

Form #3 ☐

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 23, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 33CSR3 - "Yard Waste Management Rule"

Dear Ms. Cooper:

This letter will serve as my approval to file with your Office the above-referenced Legislative rule as "Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Larry Atha
Carrie Chambers

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 31, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division Environmental Protection, Office Waste

Management, 1356 Hansford Street, Chas., WV 25301

Phone, Dick Cooke, OWM: 558-6350

Carrie Chambers, Director's Office: 759-0515

LEGISLATIVE RULE TITLE: 33CSR3 - "Yard Waste Composting Rule"

1. Authorizing statute(s) citation 22-11-8(c)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 14, 2000

b. What other notice, including advertising, did you give of the hearing?
Statewide News Release by DEP's Public Information Office/Publication in
DEP's InDepth Newsletter with statewide circulation

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 15, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 31, 2000

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Dick Cooke, Asst. Chief, OWM, 1356 Hansford Street, Chas., WV 25301

Phone, 558-6350, fax, 558-1574, e-mail, DCooke@mail.dep.state.wv.us

Carrie Chambers, Exec. Asst., Director's Office, #10 McJunkin Rd., Nitro, WV 25143

Phone, 759-0515, fax, 759-0526, e-mail, CChambers@mail.dep.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
PROPOSED LEGISLATIVE RULE**

BRIEFING DOCUMENT

RULE TITLE: "33CSR3 -Yard Waste Composting Rule"

A. AUTHORITY: §20-11-8

B. SUMMARY OF RULE:

The enclosed Legislative Rule will revise the West Virginia Division of Environmental Protection Office of Waste Management, Yard Waste Management Rule, Title 33, Series 3.

Amendments to this Rule are necessary to fulfill the requirements of §20-11-8 of the Code of W. Va. The proposed Legislative Rule amendments, among other items, allows residents of West Virginia to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available. The proposed rule also reinserts language inadvertently deleted by the Agency during the last rule revision.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This proposed Legislative Rule is necessary to update the Yard Waste Management Rule, Title 33, Series 3, to fulfill the requirements of §20-11-8 of the Code of W. Va. The proposed Legislative Rule amendments, among other items, allows residents of West Virginia to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available. The proposed rule also reinserts language inadvertently deleted by the Agency during the last rule revision. This deletion restricted the Agencies' ability to effectually regulate yard waste composting facilities situated atop a partially or fully closed solid waste disposal area .

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There are no federal counterpart regulations

E. CONSTITUTIONAL TAKINGS DETERMINATION:

N/A

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

These proposed rule amendments were discussed during the meeting of the Environmental Protection Council in their meeting of July 6, 2000. Those minutes are attached.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPs. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that 45CSR15 adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to 45CSR16, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

□ 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

□ 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- 33CSR3 - "Yard Waste Management Rule"
- 33CSR5 - "Waste Tire Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"
- 33CSR32 - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on 33CSR3. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under 33CSR5. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"
- 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

APPENDIX B

Rule Title: 33CSR3 - Yard Waste Composting Rule

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Division of Environmental Protection

Address: Office of Waste Management, 1356 Hansford Street, Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates:

No Fiscal Impact

3. Objectives of These Rules:

Objectives of These Rules.
To fulfill the requirements of WV Code 20-11-8 to amend the legislative rule to allow residents to dispose of small quantities of domestic yard waste in solid waste landfills, when there is no other option available.

Rule Title: 33CSR3 - "Yard Composting Rule"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

This rule should not result in any changes to the economic impact on state government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: Provides for municipalities, landscapers, garden centers, solid waste authorities and others to compost yard waste and create a marketable/reusable product if they so desire.

C. Economic Impact on Citizens/Public at Large.

Prohibition on disposal of yard waste results in savings of up to 6% of the waste stream from being disposed of in landfills, thus extending the life of West Virginia landfills for public use.

Date: Carrie J. Chambers

Signature of Agency Head or Authorized Representative:

July 14, 2000

FILED

Aug 31 2 13 PM '00

TITLE 33
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

SERIES 3
YARD WASTE COMPOSTING RULE

§33-3-1. General.

1.1. Scope. -- This legislative rule establishes requirements for the proper handling and composting of yard waste including siting, bonding, design, construction, modification, operation, closure and permitting procedures pertaining to any facility or activity that generates, processes, composts or otherwise reuses or recycles yard waste by whatever means and sets forth requirements for operator training and certification.

1.2. Authority. -- W. Va. Code §20-11-8(c).

1.3. Filing Date. -- ~~May 5, 1997.~~

1.4. Effective Date. -- ~~May 5, 1997.~~

1.5. Legislative Mandate.

Effective January 1, 1997 it is unlawful to deposit yard waste, including grass clippings and leaves, in a solid waste facility in West Virginia: Provided, That such prohibitions do not apply to a facility designed specifically to compost yard waste or otherwise recycle or reuse such items: Provided, That reasonable and necessary exceptions to such prohibitions are included in subsection 3.1.b of this rule.

