

47CSR38C

Division of Environmental Protection.

“Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking the title number ‘47’ and inserting in lieu thereof the title number ‘33’;

On page 1, in the title, by striking the words ‘WATER RESOURCES - WASTE MANAGEMENT’ and inserting in lieu thereof the words ‘OFFICE OF WASTE MANAGEMENT’;

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking the series number ‘38C’ and inserting in lieu thereof the series number ‘40’;

On page 1, subsection 1.1, by striking the code reference ‘§20-5N-1 et seq.’ and inserting in lieu thereof the code reference ‘§22-16-1 et seq.’;

On page 1, subsection 1.1, by striking the code reference ‘5N’ and inserting in lieu thereof the code reference ‘16.’;

On page 1, subsection 1.2, by striking the code reference ‘§20-5N-8’ and inserting in lieu thereof the code reference ‘§22-16-13.’;

Beginning on page 1, in subsection 1.6, and continuing throughout the text of the rule, by striking the words ‘these regulations,’ or ‘regulation’ and inserting in lieu thereof the words ‘this rule’ or ‘rule’ as appropriate;

On page 1, subsection 2.2, by striking the code references ‘§20-5N-3 and 10’ and inserting in lieu thereof the code reference ‘§§22-16-3 and 15’;

On page 2, subsection 2.3, by striking the words ‘of the Department of Commerce, Labor and Environmental Protection’ for clarity;

On page 2, subsection 2.4, by striking the word ‘so’ and inserting the word ‘also,’ as in the

Code ;

On page 2, subsection 2.7, by inserting the subsection heading 'Incorporation of §22-15-2 Definitions.';

On page 2, subsection 2.7, by striking the code reference '§20-5F-2' and inserting in lieu thereof the code reference '§22-15-2';

On page 2, subsection 3.1, by inserting the subsection heading 'Application Form.';

On page 2, subsection 3.2, by inserting the subsection heading 'Application Information.';

Beginning on page 2, in subsection 3.2, and continuing throughout the text of the rule, by striking the existing subsection, subdivision, paragraph, subparagraph, part, subpart, item, or subitem, or cross-reference thereto, and inserting in lieu thereof, the corresponding number as specified in Table 153-6A; Text Breakdown, in 'Title 153CSR6, (The Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the Public Register), as amended effective June 7, 1996' (e.g., on page 2 by striking '3.2.1' and by inserting in lieu thereof '3.2.a.');

On page 2, subdivisions 3.2.1 and 3.2.2, and on page 3, subdivisions 3.2.3 and 3.2.4, by inserting the word 'the' for clarity;

On page 3, subparagraphs 3.2.5 and 3.2.6, by striking the abbreviation 'No.' and by inserting the word 'Number' for clarity;

Beginning on page 3, in paragraph 3.2.8.b, and continuing throughout the text of the rule, by striking the word used to describe the existing cross-reference to subsections, subdivisions, paragraphs, subparagraphs, parts, subparts, items, or subitems, and inserting in lieu thereof, the corresponding reference as specified in Table 153-6A; Text Breakdown, in 'Title 153CSR6, (The Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts

of the Public Register), as amended effective June 7, 1996' (e.g., on page 3, in paragraph 3.2.8.b by striking 'section' and inserting in lieu thereof 'paragraph'.);

On page 4, paragraph 3.2.8.e, by striking the code reference '§20-5F-4(k)' and inserting in lieu thereof the code reference '§22-15-5(k)';

On page 4, subsection 3.3, by inserting the subsection heading 'Application Review and Decision.';

On page 4, subsection 3.4, by inserting the subsection heading 'Application Resubmittal.';

On page 4, subsection 3.4, by striking the word '90' and inserting in lieu thereof the words 'ninety (90)';

On page 4, subsection 3.5, by inserting the subsection heading 'Application Deadlines.';

On page 4, subsection 3.5, by striking the code reference '§20-5F-6' and inserting in lieu thereof the code reference '§22-16-11';

