

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

FILED

1988 JUN 30 PM 8 30

SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Tax Department TITLE NUMBER: 110

CITE AUTHORITY: W.Va. Code §§ 11-10-5, 20-5F-5a(f) and 29A-3-15

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

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

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 6A

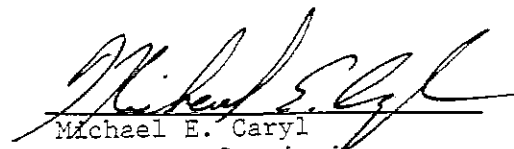
TITLE OF RULE BEING FILED AS AN EMERGENCY: Solid Waste Assessment Fee

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The solid waste assessment fee imposed by W.Va. Code § 20-5F-5a is effective July 1, 1988. This rule provides the framework for the administration of that fee. Because the fee is imposed on all who dispose of solid waste at authorized facilities, regardless of whether such parties are West Virginia residents or from out-of-state, this rule is necessary to protect the public interest.

Use Additional Sheets If Necessary.

  
Michael E. Caryl  
State Tax Commissioner

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Solid Waste Assessment Fee

Type of Rule: X Legislative          Interpretive          Procedural

Agency: Tax Department Address: State Capital; 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 the rule should not differ from that envisioned by the Legislature when it passed H.B. 3146 on March 12, 1988.

3. Objectives of these rules:

This rule governs the administration of the solid waste assessment fee imposed by H.B. 3146.

DATE: JUNE 30, 1988

TO: LEGISLATIVE RULE-MAKING COMMITTEE

FROM: STATE TAX DEPARTMENT

EMERGENCY RULE TITLE: SOLID WASTE ASSESSMENT FEE

1. Date of filing: June 30, 1988

2. Statutory authority for promulgating the emergency rule: \_\_\_\_\_  
W. Va. Code §§ 11-10-5, 20-5F-5a and 29A-3-15

3. Date of filing of proposed legislative rule: June 30, 1988

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule is a new rule.

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

N/A

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.

N/A

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

The solid waste assessment fee imposed by W. Va. Code § 20-5F-5a is effective July 1, 1988. Because the fee is imposed on all who dispose of solid waste at authorized facilities unless otherwise exempted by law, regardless of whether such parties are West Virginia residents or from out-of-state, this rule is necessary to protect the public interest.

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

FILED  
1988 JUN 30 PM 8:30  
OFFICE OF THE SECRETARY OF STATE

Filed: June 30, 1988

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§ 110-6A-1. General.

1.1 Type of Regulation. - These regulations are emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

1.2 Scope. - These emergency 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 emergency legislative regulations are issued under the authority of W. Va. Code §§ 29A-3-15, 11-10-5 and 20-5F-5a(f).

1.4 Filing Date. - These emergency legislative regulations were promulgated and filed in the State Register on June 30, 1988. A public comment period commenced on June 30, 1988 and continued until 5:00 p.m. on July 31, 1988.

1.5 Effective Date. - These emergency legislative regulations become effective on July 1, 1988.

1.6 Citation. - These emergency 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. Such facilities will not be certified as such if waste is accepted from sources other than the owner, operator or lessor of the facility or those contributing to the operations of such facilities pursuant to a cost-sharing agreement.

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 arms 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 generated at the residence of the individual

disposing of such waste and which is disposed of in a manner consistent with Department rules regulating exempt disposal days and shall not include any solid waste of a type inconsistent with that typically generated by a residence.

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 is presorted at the time it arrives at a solid waste disposal facility and such facility has a reuse or recycling operation in place which is certified by the Department.

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, 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-1-1 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 designates and files in the State Register pursuant to W. Va. Code § 16-26-8, on either a temporary or permanent basis.

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, such fee to be imposed upon all solid waste disposed of 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 severably liable for any solid waste assessment fees which are not collected from the person disposing of solid waste unless the facility is certified by the Department as an exclusive or cost-share solid waste disposal facility and is operated in a manner consistent with the provided exemption, or unless the solid waste is separated at the time of disposal into a stock of reusable or recyclable solid waste, but

only for that portion which is reusable or recyclable, and the solid waste disposal facility has a Department certified reuse and recycling project or the solid waste is disposed of pursuant to and subject to the Department's regulations authorizing residential exempt disposal as provided in W. Va. Code § 20-5F-5a(e)(3).