~~1.5.~~ 1.6. Incorporation by Reference.

Whenever federal or state statutes or rules are incorporated into this rule by reference, the reference is to the statute or rule in effect on the effective date of this rule.

§33-3-2. Definitions.

All definitions in W. Va. Code §22-15-2 and all definitions in §33CSR1 and §33CSR2 are fully incorporated into this rule by reference. The following additional definitions apply to this rule:

2.1. "Buffer Zone" means the distance between the composting operation and the adjacent property boundaries.

2.2. "Commercial Yard Waste Composting Facility" means any solid waste facility which is authorized to handle or accept up to thirty-six thousand (36,000) tons per year of yard waste and/or other compostable solid waste materials generated by sources other than the owner or operator of the facility, provided that, a commercial yard waste composting facility does not include an approved solid waste facility owned and operated by a person for the sole purpose of composting yard waste created by that person or other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished compost is applied for use as a soil amendment/soil conditioner.

2.3. "Domestic yard waste" means yard wastes generated in small quantities by the resident or tenant of residential property.

2.4. "Non-residential composting activities" means a composting activity by persons such as landscape contractors, nurseries or greenhouses, lawn and garden companies, solid waste authorities and municipalities which are authorized to compost up to twelve thousand (12,000) tons per year of yard waste materials consisting of grass clippings, weeds, leaves, brush/shrub or tree prunings and other acceptable compostable materials which have been approved in writing by the Chief to produce a

safe product for use as a soil amendment/soil conditioner.

2.5. "Nuisance" means any practice or condition created by a composting facility or activities which results in dust, dirt, mud, infectious molds, bacteria or fungi, or offensive odor, or attracts vectors such as insects, rodents, snakes or in any way interferes with the normal use of any properties or causes harm or injury to any person or the environment.

2.6. "Runoff" means any flowing water and associated contaminants originating from any part of the solid waste facility or activity that drains over the land.

2.7. "Run-on" means any rainwater, snowmelt, wastewater, leachate or other liquid that drains over land onto any part of the compost facility.

2.8. "Soil amendment/soil conditioner" means an organic matter source or yard waste compost that when added to the soil improves the general physical, chemical and biological properties of the soil.

2.9. "Yard waste composting" means the controlled decomposition of yard waste to produce a stable and beneficial humus-like material.

2.10. "Yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that, such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste: Provided, That the same or similar waste generated by commercial agricultural enterprises is excluded.

2.11. "Windrow" means an elongated pile created by the placement of yard waste.

§33-3-3. Yard Waste Composting and Permitting Requirements.

3.1. Applicability.

3.1.a. This rule applies to all persons who handle or manage yard waste to produce compost and requires that:

3.1.a.1. Methods employed for yard waste composting must be consistent with section 4 of the Solid Waste Management Board's program for the "Proper Handling of Yard Waste," dated May 1, 1993.

3.1.a.2. Yard wastes are must not be combined with "sludge," as defined in 33CSR1 ~~subsection 2.52~~ section 2 of the Solid Waste Management Rule, "petroleum contaminated soil" or other solid waste materials specified by the director.

3.1.a.3. A yard waste composting facility shall not be situated atop a partially or fully closed solid waste disposal area, unless approved by the director in writing. Provided, That an existing solid waste facility by minor permit modification may include yard waste composting operations.

3.1.b. Reasonable and Necessary Exceptions to Prohibition. Domestic Yard waste shall be disposed of in a manner consistent with one or any combination of the following reasonable and necessary exceptions or options as provided for in W.Va. Code §20-11-8(e):

3.1.b.1. Disposal in a publicly or privately operated commercial or noncommercial composting facility or activity;

3.1.b.2. Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property;

3.1.b.3. Disposal by open burning where such activity is not prohibited by the W. Va. Code, rules promulgated thereunder or municipal or county codes or ordinances.