On page 5, subsection 4.1, by inserting the subsection heading 'Valid Landfill Facility Permit Required.';

On page 5, subsection 4.1, and continuing throughout the text of the rule, by striking the code reference '§20-5F-1' and inserting in lieu thereof the code reference '§22-15-1';

On page 5, subdivision 4.1.b, by striking the code reference '§20-5A-1' and inserting in lieu thereof the code reference '§22-11-1';

On page 5, subdivision 4.2.1, by striking the code reference '§20-5A-1' and inserting in lieu thereof the code reference '§22-11-1';

On page 5, subdivision 4.2.2, by striking the code reference '§20-5F-1' and inserting in lieu thereof the code reference '§22-15-1';

On page 5, subsection 4.2.2, and continuing throughout the text of the rule, by striking the

rule reference '47 CSR 38' and inserting in lieu thereof the rule reference '33CSR1';

On page 6, subdivision 4.4.1, by striking the words 'Water Resources Board' and inserting in lieu thereof the words 'Environmental Quality Board';

On page 6, subdivision 4.5, by striking the code reference '§20-5N-4(a)' and inserting in lieu thereof the code reference '§22-16-5';

On page 6, in paragraph 4.6.1.c and continuing throughout the text of the rule, by striking the word 'Chief' and inserting in lieu thereof the word 'director';

On page 7, paragraph 4.6.1.f, by inserting the word 'the' for clarity;

On page 7, subsection 4.7, by inserting the subsection heading 'Authority of the Director to Modify Permit.';

On page 7, subsection 4.8, by inserting the subsection heading 'Granting of Access to Facility To Director.';

On page 7, subsection 5.1, by inserting the subsection heading 'Authority of the Director to Establish Maintenance Contracts.';

On page 8, subsection 6.1, by inserting the subsection heading 'Performance of Post-Closure Activities.';

On page 8, subsection 7.1, by inserting the subsection heading 'Expenditure of Funds from the Closure Assistance Fund.';

On page 8, subsection 7.2, by inserting the subsection heading 'Assistance Contingent upon the Availability of Revenues.';

On page 8, subsection 8.1, by inserting the subsection heading 'Priority for Final Assistance.'

TITLE 47 33
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
~~WATER RESOURCES WASTE MANAGEMENT~~
OFFICE OF WASTE MANAGEMENT

SERIES 38C 40
COMMERCIAL SOLID WASTE LANDFILL
CLOSURE ASSISTANCE PROGRAM

~~§47-38C-1.~~ §33-40-1. General.

1.1. Scope.

This legislative rule establishes requirements for the operation of the Landfill Closure Assistance Program pursuant to W. Va. Code ~~§20-5N-1 et seq.~~ §22-16-1 et seq. Article 5N 16 provides an application process for the permittee, sets conditions for application approval, provides guidance for interim status assistance, and establishes a prioritization procedure for assistance. This rule applies to any permittee who may desire closure assistance from the Division of Environmental Protection.

1.2. Authority. -- W. Va. Code ~~§20-5N-8~~ §22-16-13.

1.3. Filing Date. -- May 20, 1994.

1.4. Effective Date. -- June 1, 1994.

1.5. Short Title. -- Closure Assistance Program.

1.6. Incorporation by Reference.

Whenever federal or state statutes or regulations are incorporated into ~~these regulations~~ this rule by reference, the reference is to the statute or regulation rule in effect on July 1, 1992.

~~§47-38C-2.~~ §33-40-2. Definitions.

2.1. "Chief" means the chief of the Office of Waste Management, Division of Environmental Protection or his or her authorized representative.

