

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FEB 24 3 44 PM '99

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Division of Environmental Protection
Office of Waste Management TITLE NUMBER: 33*

CITE AUTHORITY: 22-15-5

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

29A-1-2(g)

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6*

TITLE OF RULE BEING AMENDED: Solid Waste Management Fee Exemption
Program

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

*This rule was previously filed as 47CSR38A and was changed to 33CSR6 as part of
DEP's rule cleanup initiative.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS April 1, 1999

Larri J. Chambers
Authorized Signature

84.80



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
Fax: (304) 759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

February 24, 1999

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


RE: 33CSR6 - "Solid Waste Management Fee Exemption Program"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as Notice of Agency Adoption of a Procedural Rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Cap Smith
Larry Atha
Carrie Chambers

TITLE 33
PROCEDURAL RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

FILED

FEB 24 3 45 PM '99

OFFICE OF THE CLERK OF THE SUPREME COURT
SECRETARY OF STATE

SERIES 6
SOLID WASTE ASSESSMENT FEE EXEMPTIONS

§33-6-1. General.

1.1. Scope.

This rule establishes procedures to be followed in obtaining solid waste assessment fee exemptions provided under W. Va. Code §22-15-11(e).

1.2. Authority. -- W. Va. Code §22-15-5.

1.3. Filing Date. -- February 24, 1999.

1.4. Effective Date. -- April 1, 1999.

§33-6-2. Solid Waste Assessment Fee Exemptions.

2.1. Exemptions for Certain Facility Owners, Operators, and Lessees.

A person who owns, operates, or leases an approved solid waste disposal facility is exempt from the payment of solid waste assessment fees, upon the receipt of a Certificate of Exemption from the director, if that facility is used exclusively to dispose of waste originally produced by such person in his or her regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis.

2.1.a. In order to obtain a Certificate of Exemption under subsection 2.1 of this rule, a person must submit the following information to the Division of Environmental Protection on the form provided in Appendix A of this rule:

2.1.a.1. The name, address, and telephone number of the person applying for the exemption;

2.1.a.2. A notation of the status of the person applying for the exemption as either the owner, operator, or lessee of the approved solid waste disposal facility;

2.1.a.3. The location and permit number of the facility;

2.1.a.4. A description of the origins, types, and estimated

amounts of all wastes disposed of at the facility;

2.1.a.5. A brief description of each business or activity that produces the wastes disposed of at the facility;

2.1.a.6. The name, address, and telephone number of each person utilizing the facility on a cost-sharing or nonprofit basis; and

2.1.a.7. A summary of the legal documents that describe the relationship between the owner, operator, or lessee of the approved facility and the other person or persons disposing of solid waste at the facility. Copies of the actual documents may be requested by the director.

2.2. Exemption for Reused or Recycled Solid Waste.

A person who segregates and delivers his or her solid waste to an approved resource recovery or recycling facility for the purpose of reuse or recycling of that waste is exempt from the payment of solid waste assessment fees upon the receipt of a Certificate of Exemption from the director.

2.2.a. In order to obtain a Certificate of Exemption under subsection 2.2 of this rule, a person must submit the following information to the Division of Environmental Protection on the form provided in Appendix A of this rule:

2.2.a.1. The name, address, and telephone number of the person applying for the exemption;

2.2.a.2. The location and permit number of the facility to which the waste is delivered for reuse or recycling;

2.2.a.3. A description of the origin, type, and estimated amount of the waste delivered for reuse or recycling;

2.2.a.4. A brief description of the process or method of reusing or recycling the delivered waste; and

2.2.a.5. A notarized statement from the owner or operator of the approved facility that certifies that a reuse or recycling process is in operation at his or her facility and that the delivered waste will in fact be reused or recycled.

§33-6-3. Certificates of Exemption.

