

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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Feb 24 3 45 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**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: 22C-4-10

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7*

TITLE OF RULE BEING AMENDED: Proof of Proper Solid Waste Disposal

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

TITLE OF RULE BEING ADOPTED: _____

*This rule was previously filed as 47CSR38B and was changed to 33CSR7 as part of
DEP's rule clean up initiative.

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


Authorized Signature

\$4.00



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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: 33CSR7 - "Proof of Proper Solid Waste Disposal"

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 an Interpretive 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

**COMMENTS, RESPONSES TO COMMENTS
AND REASONS FOR THE AMENDMENTS
33CSR7 (Previously 47CSR38B)**

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 47CSR38B, subsection 2.3, requires the owner or operator of an approved solid waste facility to maintain records of each delivery of solid waste made by an individual who is not a hauler.

Response: The agency disagrees, and will retain this rule provision.

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

SERIES 7
PROOF OF PROPER SOLID WASTE DISPOSAL

FILED
FEB 24 3 45 PM '99
OFFICE OF THE ATTORNEY GENERAL
WEST VIRGINIA
SECRETARY OF STATE

§33-7-1. General.

1.1. Scope and Purpose.

This rule provides guidance to persons occupying a residence or operating a business establishment in this state regarding the approved method of providing proof of proper solid waste disposal to the Division of Environmental Protection.

1.2. Authority. -- W. Va. Code §22C-4-10.

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

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

§33-7-2. Proof of Proper Solid Waste Disposal.

2.1. Applicability.

Each person occupying a residence or operating a business establishment in this state must be able to provide proof to the Division of Environmental Protection that his solid waste was disposed of at an approved solid waste facility.

2.2. Forms of Proof.

Proof of proper solid waste disposal includes:

2.2.a. Records demonstrating that a person has subscribed to and used a solid waste collection service and has paid the fees established therefor; or

2.2.b. Records, including bills of receipt, demonstrating that a person has delivered his or her waste to an approved solid waste facility for disposal.

Note: The term "solid waste collection service" means a collection service offered either by a common carrier certificated by the West Virginia Public Service Commission (or similar body of a contiguous state) or by a municipality or other governmental body.

2.3. Recordkeeping Requirements.

The owner or operator of each approved solid waste facility in this state must maintain records of each delivery of solid waste made by an individual who is not in the business of hauling or disposing of solid waste. Such records must include:

2.3.a. The name and address of the individual who delivered the waste for disposal;

2.3.b. A description of the origin, type, and estimated amounts of the waste delivered for disposal; and

2.3.c. A copy of the bill of receipt for the waste delivered for disposal.

2.4. Maintenance and Retention of Records.

All records required under this rule must be maintained for a minimum of three (3) years and be made available for inspection by an authorized representative of the director upon request.

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August 24, 1998

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

Re: Proof of Proper Solid Waste Disposal, 47 CSR 38B

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 interpretive rule "Proof of Proper Solid Waste Disposal," 47 CSR 38B, 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
PROOF OF PROPER SOLID WASTE DISPOSAL

47 CSR 38B

August 24, 1998

COMMENTS OF WASTE MANAGEMENT, INC.
TO THE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
PROOF OF PROPER SOLID WASTE DISPOSAL
47 CSR 38B

I. INTRODUCTION

On July 22, 1998, the West Virginia Division of Environmental Protection (DEP), Office of Waste Management, filed proposed changes to the Proof of Proper Solid Waste Disposal, 47 CSR 38B, an interpretive 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

The Legislature has been in the process of reviewing the effectiveness of the current statutory provisions to ensure proper disposal of solid waste in West Virginia. While the effectiveness of the current mandates is certainly debatable, WMI recognizes that the statutory provision controls and the rules must adhere to the statutory mandates. Thus, no significant deviation may be enforced in a procedural rule. However, the rule should provide clarification of the legislative intent. As written, the burden on recordkeeping has been placed upon the owner or operator of the solid waste facility. WMI asserts that this requirement is wholly misplaced and needs to be corrected.

III. SPECIFIC COMMENTS

a. Section 2.3

The section requires the owner or operator of an approved solid waste facility to maintain records of each delivery of solid waste made by an individual who is not a hauler. As part of this requirement, the landfill must obtain the name and address of the individual, a description of the origin, type and estimated amounts of waste and a copy of the bill of receipt. In addition, Section 2.4 requires the records be retained for three years.

WMI believes the burden on the solid waste facility to obtain this information from each individual delivering waste to the facility is overly burdensome and unauthorized by statute. West Virginia Code 22C-4-10 is the statutory provision requiring each person occupying a residence or operating a business establishment to maintain proof of proper disposal, either by subscribing to a collection service, or demonstrating proper disposal at a solid waste facility. The burden then is upon the residence or business to retain proof of proper disposal. The statutory burden is not upon the landfill to obtain and maintain proof of proper disposal for all non-commercial deliveries of

waste. Accordingly, the rule needs to be revised to reflect the statutory mandate. WMI submits that section 2.3 be deleted or changed to remove the requirement that the solid waste facility compile records of individual deliveries of waste disposal.

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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