2.2. "Cost of Project" includes the cost of the services authorized in W. Va. Code ~~§20-5N-3 and 10,~~ §§22-16-3 and 15.

property, material and labor which are essential thereto, financing charges, interest during construction, and all other expenses, including legal fees, trustees' engineers' and architects' fees which are necessarily or properly incidental to the program;

2.3. "Director" means the director of the Division of Environmental Protection ~~of the Department of Commerce, Labor and Environmental Resources,~~ or his or her authorized representative;

2.4. "Landfill" means any solid waste facility for the disposal of solid waste on land, and ~~se~~ also means any system, facility, land, contiguous land, ~~improvements on~~ the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified. The facility shall be considered to be situated, for purposes of this rule, in the county where the majority of the spatial area of the facility is located;

2.5. "Permittee" means a person who has or should obtain a permit for a commercial solid waste facility that is a landfill;

2.6. "Project" means the providing of closure assistance to one or more landfills under this rule;

2.7. Incorporation of §22-15-2 Definitions.

The definitions provided in W. Va. Code ~~§20-5F-2,~~ §22-15-2, and the ~~regulations~~ rules promulgated thereunder, to the extent they are applicable, apply to this rule.

~~§47-38C-3.~~ §33-40-3. Closure Assistance Application.

3.1. Application Form.

Unless otherwise instructed by the director in writing, the permittee shall use the application form attached (Appendix A).

3.2. Application Information.

The application may request the following information:

~~3.2.1.~~ 3.2.a. Name of the permittee;

~~3.2.2.~~ 3.2.b. Mailing address of the permittee;

~~3.2.3.~~ 3.2.c. Name of the facility;

~~3.2.4.~~ 3.2.d. General location of the facility;

~~3.2.5.~~ 3.2.e. Solid Waste Facility Permit No. Number, or the Permit Application No. Number, as applicable;

~~3.2.6.~~ 3.2.f. NPDES Permit No. Number, and the effective date or Application No. Number, or General Permit No. Number, as applicable;

~~3.2.7.~~ 3.2.g. Type of bond in effect, and the bond's amount, and expiration date;

~~3.2.8.~~ 3.2.h. Financial information;

~~3.2.8.a.~~ 3.2.h.1. The financial statement shall include income statements, balance sheets, statements of changes in financial position, and accompanying notes to the statements. The statements will cover the most recent accounting year and the two immediately preceding accounting years.

~~3.2.8.b.~~ 3.2.h.2. It is required that these statements be audited statements provided by independent certified public accountants unless the director grants a waiver of these requirements pursuant to section paragraph 3.2.8.d 3.2.h.4 of this rule.

~~3.2.8.c.~~ 3.2.h.3. If the statements are supplied unaudited, they shall at a minimum contain the following information:

~~3.2.8.c.1.~~ 3.2.h.3.A. The income statements will contain such detail as to identify all sources of revenue and a reasonable breakdown of expenses including interest, depreciation and taxes;

~~3.2.8.c.2.~~ 3.2.h.3.B. The balance sheet's asset section will contain identification of all cash and investments, property, plant, and equipment, and other assets. The liabilities section will contain current accounts and notes receivable and a listing of all long term debt. The equity section will contain the beginning balance, current year changes and ending balance;

~~3.2.8.c.3.~~ 3.2.h.3.C. The statements of changes in financial position will identify the sources and uses of cash by the reporting entity;

~~3.2.8.e.4.~~ 3.2.h.3.D. The statements will be accompanied with supporting notes which explain and detail the major items of interest and make necessary disclosures; and

~~3.2.8.e.5.~~ 3.2.h.3.E. Unaudited statements will be accompanied with and supported by copies of filed federal income tax returns.

~~3.2.8.d.~~ 3.2.h.4. At the discretion of the director, the above requirements or portions thereof may be waived for good cause. The waiver shall be requested and approved or denied in writing.

~~3.2.8.e.~~ 3.2.h.5. The financial information section of this rule may apply to all parties named in the original disclosure application as required in W. Va. Code ~~§20-5F-4(k)~~ §22-15-5(k); and

~~3.2.9.~~ 3.2.i. Any other information from the permittee required by the director, in writing, in order to determine the permittee's acceptance into the program.

