WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #8

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THIS DATE Sept 2, 1988
ADMINISTRATIVE LAW DIVISION

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Tax Department TITLE NUMBER: 110

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 30, 1988

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

No

DATE OF FIRST EMERGENCY AMENDMENT: N/A

SERIES NUMBER OF RULE: Series 6A TITLE OF RULE Soild Waste Assessment Fee

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.

FILED

1988 SEP -2 AM 8 35

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AGENCY APPROVED

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

Filed: September 2, 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. and July 31, 1988. These emergency legislative regulations were refiled in the State Register and with the Legislative Rule-Making Review Committee on September 2, 1988.

1.5 Effective Date.-These emergency legislative regulations become effective immediately upon filing in the State Register.

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 lessee 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 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. This waste must be 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 at 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 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-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 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 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 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.

§ 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

§ 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 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 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.

6.1.2 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 exclusive user 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 to those persons who obtain certification from the Department that the transaction qualifies as reuse or recycling.

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 Solid waste must be separated by the person disposing of the reusable or recyclable waste prior to disposing of such waste to qualify for exemption under these provisions.

6.2.4 This exemption does not apply where the operator of a solid waste disposal facility merely asserts an intention to reuse or recycle 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, as certified by the Department.

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 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 §§ 11-10-2 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 § 20-5F-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).

§ 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 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, 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, 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 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 landfill 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 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.