3.1.b.4. Disposal in a ~~publicly or privately operated landfill is prohibited, provided that 3.1.b.4.A.~~ Solid waste landfills may accept and dispose of domestic yard waste delivered to the facility by a municipality, solid waste hauler, resident or tenant or when the director determines that none of the foregoing options are available, practical

~~3.1.b.4.B. When the director determines that it is not reasonable to separately collect domestic yard waste generated by residents or tenants.~~

3.2. Location Standards for Siting a Commercial Yard Waste Composting Facility.

3.2.a. The following location standards apply to commercial yard waste composting facilities, unless otherwise approved by the director:

3.2.a.1. A yard waste composting facility shall be located in an area which has been authorized for composting facilities by the county and/or regional solid waste authority approved siting plan;

3.2.a.2. Yard waste composting facilities shall not be sited or constructed in areas subject to a one hundred year flood plain and no facility shall be closer than three hundred (300) feet to any regularly flowing stream, perennial stream, pond, lake, wetland or spring;

3.2.a.3. Yard waste composting facilities shall not be located in areas which are geologically unstable or where the site topography exceeds six (6) percent grade;

3.2.a.4. Acceptable sites must have sufficient area and terrain to allow for proper management of run-on, runoff and leachate;

3.2.a.5. A yard waste composting facility shall not be located within two thousand (2,000) feet of any health care facility, school, church, or similar type of institution. The director

may reduce this setback distance if the owner or operator can successfully demonstrate that a nuisance will not be created due to the operation of the facility;

3.2.a.6. A yard waste composting facility shall not be located within two hundred (200) feet of drinking water supply wells and occupied dwellings;

3.2.a.7. A yard waste composting facility shall not be located within fifty (50) feet of a federal or state highway right-of-way or within twenty-five (25) feet of a city street right-of-way;

3.2.a.8. The operational area of a yard waste composting facility shall not be located within one hundred (100) feet of an adjacent property owner's boundary line;

3.2.a.9. A yard waste composting facility shall not be located on land where runoff drains into a sinkhole;

3.2.a.10. A yard waste composting facility shall not be located on land that has a seasonal high groundwater table (based on soil maps) less than two (2) feet from the land surface;

3.2.a.11. A yard waste composting facility shall not be located on land that has less than twenty (20) inches of soil over bedrock or on an impervious pan; and

3.2.a.12. A yard waste composting facility shall not be located within ten thousand (10,000) feet to the closest point of any airport runway used or planned to be used by turbojet aircraft or within five thousand (5,000) feet to the closest point of any airport runway used only by piston type aircraft or within other areas where a substantial bird hazard to aircraft would be created.

3.3. Location Standards for Siting Non-Residential Composting Activities.

3.3.a. The following location standards

apply to non-residential composting activities:

3.3.a.1. Non-residential composting activities shall not be sited or constructed in areas closer than one hundred (100) feet to any regularly flowing stream, perennial stream, pond, lake, wetland or spring;

3.3.a.2. Non-residential composting activities shall have sufficient area and terrain to allow for the proper management of run-on, runoff and leachate;

3.3.a.3. Non-residential composting activities shall not be located within one hundred (100) feet of an adjacent property owner's boundary line without obtaining prior written permission from the adjacent property owner;

3.3.a.4. Non-residential composting activities shall not be located within one hundred (100) feet of a sinkhole; and

3.3.a.5. Non-residential composting activities shall not exceed five (5) acres in size without written approval from the director.

3.3.b. Compliance with any of the location standards for yard waste composting facilities or activities in this rule does not relieve the owner or operator from compliance with all other codes, ordinances or rules.

3.4. Design and Construction of Commercial Yard Waste Composting Facility.

3.4.a. A handling area and proper equipment shall be provided to segregate waste other than yard waste and non-compostable components in the yard waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

3.4.b. If the yard waste composting facility is located in any area where the seasonal high water table (based on soil maps) lies within five (5) feet of the ground surface, the composting and handling areas shall be hard-surfaced in a

manner acceptable to the director and diked to prevent entry of run-on or escape of runoff and other liquids, and a sump with an adequately sized pump located at the low point of the hard-surface area shall be provided to convey liquids to a wastewater treatment, disposal or holding facility.

3.4.c. Accepted engineering practices shall be incorporated into the design of facilities located on sites with:

3.4.c.1. Springs, seeps, and other groundwater intrusions;

3.4.c.2. Gas, water, phone, sewage lines or other utilities under the active areas; or

3.4.c.3. Electrical transmission lines above or below the active areas; and

3.4.c.4. Additional design and construction considerations.

3.4.c.4.A. Areas used for mixing, curing, and storing of compost shall be graded to prevent run-on, collect runoff, and provided with a drainage system to route the collected runoff to a wastewater storage, treatment, or disposal facility.

3.4.c.4.B. A buffer zone with the minimum width of one hundred (100) feet shall be incorporated in the facility design between facility adjacent property boundaries and the operational areas of the facility.

3.4.c.4.C. Roads serving the unloading, handling, composting, and storage areas shall be of all-weather construction and the design features for each shall be shown on drawings submitted to the Division of Environmental Protection in the application.

3.4.c.4.D. The design of a commercial yard waste composting facility shall be signed and sealed by a W. Va. registered professional engineer.

3.5. Permits Required.

3.5.a. Applicability.