3.3. Application Review and Decision.

The application will be reviewed by the director and notification of acceptance or rejection will be sent to the permittee within a reasonable amount of time. If the application is rejected, the notice shall contain the reason(s) for the rejection.

3.4. Application Resubmittal.

If the permittee's application is rejected, the permittee shall have the opportunity to correct or remedy where the director finds, in writing, that the conditions which are the basis for the director's rejection can be corrected or remedied. The applicant may resubmit its application for closure assistance within ~~90~~ ninety (90) days after the date of receipt of the director's notice of rejection and the deadline for application for landfill closure assistance will be extended for this period to allow for resubmission of the permittee's application.

3.5. Application Deadlines.

All deadlines set forth in West Virginia Code ~~20-5N-6~~ §22-16-11 are applicable.

~~§47-38C-4.~~ §33-40-4. Conditions for Closure Assistance Application Approval.

4.1 Valid Landfill Facility Permit Required.

The applicant must currently have in his or her possession a valid landfill facility permit in compliance with the Solid Waste Management Act (W. Va. Code ~~§20-5F-1,~~ §22-15-1, et seq.) containing an approved closure plan for the landfill facility.

~~4.1.1.~~ 4.1.a. That landfill facility permit must contain, in the form of "major" or "minor" modifications, all changes in name, operation, ownership, or operator(s).

~~4.1.2.~~ 4.1.b. That landfill facility permit must contain, in the form of a modification, the landfill facility NPDES requirements of the Water Pollution Control Act (W. Va. Code ~~§20-5A-1~~ §22-11-1 et seq.).

4.2. Bonding.

~~4.2.1.~~ 4.2.a. The applicant must have submitted the full amount of the bond required under ~~section 4.2.2~~ subdivision 4.2.b of this rule and received approval of the bond from the director.

~~4.2.2.~~ 4.2.b. The bonding requirements set forth in W. Va. Code ~~§20-5F-1~~ §22-15-1 et seq. and in Division of Environmental Protection Solid Waste Management Regulations Rule 47-CSR-38 33CSR1 ~~section subsection~~ 3.13, are applicable.

~~4.2.3.~~ 4.2.c. None of the requirements of ~~section 4.2.2~~ subdivision 4.2.b of this rule may be waived without written approval of the director.

4.3 Violations.

~~4.3.1.~~ 4.3.a. All closure-related Division of Environmental Protection Notice of Violation(s) shall have been abated.

~~4.3.2.~~ 4.3.b. All closure-related Division of Environmental Protection Civil Administrative Penalties are paid or reflected in a payment schedule contained in subsequently-issued Solid Waste Administrative Orders.

~~4.3.3.~~ 4.3.c. All terms and conditions of any prior closure-

related administrative orders shall have been resolved.

~~4.3.4.~~ 4.3.d. All stipulated penalty amounts in any prior administrative orders shall have been paid, or reflected in a payment schedule contained in a subsequently-issued administrative order.

~~4.3.5.~~ 4.3.e. None of the requirements of subsection 4.3 of this section may be waived without written approval of the director.

4.4. Legalities.

~~4.4.1.~~ 4.4.a. All pending magistrate, ~~Water Resources Board, Environmental Quality Board,~~ state court, federal court, or other legal actions must have been resolved.

~~4.4.2.~~ 4.4.b. None of the requirements of Section 4.4.1 subdivision 4.4.a of this rule may be waived without written approval of the director.

4.5. Closure Funds.

~~4.5.1.~~ 4.5.a. All funds available at the time of closure that have been dedicated to closure, as may have been required by the Public Service Commission, shall have been expended for closure, in compliance with Division of Environmental Protection, Solid Waste Management Regulations 47 CSR 30 Rule, 33CSR1, section 6 or donated to the Closure Cost Assistance Fund as outlined in W. Va. Code ~~§20-5N-4(a)~~ §22-16-5.