3.4 The solid waste assessment fee shall be collected from both 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.

§ 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 at the facility Department of Labor approved scale facilities sufficient to weigh and weighs 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

§ 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 a return in such form or forms as prescribed by the State Tax Commissioner. A return shall be due regardless of the fact that no fees are due from the facility.

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

6.1.2 The exclusive or cost-share solid waste disposal facility shall file monthly solid waste assessment fee returns whether or not any such fees are due.

6.1.3 The exclusive or cost-share solid waste disposal facility shall keep all records required for solid waste disposal facilities pursuant to these regulations and those of the Department.

6.1.4 The exclusive or cost-share solid waste disposal facility will forfeit its certification for this exemption if it accepts any solid waste other than that originally produced by the operator of such facility or by persons using the facility pursuant to a written non-profit or cost-sharing agreement.

6.2 Reuse or recycling of any solid waste.

6.2.1 This exemption applies only where the solid waste has been separated by the person disposing of the reusable or recyclable waste prior to disposing of such waste.

6.2.2 This exemption may not be taken for disposal of solid waste except at a solid waste disposal facility with a certified reuse or recycling project or trans-shipment location.

6.2.3 This exemption does not apply where the operator of a solid waste disposal facility merely asserts an intention of reuse or recycling at a future date, but applies only to those operations where the reuse or recycling activity is actually undertaken or where solid waste is accumulated for trans-shipment to a facility where actual reuse or recycling activities are occurring.

If the operator asserts an intention to reuse or recycle solid waste but fails to reuse or recycle the solid waste or to ship it to a facility which will do so, the operator shall be personally liable for the fee due on such tonnage and not the person who in good faith disposed of it with the operator.

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 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 in the discretion of the State Tax Commissioner will 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 §§ 11-10-2 through 17, the provisions of W. Va. Code § 11-9-1 et seq. shall apply to the solid waste assessment fee.

§ 110-6A-12. Deposit of funds. - Net proceeds collected under W. Va. Code § 20-5-5a 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).

§ 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 disposal 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 fee paid separate from the proceeds of sale exclusive of the solid waste assessment fee 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 is to be rounded to the next highest whole number of tons, and the total of these figures are to be reported as the "total solid waste disposed of during the month" on the return.

§ 110-6A-14. No profit shall accrue to any person as a result of the collection of the solid waste assessment fee notwithstanding the total amount of

State Tax Department  
Title 110  
Series 6A

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.



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(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

August 9, 1988

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Tax Department

RULE: New Rule, Series 6A, Solid Waste Assessment Fee

DATE FILED AS AN EMERGENCY RULE: June 30, 1988

DECISION NO. 9-88

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

KEN HECHLER  
Secretary of State

FILED  
1988 AUG 10 PM 4:03  
OFFICE OF THE SECRETARY OF STATE



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(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

### DECISION      EMERGENCY RULE DECISION (ERD 9-88)

AGENCY: Tax Department  
RULE: New Rule, Series 6A, Solid Waste Assessment Fee  
DATE FILED AS AN EMERGENCY RULE: June 30, 1988

- par. 1 The Tax Department has filed the above new rule as an emergency rule.
- 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 Tax Department has filed this emergency rule with supporting documents with the Secretary of State on June 30, 1988 and with the LRMRC on July 7, 1988.

par. 7 It is the determination of the Secretary of State that the Tax Department 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 §11-10-5 reads in part:

*The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the State Administrative Procedures Act in chapter twenty-nine-a (§29A-1-1 et seq.) of this code.*

par. 9 WV Code 20-5F-5a(f) reads:

*(f) Procedure and administration. -- Each and every provision of the "West Virginia Tax Procedure and Administration Act" shall set forth in article 10 (11-10-1 et seq.) chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.*

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

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

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

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

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

The solid waste assessment fee imposed by W. Va. Code §20-5F-5a is effective July 1, 1988. This rule provides the framework for the administration of that fee. Because the fee is imposed on all who dispose of solid waste at authorized facilities, regardless of whether such parties are West Virginia residents or from out-of-state, this rule is necessary to protect the public interest.

- par. 14. The primary funding source for local governmental solid waste activities is the assessment fee. The new law went into effect July 1, 1988 and it is clearly within the public interest to begin collection of moneys for funding the new law.
- par. 15. It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.
- par. 16. This decision shall be cited as Emergency Rule Decision 9-88 or ERD 9-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Tax Department, the Attorney General and the Legislative Rule Making Review Committee.

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KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_