No person may establish, install, construct or operate the following:

3.5.a.1. A commercial yard waste composting facility without obtaining a solid waste facility permit from the Division of Environmental Protection, provided that first, the applicant fulfills the pre-siting requirements of subsection 3.4 of the West Virginia Solid Waste Management Rule, 33CSR1; or

3.5.a.2. A non-residential composting activity without the property owner/operator obtaining a registration number from the Division of Environmental Protection, Office of Waste Management, Solid Waste Management Section.

3.5.b. Exemptions.

Residential and non-residential composting activities are exempt from obtaining a commercial solid waste facility permit. However, the non-residential activity shall be located and operated in compliance with the location standards and the operational requirements as set forth in subsections 3.3 and 3.8 of this rule.

3.6. Permit Application Requirements.

3.6.a. The applicant for a permit to establish, install, construct, operate and close a commercial yard waste composting facility shall include in the permit application the following:

3.6.a.1. A copy of the Certificate of Convenience and Necessity (CON) obtained from the WV Public Service Commission;

3.6.a.2. A copy of the Certificate of Siting Approval;

3.6.a.3. The name, address, and location of the proposed facility;

3.6.a.4. The proposed operator's and owner's name, address, telephone number,

ownership status, and status as a federal, state, private, public or other entity;

3.6.a.5. A copy of legal documents demonstrating that the applicant has legal right to enter and conduct commercial yard waste composting operations on the property including a copy of the deed description or lease agreement;

3.6.a.6. A safety program designed to prevent hazards and accidents at the proposed facility;

3.6.a.7. Proof of liability insurance to cover the operations of the proposed facility; and

3.6.a.8. A detailed description of the activities to be conducted by the applicant at the facility.

3.6.b. An engineering report for an application to obtain a permit to construct shall contain, at a minimum, the following:

3.6.b.1. A regional map, or maps, (of appropriate scale) that delineate the entire service area of the proposed facility (both existing and proposed); existing and proposed collection, processing, and disposal operations; the location of the closest population centers; and the transportation systems including highways, airports, railways and waterways;

3.6.b.2. A vicinity map (minimum scale of 1"=2000') that delineates the area within one mile of the facility boundaries, zoning and land uses, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed manmade or natural features relating to the project;

3.6.b.3. A site plan (minimum scale of 1"=200') with five foot contour intervals that delineates property boundaries, the location of existing and proposed soil boring, monitoring wells, buildings and appurtenances, fences, gates, roads, parking areas, drainage, culverts, storage facilities or areas, loading areas; existing and

proposed elevation contours and direction of prevailing winds; and the location of residences, potable wells, surface water bodies, wetlands, and drainage swales located within the site and in the site plan area;

3.6.b.4. A detailed description of the operation of the facility including precautions or procedures for operation during heavy winds, thunderstorms, snowstorms, prolonged freezing conditions and an operational narrative describing the following:

3.6.b.4.A. Collection methods to be employed;

3.6.b.4.B. Methods to be utilized in constructing compost piles or windrows, including equipment;

3.6.b.4.C. Proposed dimensions of compost piles or windrow;

3.6.b.4.D. A source of supplemental water to maintain an optimal moisture content of compost piles or windrows;

3.6.b.4.E. Proposed turning frequency, including the method for determining that frequency;

3.6.b.4.F. Proposed duration of the composting process, including curing or storage time, and the term of compost distribution;

3.6.b.4.G. A distribution plan for the yard waste compost;

3.6.b.4.H. A residue disposal plan including the location of disposal site(s);

3.6.b.4.I. Provisions for emergency response; and

3.6.b.4.J. A public information and education program;

3.6.b.5. A schedule of operation,

including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;

3.6.b.6. Anticipated daily traffic flow to and from the facility;

3.6.b.7. A description of the ultimate use for the finished yard waste compost, method for removal from the site, and a plan for use or disposal of any yard waste compost that cannot be used in the expected manner due to poor quality or change in market conditions;

3.6.b.8. Identification of the personnel required to operate and maintain the facility and their job descriptions and responsibilities;

3.6.b.9. A detailed description of the origin, quality, quantity, and type of yard waste anticipated to be received at the proposed facility. The quantity of yard waste anticipated to be received shall be estimated in both cubic yards and tonnage, and the maximum amount of compost estimated to be produced daily, monthly and annually shall be stated;

3.6.b.10. Contingency plans detailing corrective (or remedial) action to be taken in the event of equipment breakdown; air pollution (odors); unacceptable waste delivered to the facility; groundwater contamination; spills; and undesirable conditions such as fires, dust, noise, vectors, lack of a market for the yard waste compost product and unusual traffic conditions;

3.6.b.11. The procedures for the development of an operations manual. The manual must contain general design information, detailed operational information and instructions including methods of monitoring for moisture, temperature, and other quality control measures during the composting process. In addition, the manual must outline the specific procedures to be used in monitoring, sampling and analyzing finished compost material, which must be acceptable to the director, provided that, as a minimum the finished compost material shall be analyzed by an approved

EPA method for the concentration levels of heavy metals prior to its use. If any heavy metal concentration level exceeds regulatory standards, the finished compost material must be disposed of in an approved landfill; and

3.6.b.12. A detailed description of the yard waste composting technology to be utilized at the proposed facility.

