute the solid waste disposal sheds.

4.2 No solid waste disposal facility authorized by the Department to handle an aggregate of ten thousand tons or more of solid waste per month may accept solid waste after July 1, 1988, unless the commercial solid waste disposal facility has Department of Labor approved scale facilities sufficient to weigh all solid waste as it arrives at the facility after June 30, 1988.

4.3 Every solid waste disposal facility other than those subject to the provisions of Subsection 4.2 of these regulations shall install by May 1, 1989, Department of Labor-approved scale facilities which will be sufficient to weigh all solid waste arriving at such facility on and after that date.

4.4 Those solid waste disposal facilities which are not authorized by the Department to accept an aggregate of ten thousand tons or more of solid waste per month may use the following conversion factors until May 1, 1989, in order to estimate the tonnage of solid waste disposed of at the facility for purposes of calculating the solid waste assessment fee due;

4.4.1	COMPACTED	2.5 cubic yards/ton
4.4.2	UNCOMPACTED	5.0 cubic yards/ton
4.4.3	BALED	1.25 cubic yards/ton
4.4.4	SOIL	0.6 cubic yards/ton
4.4.5	SLUDGE	1.0 cubic yards/ton

4.5 Waiver. - The State Tax Commissioner shall have authority to waive the requirement that scales be installed at a solid waste disposal facility upon application by such facility. To be eligible for such waiver the facility shall demonstrate that the facility has applied for a closure permit from the Department of Natural Resources and that such facility will not be in operation as a solid waste disposal facility required to collect the solid waste assessment fee on or after November 4, 1990.

§ 110-6A-4a. Additional Interim Fee.

4a.1 Imposition and Rate. - Effective July 1, 1989 in addition to that fee imposed pursuant to W. Va. Code § 20-5F-5a, a solid waste assessment interim fee, imposed pursuant to W. Va. Code § 20-9-12c, of one dollar per ton, or part thereof, shall be collected at the time solid waste is disposed of in West Virginia.

4a.2 Collection. - The solid waste assessment interim fee imposed pursuant to W. Va. Code § 20-9-12C is to be collected by the operator of the solid waste disposal facility from persons disposing of solid waste. The collection of this additional tax shall be subject to the same provisions as are applicable to the solid waste assessment fee which are provided elsewhere in these regulations.

§ 110-6A-5. Return and Due Date. - The solid waste assessment fees collected by the operator of a solid waste disposal facility shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued, together with the return in such form or forms (Form WV/SWA-1) as prescribed by the State Tax Commissioner. A return shall be due regardless of the fact that no fees are due from the facility for the reportable month.

§ 110-6A-6. Exemptions From Fee. - The following transactions shall be exempt from the solid waste assessment fee:

6.1 Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if such

facility is used exclusively to dispose of solid waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis.

6.1.1 This exemption applies only to those facilities which obtain and maintain certification from the Department that the facility qualifies as an exclusive or cost-share solid waste disposal facility.

6.2 Reuse or recycling of any solid waste.

6.2.1 This exemption applies only to those persons who obtain certification from the Department that the transaction qualifies as reuse or recycling.

6.3 Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste shall be exempt only when done pursuant to regulations and requirements of the Department implementing this exemption.

§ 110-6A-7. Records. - Each solid waste disposal facility shall keep complete and accurate records of the following:

7.1 The amount of solid waste received from each person disposing of solid waste at a solid waste disposal facility.

7.2 The amount of solid waste disposal assessment fee collected from each person disposing of solid waste at the facility.

7.3 The identity of each person disposing of solid waste at the facility including the name and address of the individual.

7.4 The license plate number of the vehicle carrying the solid waste.

7.5 A copy of the manifest or an affidavit from the generator or collector of the solid waste identifying the type of waste and its origin, unless the solid waste is residential solid waste disposed of by an individual not in the business of hauling or disposing of solid waste.

7.6 Any other records the Tax Commissioner or Director deem necessary.

§ 110-6A-8. Records keeping. - All records and other documents shall be preserved for a period of time not less than three years from the due date of the monthly return to which they relate, unless:

8.1 The Tax Commissioner or Director in writing requires the operator to keep records for a longer period;

8.2 An agreement extending the time for issuance of a deficiency assessment is executed, which shall automatically extend the time for retention of records.

§ 110-6A-9. Confidentiality. - Pursuant to the authority granted under W. Va. Code § 11-10-5d(f), and upon passage of these regulations by the Legislature as legislative regulations, the State Tax Commissioner may enter into an agreement with the Director of the Department to exchange any information with the Director, that the Tax Commissioner may in his discretion deem to facilitate the enforcement of W. Va. Code § 20-5F-1 et seq.