4.6. Additional Closure Items.

~~4.6.1.~~ 4.6.a. The applicant shall have complied, or begun to comply with the following permit, or regulatory requirements, as outlined in Division of Environmental Protection, Solid Waste Management Regulations Rule 47 CSR 30 33CSR1, section 6. These items are ineligible for coverage by the assistance program:

~~4.6.1.a.~~ 4.6.a.1. Legal advertisement;

~~4.6.1.b.~~ 4.6.a.2. Notification to users;

~~4.6.1.c.~~ 4.6.a.3. Notification to the chief director;

~~4.6.1.d.~~ 4.6.a.4. Posting of signs on the fence;

~~4.6.1.e.~~ 4.6.a.5. Denial of entry/restricted access;

~~4.6.1.f.~~ 4.6.a.6. Notification to the Solid Waste Authority, State Solid Waste Management Board, etc.; and

~~4.6.1.g.~~ 4.6.a.7. Deed notation.

~~4.6.2.~~ 4.6.b. The Closure Assistance Program shall also cover the payment of principal, premium, if any, and interest accrued with respect to any indebtedness, bonded or otherwise, outstanding with respect to any landfill scheduled for closure which was incurred in connection with acquisition, construction or equipping landfills qualifying for assistance.

4.7. Authority of Director to Modify Permit.

An approved application provides a basis for the Chief director to modify the permit in accordance with the provisions of Division of Environmental Protection Solid Waste Management Regulations Rule 47-CSR-38 33CSR1, section 6 in order to meet the requirements of the Closure Assistance Program.

4.8. Granting of Access to Facility to Director.

Upon acceptance of a permittee into the Closure Assistance Program, access to the facility shall be given to the director.

~~§47-38C-5.~~ §33-40-5. Interim Status Assistance.

5.1. Authority of the Director to Establish Maintenance Contracts.

The director may establish maintenance contracts to maintain intermediate-cover, water control structures, sediment control structures, surface water and ground water monitoring, gas management, leachate management and any other closure related requirements of W. Va. Code ~~§20-5F-1~~ §22-15-1 et seq. and rules promulgated pursuant thereto. These contracts will be established for the purpose of assisting the permittee, who has an approved closure assistance application, in maintaining compliance with closure related requirements until final closure activities are initiated.

~~§47-38C-6.~~ §33-40-6. Post-Closure Assistance.

6.1. Performance of Post-Closure Activities.

Unless otherwise specified by the director, all post-closure monitoring maintenance, sampling, testing, and water treatment will be conducted by the Division of Environmental Protection.

~~§47-38C-7.~~ §33-40-7. Contracting.

7.1. Expenditure of Funds from the Closure Assistance Fund.

All funds expended from the Closure Assistance Fund for the purposes of fulfilling the requirements of W. Va. Code ~~§20-5N-1~~ §22-16-1 et seq. will be in accordance with Department of Administration laws, rules, and procedures.

7.2. Assistance Contingent upon the Availability of Revenues.

Landfill closure assistance provided by the director is contingent upon the availability of revenues from the Closure Cost Assistance Fund.

~~§47-38C-8.~~ §33-40-8. Final Closure Assistance Priority.

8.1. Priority for Final Closure Assistance.

The director shall establish the priority for final closure assistance by assessing landfill conditions as provided for by the utilization of the Priority Evaluation Matrix in Appendix B.

KEN HECHLER
Secretary of State

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Deputy Secretary of State

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

(Plus all the volunteer
help we can get)

AUG 29 3 17 PM '97

FILED

TO: CARRIE CHAMBERS

AGENCY: DEP - OFFICE OF WASTE MANAGEMENT

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 31, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 40 TITLE: 33 DEP - OFFICE OF WASTE MANAGEMENT

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Larry S. Atha

TITLE OF PERSON SIGNING: ERS III

DATE: August 29, 1997

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.