3.6.c. Six (6) copies of the application, including all supporting documents shall be submitted as follows: four (4) copies shall be filed with the Division of Environmental Protection, Office of Waste Management, Solid Waste Management Section, one (1) copy shall be submitted to the Solid Waste Management Board, and one copy shall be submitted to the county or regional solid waste authority for the area in which the proposed facility is to be located.

3.7. Permit Application Fees.

3.7.a. Each application filed for a commercial yard waste composting facility permit must be accompanied by a nonrefundable application fee made payable to the Division of Environmental Protection in the amount of five hundred (500) dollars.

3.7.b. The Division of Environmental Protection may require a fee of fifty (50) dollars or ten (10) percent of the application fee for any application refiled due to incompleteness.

3.8. Operational Requirements for Commercial Yard Waste Composting Facilities and Non-Residential Composting Activities.

3.8.a. The addition of any other solid waste including but not limited to hazardous, sludges, infectious, construction debris, demolition, industrial or other municipal solid waste to the yard waste is strictly prohibited.

3.8.b. Waste other than yard waste and non-compostable solid wastes shall be segregated from the compostable yard waste and promptly

removed from the site for proper disposal at an approved facility. Segregated solid waste shall be removed from the facility at the end of each working day unless it is stored in containers specifically designed for storage of solid waste, provided that the material shall not remain at the facility more than thirty (30) days.

3.8.c. Screening and removal of non-compostable solid wastes from the windrows or compost piles shall occur after the composting process is completed.

3.8.d. Access to a yard waste composting facility is allowed only when an attendant is on duty.

3.8.e. Any nuisance created by a commercial yard waste composting facility or a non-residential composting activity which causes harm or injury to any person or the environment shall be abated or the composting facility or activity may be required by the director to cease and desist operations.

3.8.f. Shrubs, brush, tree prunings or any other bulky, woody type materials shall be shredded, ground or otherwise reduced in size prior to being mixed with other yard wastes to be composted.

3.8.g. The operator of a yard waste composting facility shall implement, and enforce a safety program designed to prevent hazards and accidents.

3.8.h. Open burning is prohibited, except as provided by paragraph 3.1.b.3 of this rule.

3.8.i. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances and the operator must immediately abate any nuisances.

3.8.j. Leachate or other runoff from a compost facility shall not be permitted to drain or discharge into surface waters except when authorized under a West Virginia NPDES permit

issued by the Division of Environmental Protection.

3.8.k. A one hundred (100) foot buffer zone shall be provided and maintained in a manner acceptable to the director.

3.9. Other Acceptable Compostable Materials.

3.9.a. Other acceptable compostable materials may include, but are not limited to, coffee grounds, kitchen scraps, pet and human hair, shredded newspapers, lint and sweepings, wood ashes, fish and poultry carcasses/litter, and animal manures.

3.10. Incorporation by Reference.

3.10.a. The following subsections of the West Virginia Solid Waste Management, 47 CSR 38, Rule, 33CSR1 are hereby incorporated and implemented as a part of this yard waste composting rule and apply only to commercial yard waste composting facilities:

3.10.a.1. Subsection 3.4; "Pre-Siting Requirement for Commercial Solid Waste Facilities";

3.10.a.2. Subsection 3.13; "Bonding and Financial Assurance";

3.10.a.3. Subsection 3.17; "Draft Permit";

3.10.a.4. Subsection 3.18; "Permit Modification, Suspension and Revocation";

3.10.a.5. Subsection 3.19; "Transfer of permit";

3.10.a.6. Subsection 3.20; "Permit Renewal";

3.10.a.7. Subsection 3.21; "Public Notice";

3.10.a.8. Subsection 3.22; "Public Comments and Request for Public Hearings";

3.10.a.9. Subsection 3.23; "Public Hearings";

3.10.a.10. Subsection 3.24; "Reopening of the Public Comment Period";

3.10.a.11. Subsection 3.25; "Public Participation File";

3.10.a.12. Subsection 3.26; "Public Availability of Information";

3.10.a.13. Subsection 3.27; "Issuance and Effective Date of Permit";

3.10.a.14. Subsection 3.28; "Permit Review by the director";

3.10.a.15. Subsection 3.29; "Appeals";

3.10.a.16. Subsection 4.5.5; "Quality Assurance and Quality Control" (applicable portions only);

3.10.a.17. Subsection 4.8; "Leachate Management"; and

3.10.a.18. Subsection 4.12; "Reporting."