§ 110-6A-10. Procedure And Administration. - Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in W. Va. Code § 11-10-1 et seq. shall apply to the solid waste assessment fee.

§ 110-6A-11. Criminal Penalties. - Notwithstanding W. Va. Code §§ 11-9-2 the provisions of W. Va. Code §§ 11-9-3 through 11-9-17 shall apply to the solid waste assessment fee.

§ 110-6A-12. Deposit Of Funds. - Net proceeds collected under W. Va. Code § 20-5F-5a by the Tax Commissioner shall be transferred to an account designated by the Director, who then shall deposit the funds in other accounts as provided in W. Va. Code § 20-5F-5a(h). It shall be the duty of the Director to make all calculations to assure the proper allocation and deposit of funds into the accounts as provided in subsection (h): Provided, That net proceeds of the interim fee collected pursuant to W. Va. Code § 20-9-12c shall be transferred to a special revenue account designated as the "Solid Waste Planning Fund" and the proceeds allocated as provided under W. Va. Code § 20-9-12c(h).

§ 110-6A-13. Person Disposing Of Solid Waste To Pay, Accounting By Solid Waste Disposal Facility. - The person disposing of solid waste shall pay the operator of the solid waste disposal facility the amount of the solid waste assessment fee, which shall be added to and constitute a part of the sales price, and shall be collectible as such by the solid waste disposal facility, which shall account to the State for all solid waste assessment fees paid by the disposer of solid waste. The solid waste disposal facility shall keep the amount of solid waste assessment fees paid separate from the proceeds of sale unless authorized in writing by the Tax Commissioner to keep such fees in a different manner. Where such authorization is given, the State's claim shall be enforceable against and shall take precedence over all other claims against the moneys commingled.

The solid waste disposal facility shall report as it's "total solid waste disposed of during the month," it's tonnage total for purposes of determining the solid waste disposal assessment fees, not the actual weight totals of solid waste disposed of at the facility. Each load, or the total aggregate weight of all loads received from a particular person making more than one trip during the day, is to be rounded to the next highest whole number of tons, and the totals of these daily figures are to be totaled for the month and reported on the return as the "total solid waste disposed of during the month." For those haulers regulated by the West Virginia Public Service Commission or billed on a regularly scheduled basis by the solid waste disposal facility, the total aggregate weight of all loads received for the month is to be rounded to the next highest whole number of tons, and this figure is to be used to compute the solid waste assessment fee due and the "total solid waste disposed of during the month."

§ 110-6A-14. No Profit Accruing. - No profit shall accrue to any person as a result of the collection of the solid waste assessment fee notwithstanding the fact that the total amount of such fees collected may be in excess of the amount for which such person would be liable pursuant to W. Va. Code § 20-5F-5a, and the total of all such fees collected by such person shall be returned and remitted to the Tax Commissioner as otherwise provided.

§ 110-6A-15. Receivership, Bankruptcy; Priority Of Tax. - In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all solid waste assessment fees due and unpaid, shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due the United States which under federal law are given priority or except other taxes and debts owed the State of West Virginia.

§ 110-6A-16. Exempt Facilities. - Once a facility is certified exempt from the solid waste assessment fee by the Department of Natural Resources, no provisions of these regulations purporting to require the filing of returns, the keeping of records or the installation of scales shall apply.

§ 110-6A-17. Remittance Of Fee From Customers Billed Monthly. - For those customers billed on a monthly basis, the solid waste assessment fee accrued in a month may be reported as accrued in the following month in which payment is received by the solid waste disposal facility operator. For example, fees accrued in August, 1988 may be deemed to have accrued in September, 1988; such fees must be then remitted in October, 1988.

§ 110-6A-18. Limitation Of Liability Of Solid Waste Facility Operator Where Customer Fails To Pay Fee. - The solid waste facility operator will not be held liable for solid waste assessment fees invoiced to the hauler which the hauler refuses to pay if the operator, within thirty (30) days after the hauler refuses to pay the fees assessed, supplies the Tax Commissioner with copies of the invoices showing the amount of solid waste dumped by the hauler, the amount of solid waste assessment fee due from the hauler, and the name and address of the hauler.

§ 110-6A-19. Solid Waste From Both Inside And Outside The Waste Shed. - Haulers of solid waste with routes which cross a solid waste disposal shed line, shall provide the operator of a solid waste disposal facility with the percentage of accounts inside the solid waste shed and the percentage of accounts outside the solid waste shed so that the operator will be able to account for the totals to be included in the respective category of out-of-shed and in-shed tons reported on their monthly returns. Once the percentage of tons in each category is calculated, tonnage shall be accounted for in the manner required by Section 110-6A-13 of these rules and regulations.