3.1. Exemption Determination.

After reviewing the information submitted by a person seeking an exemption under subsection 2.1 or 2.2 of this rule, Division of Environmental Protection personnel will recommend to the director that:

3.1.a. A Certificate of Exemption be granted;

3.1.b. A Certificate of Exemption be denied; or

3.1.c. A letter requesting additional information be sent to the person seeking the exemption.

3.2. Notification of Denial.

If the director accepts a recommendation to deny the granting of a Certificate of Exemption, he will notify the person who sought the exemption of the denial and the reasons therefor.

3.2.a. A decision of the director to deny the granting of a Certificate of Exemption is appealable under the provisions of W. Va. Code §22-15-16.

3.3. Changes in Information.

Whenever a change occurs which modifies the information submitted under subsection 2.1 or 2.2 of this rule, the person granted a Certificate of Exemption must, within thirty (30) days, submit written notice to the division detailing the change.

3.3.a. Failure by a person granted a Certificate of Exemption to submit the change of information notice required under subsection 3.3 of this rule constitutes cause for revoking the certificate.

APPENDIX A

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
SOLID WASTE ASSESSMENT FEE EXEMPTION APPLICATION

PLEASE COMPLETE AND RETURN TO:

W. Va. Division of Environmental Protection
Assessment Fee Exemption
1356 Hansford Street
Charleston, WV 25301

1. NAME, ADDRESS, AND TELEPHONE NUMBER OF APPLICANT:

Please indicate whether you are the:

- Facility owner,
- Facility operator,
- Facility lessee,
- Person delivering his or her waste to a resource recovery; or
- Recycling facility.

2. LOCATION OF THE FACILITY AND ITS PERMIT NUMBER:

3. BRIEF DESCRIPTION OF THE TYPE AND ESTIMATED ANNUAL AMOUNT OF WASTE DISPOSED AT THIS FACILITY:

4. BRIEF DESCRIPTION OF THE BUSINESSES OR ACTIVITIES WHICH GENERATE THE WASTE DISPOSED AT THIS FACILITY:

NOTE: If you are seeking an exemption for a facility that disposes of waste on a cost-sharing or nonprofit basis, please complete item 5. If you are seeking an exemption for reuse or recycling, please complete item 6.

5. BRIEF SUMMARY OF THE LEGAL DOCUMENTS WHICH DESCRIBE THE RELATIONSHIP BETWEEN YOUR FACILITY AND THE INDIVIDUALS DISPOSING WASTE THERE ON A COST-SHARING OR NONPROFIT BASIS:

Please attach an additional sheet listing the name, address, and telephone number of each person using the facility on a cost-sharing or nonprofit basis.

6. BRIEF DESCRIPTION OF THE PROCESS OR METHOD EMPLOYED TO REUSE OR RECYCLE YOUR DELIVERED WASTE:

Please attach a notarized statement from the facility owner or operator that certifies that a reuse or recycling process is in operation at his or her facility and that the delivered waste will in fact be reused or recycled.

I hereby declare that the information in this application is accurate and true to the best of my knowledge and belief. I understand that the filing of false, inaccurate, or misleading information is grounds for the revocation of my exemption.

Signature of Applicant

Date

LAW OFFICES
ROBINSON & McELWEE LLP

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CLARKSBURG OFFICE
P.O. BOX 128
CLARKSBURG, WEST VIRGINIA 26302
TELEPHONE (304) 622-5022
TELEFAX (304) 622-5065

August 24, 1998

William Rheinlander
WV Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301-1401

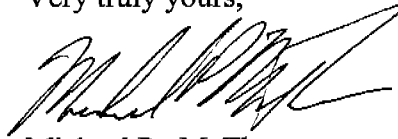
Re: Solid Waste Assessment Fee Exemptions, 47 CSR 38A

Dear Bill:

Enclosed for filing in the usual manner are the comments of Waste Management, Inc. and its subsidiary companies to the changes to the procedural rule "Solid Waste Assessment Fee Exemptions," 47 CSR 38A, proposed by the Division of Environmental Protection, Office of Waste Management.

If you have any questions, please don't hesitate to contact me.

