

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

Form #4

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1030 FEB 24 PM 2:22  
OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Tax Department TITLE NUMBER: 110

CITE AUTHORITY W.Va. Code §§ 29A-3-1 et. seq., 11-10-5 and 20-5E-5a(f)

AMENDMENT TO AN EXISTING RULE: YES  NO

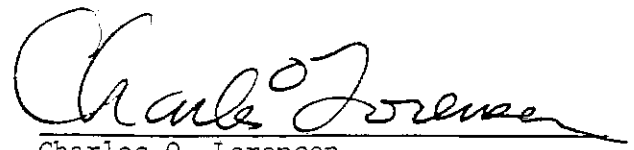
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 6A

TITLE OF RULE BEING PROPOSED: Solid Waste Assessment Fee

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Charles O. Lorenson  
State Tax Commissioner

FILED

1989 FEB 24 PM 2:22

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

Filed: February 24, 1989

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§ 110-6A-1. General.

1.1 Type of Regulation.-These regulations are legislative rule 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 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 legislative regulations were refiled as agency approved legislative regulations in the State Register and with the Legislative Rule-Making Review Committee on September 2, 1988, and as modified legislative regulations on December 8, 1988 and again on February 24, 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.

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

§ 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 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).

§ 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, 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

State Tax Department  
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calculated, tonnage shall be accounted for in the manner required by Section 110-6A-13 of these rules and regulations.



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WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
Room M-438, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

OFFICE OF THE SECRETARY OF STATE

Senator Larry A. Tucker, Co-Chairman  
Delegate Thomas A. Knight, Co-Chairman

December 6, 1988

M. E. Mowery, Counsel  
Debra A. Graham, Associate Counsel  
Marie Nickerson, Receiving Clerk

NOTICE OF ACTIONS TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: Michael E. Caryl, Commissioner  
State Tax Department  
State Capitol  
Charleston, WV 25305  
FROM: Legislative Rule-Making Review Committee  
PROPOSED RULE: Solid Waste Assessment Fee

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: John Montgomery