§33-3-4. Closure Requirements for a Commercial Yard Waste Composting Facility.

4.1. Maintenance Minimization.

The owner or operator shall close the facility in a manner that minimizes the need for further maintenance. All solid waste, compost, and residues shall be removed and disposed in a permitted solid waste disposal facility.

4.2. Closure Plan and Closure Plan Amendments.

The owner or operator of a commercial yard waste composting facility shall have a written closure plan.

4.2.a. Closure Plan Inclusions.

4.2.a.1. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive or operating at peak capacity. The closure plan must include, at a minimum, a schedule for final closure, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

4.2.a.2. The closure plan shall be submitted to the Division of Environmental Protection as a part of the application for a permit. If the director finds the closure plan is deficient, the closure plan shall be amended by the owner or operator within ninety (90) days of the director's finding. The permit will not be issued by the Division of Environmental Protection until the amended plan meets the closure requirements.

4.2.b. Closure Plan Amendments.

4.2.b.1. The owner or operator shall update the closure plan with any changes in operation or facility design that affects the closure plan. The updated plan shall be submitted to the Division of Environmental Protection for approval fifteen (15) days prior to such changes. The director may require modifications to any updated plan which does not meet the closure requirements.

4.2.b.2. At any time during the operating life of the facility, the amended closure plan shall be made available to the Division of Environmental Protection or the county or regional solid waste authority upon request.

4.3. Time Allowed for Closure.

The owner or operator shall complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or

planned closure activities will, of necessity, take longer than six months to complete; and that he or she has taken all necessary steps to eliminate any threat to human health and the environment from the unclosed but inactive facility.

4.3.a. At least thirty (30) days prior to the beginning of closure activities, the owner or operator shall post a sign at all points of access to the facility notifying all persons of the closing, and state that further receipt of waste materials is prohibited. Further, upon closure, suitable barriers shall be installed at all former access points to prevent new waste from being deposited.

4.3.b. Notice of the upcoming closure is a Class II legal advertisement which must be published in a local newspaper at least thirty (30) days prior to closure and a copy of the notice must be provided to the director within ten (10) days of the date of publication.

4.4. Site Reclamation Responsibilities.

A uniform and compacted layer of soil that is at least six (6) inches in thickness and capable of supporting revegetation shall be placed over all disturbed land surface areas within the facility's boundaries. A revegetation plan shall be a part of the closure plan requirements and must conform with the provisions of subdivision 4.5.f of 33CSR1, the Solid Waste Management Rule.

4.5. Evidence of Proper Closure.

A compost facility shall be considered properly closed when the actions required by subsection 4.4 of this rule have been taken by the owner or operator and duly authorized representatives of the director verify compliance by an on-site inspection and provide a written confirmation that closure has been completed properly.

§33-3-5. Commercial Yard Waste Composting Operator Training and Certification Program.

5.1. Experience, Training and Education.

In order to ensure the proper, safe and efficient composting of yard waste, operators of commercial yard waste composting facilities must have a minimum of two (2) years on the job experience in yard waste composting or receive training and education in yard waste composting. The training and education shall consist of but not be limited to forty (40) classroom hours. Topics should include:

5.1.a. Proper and safe equipment operation and equipment preventive maintenance; and

5.1.b. Composting science technology which encompasses the composting process, composting methods, composting operations, site and environmental considerations, facility design and use, compost quality control, using and marketing compost, composting economics, record keeping and reporting, worker safety, business math and volumetric calculations.

5.2. Approved Training and Education Programs.

Training and education for yard waste composting shall include programs sponsored by, but not limited to, colleges and universities, agricultural extension services, and county or regional solid waste authorities: Provided that all training and education programs must be approved by the Division of Environmental Protection, Office of Waste Management. ~~A list of approved training and education programs shall be made available by the DEP Office of Waste Management.~~

5.3. Certification.

Any person who meets the requirements as listed in subsection 5.1 of this rule is considered a certified yard waste composting operator, provided that, written verification of on the job experience or training and education is properly submitted to, and approved by the Division of Environmental Protection ~~on application forms provided by the director.~~

August 9, 2000

TO: Mr. Larry ATha

From: Mr. Melvin S. Fursten

105 Carmel Rd

Wheeling, WV 26003

(304) 242.0341

RE: Comment on 33CSR3 (W.Va Code 20-11-8)

The enclosed comment is submitted by the
officers of The Wheeling Environmentalists.