Very truly yours,



Michael P. McThomas
Counsel, Waste Management, Inc.

c: Mr. Frank E. Williams, III
Mr. Ron Levine

COMMENTS OF WASTE MANAGEMENT, INC.
TO THE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
SOLID WASTE ASSESSMENT FEE EXEMPTIONS

47 CSR 38A

August 24, 1998

COMMENTS OF WASTE MANAGEMENT, INC.
TO THE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
SOLID WASTE ASSESSMENT FEE EXEMPTIONS
47 CSR 38A

I. INTRODUCTION

On July 22, 1998, the West Virginia Division of Environmental Protection (DEP), Office of Waste Management, filed proposed changes to the Solid Waste Assessment Fee Exemptions, 47 CSR 38A, a procedural rule. Written comments on the rule are being accepted on or before August 24, 1998.

Waste Management, Inc. (WMI) is an owner and operator of several solid waste services in West Virginia. Through its subsidiary companies, WMI currently owns and/or operates the following solid waste facilities: LCS Services, Inc. located in Berkeley County, Disposal Service, Inc. in Putnam County, Meadowfill Landfill, Inc. in Harrison County, Northwestern Landfill, Inc. in Wood County, and the City of Charleston Landfill in Kanawha County. Any changes to rules relating to solid waste management are of immediate concern to WMI and may be of significant consequence to company operations. Accordingly, WMI files these comments on behalf of WMI and its subsidiary companies operating in West Virginia. We hope that WMI's significant experience in solid waste management is of assistance in developing and refining reasonable and workable rules while serving the goal of environmental protection.

II. GENERAL COMMENTS

Any exemption from the solid waste assessment fee should be granted in accordance with the statutory exemptions provided in the West Virginia Code. The implementation of the exemption needs to be administratively simple and without excessive paperwork and reporting. In addition, the rule needs assure that only individuals or entities entitled to the exemption are able to take advantage of the statutory exemption.

III. SPECIFIC COMMENTS

a. Section 2.3

The section provides an exemption for residential solid waste disposed of by an individual. This section appears outdated and does not comport with the intent of the statutory provision. Section 2.3.a requires the solid waste facility to designate at least ten hours per week for the exempt disposal of residential waste and post a sign stating the days and times for the disposal of exempt residential waste. The statutory provision provides that the following transaction is exempt from the solid waste assessment fee: disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director is exempt from the solid waste assessment fee. W.Va. Code 22-15-11(e)(3). Purportedly, this code section should be read in *pari materia* with the provisions for “free day” set forth in W.Va. Code 22-15-7. That is, with the advent of free day, the particular requirement of setting aside at least 10 hours per week for disposal without assessment of the fee becomes moot. If a solid waste facility notifies the Office of Waste Management of its free day schedule then the provisions of W.Va. Code 22-15-11(e)(3) have been met. Accordingly, the provisions of Section 2.3 of the rule should be revised; in sum, the provisions of Section 2.3 should be deleted. At a minimum, the provisions of sections

2.3.a, 2.3.b and 2.3.c should be deleted. With “free day,” no other exemption from the solid waste assessment fee can be envisioned.

IV. Conclusion

WMI appreciates the opportunity to provide comments on the proposed rules and stands ready to assist in the further refinement of the rules.

Respectfully submitted this 24th day of August, 1998

Waste Management, Inc. and
Its subsidiary companies

By Counsel:

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COMMENTS, RESPONSES TO COMMENTS
AND REASONS FOR THE AMENDMENTS
33CSR6 (Previously 47CSR38A)

The comment received was made by:
Mr. Michael McThomas, Esq., Robinson & McElwee LLP, for
Waste Management, Inc. and its subsidiary companies;

The comment received and the agency's response is as follows:

Comment: That the provisions of 47CSR38A, subsection 2.3, is outdated
and does not comport with the intent of Chapter 22, Article 15

Response: The agency agrees, and made changes based upon the comment.