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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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February 11, 2001

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
DEP-Waste Management, Office of
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Yard Waste Composting Rule, 33CSR3**

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
- 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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

FILED

DEC 28 3 29 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: DEP, Office of Waste Management

Subject: Yard Waste Composting Rule

CSR Cite: 33CSR3

Counsel: JAA

PERTINENT DATES

Filed for public comment: July 14, 2000
Public comment period ended: August 15, 2000
Filed following public comment period: August 31, 2000
Filed LRMRC: August 31, 2000
Filed as emergency: Yes.

Fiscal Impact: None.

ABSTRACT

Summary

This rule is being amended to incorporate statutory changes to the authorizing statute allowing reasonable and necessary exceptions to the prohibition of disposal of yard wastes in solid waste landfills. Section 1.5 inserts statutory language authorizing the Director of the DEP to allow disposal of yard wastes in landfills when authorized by this rule.

Section 3.1.a.3. clarifies that yard waste composting facilities may not be located on a partially or fully closed solid waste disposal area unless authorized by the Director. Existing solid waste landfills may, by minor permit modification, include yard waste composting operations.

Section 3.1.b.4. provides that the director may authorize the acceptance of yard wastes at a solid waste facility when no option listed in the rule is available.

Section 5.3 is amended to strike the requirement of the DEP to provide a list of training and education programs approved by the DEP for proper yard waste composting.

AUTHORITY

Statutory authority: W.Va. Code, § 20-11-8 which provides...

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to deposit lead-acid batteries in a solid waste facility in West Virginia; effective the first day of June, one thousand nine hundred ninety-six, it shall be unlawful to deposit tires in a solid waste facility in West Virginia; and effective the first day of January, one thousand nine hundred ninety-seven, it shall be 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 such yard waste or otherwise recycle or reuse such items: Provided, however, That reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (c) of this section.

(b) No later than the first day of May, one thousand nine hundred ninety-five, the solid waste management board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May, one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the

same manner to provide for the proper handling of tires.

(c) No later than the first day of August, one thousand nine hundred ninety-five, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (b) of this section. No later than the first day of August, one thousand nine hundred ninety-four, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (b) of this section.

(d) For the purposes of this section, "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.

ANALYSIS

I. **HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?**

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.