Representing that group, I should like
to make an oral presentation at
the Public Hearing on August 15, 2000.

Thank you,

Melvin S. Fursten

RECEIVED

AUG 11 2000

Division of Environmental Protection
Office of Waste Management

Thus, the proposed word change, from practical to available, would have the effect of sanctioning the City's continued landfilling of yard waste.

For this reason it is requested that the proposed word change not be made.

Sincerely,

Dianne L. Burnham, President
35 Poplar Ave, Wheeling WV 26003 232-0590

Melvin S. Fustini, Vice President
105 Carmel Road
Wheeling, WV 26003
(304) 242-0341

Carol L. Reuther, Treasurer/Secretary
RD1 Box 138
Wheeling WV 26003
(304) 336-7541

Guy Shelley Guy Shelley Education Coordinator
2263 Market St
Wheeling WV 26003
304 233 8363

Dolores St. Hickey, Steering Committee
2518 Chapline St, Apt. 2
Wheeling, WV 26003-3912
(304) 233-3002

The Wheeling Environmentalists
Dianne Burnham, President
35 Poplar Avenue
Wheeling, WV 26003
304-232-0590
Email: burnhamd@cs.com

9 August 2000

Mr. Larry Atha
Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

Comment on Proposed Amendment to
33CSR3 – “Yard Waste Management Rule”

Dear Mr. Atha:

The clear intent of the enabling law (W. Va. Code §20-11-8) was to ban the disposal of yard waste in landfills. Rather, this fraction of the waste stream was to be managed through options leading to resource recycling, such as composting. However, the law provides for “...*reasonable and necessary*...” exceptions.

According to the original wording of the rule, exceptions could be granted “...*when the director determines that none of the foregoing options are practical.*” The amendment now proposed would delete the word practical and substitute available. This would clearly interfere with implementation of the legislative intent.

A specific example concerns the City of Wheeling.

- Contrary to law and regulation, Wheeling’s yard waste continues to be landfilled. This is done at the North Fork (Allied/Rohrig) landfill.
- The City owns an ideal site for yard waste composting at its unused Stackyard (or North Park) landfill. The yard waste would be placed for composting on a borrow area adjacent to the actual fill.
- The City Administration has consistently been non-responsive to the urging of residents to have a yard waste composting operation established at this site.
- Although the establishment of a composting operation by the City is eminently practical, such an operation is not currently available.

**TITLE 33, SERIES 3
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
YARD WASTE MANAGEMENT RULE**

The only comment were made by Mr. Melvin S. Feinstein, Vice President, The Wheeling Environmentalists

Comment: That the proposed word change from practical to available in paragraph 3.1.b.4 should not be made.

Response: The agency disagrees.

Division of Environmental Protection

Public Hearing: Office of Waste Management - 33CSR3, 33CSR5, 33CSR20, 33CSR30 & 33CSR32

Time/Date: August 15, 2000 6pm

NAME	ADDRESS	COMMENT YES NO
1. Floyd Savage	WV Tire Dealers Assn. P.O. Box 1335 Ches 25325	?
2. Mahon S. Funtene	105 Carmel Road Wheeling WV 26003-1505	✓
3. Greg Sayre	WV Association of Waste Haulers WV CASHIER + Recycling	✓
4. Mike Dargatz	1356 Hainsford St.	✓
5. Liz Appel	Representative, 500 W. Main St. E, Wheeling	✓
6. Larry Attha	1356 Hainsford St.	
7. Bill Rheinlander	0 Wm	✓
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ORIGINAL

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

33 CSR 3 - " Yard Waste Composting Rule."

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Waste Management, Conference Room, 1356 Hansford Street, Charleston, West Virginia, commencing at 6:00 p.m., on the 15th day of August 2000, pursuant to notice.

P R O C E E D I N G S

MS. CHANDLER:

Good, evening. This public hearing will now come to order on this 15th day of August, 2000 at the WV Division of Environmental Protection Office of Waste Management's Conference room located at 1356 Hansford Street, Charleston, West Virginia. The purpose of the Public Hearing is to receive comments on the proposed rules filed in the Secretary of State's Office on July 14, 2000 and noticed in the State Register on July 21, 2000. The proposed legislative rules are 33CSR3, 33CSR5, 33CSR20, 33CSR30, and 33CSR32.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code.

My name is Jeanne Chandler, and I'm with the Public Information Office of the West Virginia Division of Environmental Protection, and I will be the moderator for the hearing this evening.

In order to obtain separate transcripts for each of the rules, the hearing procedure this evening will be to introduce each rule individually, and then allow time for oral comments, and then close the hearing for that particular rule. Written comments for any rule may be submitted at the public hearing this evening. For those

1 of you wishing to make oral comments, a sign-up sheet is
2 available, please sign if you haven't done so already.
3 The comment period ends at the conclusion of the hearing
4 tonight. Your comments will be made a part of the
5 rulemaking record.

