

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

#1

FILED

JUL 13 3 24 PM '94

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Water Resources- Waste Mgmt

AGENCY: Bureau of Environment OWM TITLE NUMBER: 47

RULE TYPE: Legislative ; CITE AUTHORITY 22C-4-10

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38B

TITLE OF RULE BEING AMENDED: Proof of proper solid waste Disposal.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: August 15, 1994 TIME: 10:00 AM

LOCATION OF PUBLIC HEARING: Division of Environmental Protection
10 McJunkin Road
Nitro, WV 25143
Directors Conference Room

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Waste Management
1356 Hansford St.
25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Robert D. Bell

3-60



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1356 Hansford Street
Charleston, WV 25301-1401

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

RULES FOR THE PROOF OF PROPER SOLID WASTE DISPOSAL

BRIEFING DOCUMENT

A. AUTHORITY

Chapter 22C, Article 4, Section 10

B. SCOPE

This rule establishes requirements for every resident and business in West Virginia to show proof of proper disposal of solid waste.

C. JUSTIFICATION

The current rule limits enforcement to the Division of Natural Resources and fails to incorporate the statutory civil penalty for failure to comply. This revision expands enforcement to all law enforcement officers, the Public Service Commission, the Division of Environmental Protection, and local Solid Waste Authorities. It also provides for the statutory penalty for failure to show proof of proper disposal.

D. CSR CITE OF RULE BEING AMENDED

47 CSR 38B

E. FEDERAL CITE

NONE

F. TIME SCHEDULE

Filing with the Secretary of State July 13, 1994

Public Comment/Hearing Period August 15, 1994

Filing with Legislative Rule Making Review Comm. August 15, 1994

Rule should be implemented by June 1, 1995

Prepared by: Jim Hudson, ERS II, CME, OWM 558-2505
1356 Hansford Street
Charleston, WV 25301-1401

Approved By: G. Maxwell Robertson 7-11-94
G. Maxwell Robertson, Chief Date

Authorized By: David Callaghan 7/12/94
David Callaghan, Director Date



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STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE AMENDMENT

The current rule limits enforcement to the Division of Natural Resources and fails to incorporate the statutory civil penalty for failure to comply. This revision expands enforcement to all law enforcement officers, the Public Service Commission, the Division of Environmental Protection, and local Solid Waste Authorities. It also provides for the statutory penalty for failure to show proof of proper disposal.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Proof of proper Solid Waste Disposal

TYPE OF RULE: X Legislative Interpretive Procedural

Agency Bureau of Environment Address Office of Waste Management

1356 Hansford St. 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	\$180	0	0	\$180	\$180
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

These regulations will have minimal impact on those persons currently obeying the mandatory garbage disposal law. The impact on violators will vary depending upon the cost of solid waste collection and disposal in their county. This is expected to approximate currently per household \$180.00 a year plus any assessed penalty. A state wide total is impossible to determine.

3. Objectives of these rules:

To clarify approved methods of providing proof of proper disposal and establish guidelines for the assessment of penalties for failure to provide proper proof.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Will vary depending upon involvement in enforcement of the Mandatory Garbage Disposal Law.

C. Economic Impact on Citizens/Public at Large.

For violators it will increase their expenditures an estimated \$180.00 per year.

Date: July 12, 1994

Signature of Agency Head or Authorized Representative

Roger T. Hall



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SUMMARY

TITLE 47
LEGISLATIVE RULES

SERIES 38B
PROOF OF PROPER SOLID WASTE DISPOSAL

This rule was previously an interpretive rule which did not adequately address the issue of mandatory garbage disposal. The previous rule limited enforcement to the Division of Natural Resources. This revision expands the enforcement to the Division of Environmental Protection, the Public Service Commission, and local Solid Waste Authorities as entities which may require proof of proper disposal. This revision also includes new standards on record keeping by solid waste disposal facilities, and clarifies the civil penalty, and assessment for unpaid fees provided for in Chapter 22C, Article 4, Section 10.

FILED

TITLE 47
INTERPRETIVE RULES LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

JUL 13 3 24 PM '94

SERIES 38B
PROOF OF PROPER SOLID WASTE DISPOSAL

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

47-38B-1. Scope and Authority.

1.1. Scope and Purpose. -- This rule provides guidance to establishes requirements for 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 Department Division of Environmental Protection, Division of Natural Resources, the Public Service Commission, or local solid waste authorities upon request by a representative of the appropriate agency.

1.2. Authority. -- W. Va. Code 20-9-9.

1.3. Filing Date. --

1.4. Effective Date --

1.5. Determination of Stringency -- There is no federal counterpart regulation.

1.6. Constitutional Takings Determination -- No constitutional takings of real property are anticipated as a result of this rule.

47-38B-2. Proof of Proper Solid Waste Disposal.

2.1. Each person occupying a residence or operating a business establishment in this State must be able to provide proof to the Department Division of Environmental Protection, Division of Natural Resources, the Public Service Commission and the appropriate local solid waste authority that his solid waste was disposed of at an approved solid waste facility. Records establishing such proof must be maintained for a minimum of three years.

2.1.1. To constitute proper disposal, at least one instance of disposal for each quarter the person has resided in the county, or the business has been in operation, must be shown.

2.2. Proof of proper solid waste disposal includes:

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

2.2.2. Records, including bills of receipt, demonstrating that a person has delivered his 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 which holds a certificate of convenience and necessity issued by the West Virginia Public Service Commission (or a similar body of a contiguous state) or by a municipality or other governmental body.

2.3. 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:

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

2.3.2. A description of the origin, type, and estimated amount of the waste delivered for disposal; and

2.3.3. A copy of the bill of receipt for the waste delivered for disposal.

2.4. All records required under section 2.3. of these regulations must be maintained for a minimum of three (3) years and be made available for inspection by an authorized representative of the Director of any agency listed above in Section 1.1, upon request.

47-38B-3. Penalty.

3.1. Any person who fails to provide proof of proper disposal upon request by a duly authorized representative of any agency listed above in Section 1.1, shall be subject to a civil penalty of \$150.00 to be paid in equal amounts to the Solid Waste Enforcement Fund and the appropriate local solid waste authority.

3.2. Any person who fails to provide proof of proper disposal upon request by a duly authorized representative of any agency listed above in Section 1.1, shall be required to subscribe to a solid waste collection agency within thirty days and submit proof of proper disposal within ninety days or shall be subject to a second penalty of \$150.00.

3.3. Any person who has used a solid waste collection service and has failed to pay the fees established therefore; shall be required to pay the unpaid fees for every year that a fee has not been paid. These payments shall not be assessed for more than three (3) years.