6 The Court Reporter this evening is Missy Young.
7 If anyone desires a transcript of these proceeding, please
8 contact Ms. Young at 984-2300.

9 The purpose of this public hearing is to receive
10 comments on 33CSR3 - "Yard Waste Composting Rule".

11 This Legislative rule will revise the West
12 Virginia Division of Environmental Protection, Office of
13 Waste Management, Yard Waste Management Rule, Title 33,
14 Series 3. Amendments to this rule are necessary to
15 fulfill the requirements of Section 20-11-8 of the Code of
16 West Virginia. The proposed legislative rule amendments,
17 among other items, allows residents of West Virginia to
18 dispose of small quantities of domestic yard waste in
19 solid waste landfills, where there is no other option
20 available. The proposed rule also reinserts language
21 inadvertently deleted by the agency during the last rule
22 revision. This deletion restricted the agency's ability
23 to effectually regulate yard waste composting facilities
24 situated atop a partially or fully closed solid waste

1 disposal area.

2 The floor is now open for any public comment.
3 Please identify yourself and affiliation, if any, prior to
4 making comments.

5 MR. FINSTIN: I'm the lead-off batter?

6 MS. CHANDLER: You're the lead-off.

7 MR. FINSTIN: Thank you, Madam Moderator. My
8 name is Melvin S. Finstin, from 105 Carmel Road, Wheeling
9 26003. The organization known as the Wheeling
10 Environmentalist had signed this letter to Mr. Atha, and
11 it was sent by mail and another copy -- the original was
12 sent by mail to Mr. Atha. So, in speaking and giving an
13 oral comment, I represent the Wheeling Environmentalists.
14 I will repeat some of the material in this written comment
15 and perhaps will add some other comments.

16 The clear intent of the enabling law, West
17 Virginia Code 20-11-8, was to ban the disposal of yard
18 waste in landfills. This fraction of the waste stream was
19 to be managed through options leading through resource
20 recycling, such as composting. However, the law provides
21 for "reasonable and necessary exceptions". According to
22 the original wording of the rule, 33CSR3, exceptions could
23 be granted, "when the Director determines that none of the
24 forgoing options are practical". And foregoing, referred

1 to options other than landfilling, and I believe it
2 mentioned incineration, which is kind of a dead issue
3 anyway, and composting -- we view composting as the main
4 option. So, the rule stated -- the current rule states
5 when the Director determines that none of the foregoing
6 options are practical, exceptions could be granted. The
7 amendment now proposed would delete the word practical and
8 substitute the word available. Exactly why this was done
9 to amend -- I wish I could have seen you before the
10 meeting date to possibly explain what the purpose of this
11 was, but it surely isn't clear to me.

12 MR. COOKE: We'll do those in our responses.

13 MR. FINSTIN: Okay, good. At any rate, as I
14 read the situation, this change would clearly interfere
15 with implementation of the legislative intent. Specific
16 example, concerns the City of Wheeling. Contrary to law
17 and regulation, Wheeling's yardwaste continues to be
18 landfill. This includes 2000 tons per year of separately
19 collected leaves, plus I don't know how many more tons are
20 operating with the general refuse. This landfilling is
21 done at the Northpark Landfill. The City owns an ideal
22 site for yard waste compost, yet it is an unused stackyard
23 for Northpark Landfill. It might be noted that in the
24 1992 feasibility study for recycling, which was contracted

1 for by the City of Wheeling, and accepted by the City of
2 Wheeling, on page 38 or 39 of that report, it is noted
3 that the City should seriously consider setting up a yard
4 waste composting operation at the unused stackyard
5 Northpark Landfill. That was in 1992. There's been no
6 such action since then. The City administration, Wheeling
7 City administration has consistently unresponsive to the
8 urging of residents to have a yard waste composting
9 operation established at the stackyard site. Although the
10 establishment of the composting operation by the City is
11 imminently practical and, in fact, would save the City
12 money, such an operation is not currently available.
13 Thus, the proposed word change from "practical" to
14 "available", would seem to have the effect of sanctioning
15 the City's continued landfilling of the yard waste. For
16 this reason, we request that the proposed word change
17 would not be made.

18 Thank you, Madam.

19 MS. CHANDLER: Thank you. Other comments?

20 There being nothing further the hearing for
21 33CSR3 is now concluded.

22
23 (WHEREUPON, the public hearing
24 was concluded.)


BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing is, to the
best of my skill and ability, a true and accurate
transcript of all the proceedings had in the
aforementioned matter.

Given under my hand and official seal this
22nd day of August, 2000.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.