

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

1992 AUG 17 PM 11:35

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Department of Commerce, Labor & Environmental Resources  
AGENCY: Division of Environmental Protection TITLE NUMBER: 47

RULE TYPE: Legislature; CITE AUTHORITY WVa. Code §20-5N-8

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 38C

TITLE OF RULE BEING PROPOSED: "Solid Waste Landfill Closure Assistance  
Program Regulations"

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON september 18, 1992 AT 4:30pm

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING

ADDRESS.

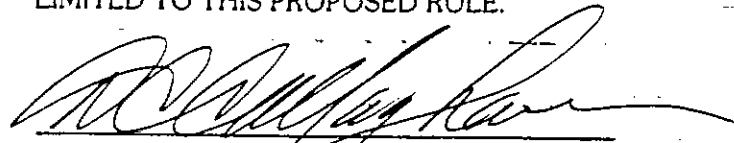
DEP Rule Comments

1356 Hansford Street

Charleston, WV 25301

Attn: Ken Ellison

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



David C. Callaghan  
Director

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.20



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY  
State Capitol, Room R-151  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-3255  
Fax No.: (304) 558-4983

GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

August 17, 1992

Mr. David C. Callaghan, Director  
Division of Environmental Protection  
#10 McJunkin Road  
Nitro, West Virginia 25143-2506

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SECRETARY OF STATE

RE: Proposed Rule - Title 47, Series 38C (Solid Waste  
Landfill Closure Assistance Program Regulations)

Dear Dave:

Pursuant to West Virginia Code 5F-2-2(a)(12), I hereby  
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing  
with the Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson  
Cabinet Secretary

JMR:mcl

FISCAL NOTE FOR A PROPOSED RULE

Rule Title: Title 47, Series 38C, "Solid Waste Landfill Closure Assistance Program."

Type of Rule: XX Legislative Interpretive Procedural

Agency: Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection.

Address: 1356 Hansford Street, Charleston, West Virginia 25301.

1. Effect of Proposed Rule	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
-Personal Services					
-Current Expense					
-Repairs and Alterations					
-Equipment					
-Other					
			NO CHANGE		

2. Explanation of Above Estimates: This regulation implements the Solid Waste Landfill Closure Assistance Program imposed by Senate Bill 18 passed in October of 1991. All monies collected for an established assistance fund shall be from a fee imposed upon the disposal of solid waste. No new administrative expenditures are anticipated.

3. Objectives of These Rules: The objectives of this rule is to implement an assistance program that will be available to permittees of solid waste landfills that will facilitate the closure of these landfills in a timely and environmentally sound manner.

4. Explanation of Overall Economic Impact of Proposed Rule.

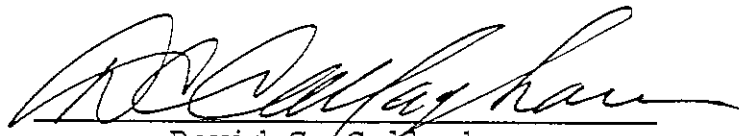
A. Economic Impact on State Government: No impact.

B.1. Economic Impact on Political Subdivisions: No impact.

2. Economic Impact on Specific Industries: No impact.

3. Economic Impact on Specific Groups of Citizens: No impact.

C. Economic Impact on Citizens/Public at Large: No impact.

  
 David C. Callaghan  
 Director

Date: August 11, 1992

PREAMBLE TO A EMERGENCY RULE CONCERNING THE  
HAZARDOUS WASTE CLEAN-UP REGULATIONS

AGENCY: Department of Commerce, Labor and Environmental  
Resources, Division of Environmental Protection.

REGULATION: Title 47, Series 38C, "Solid Waste Landfill Closure  
Assistance Program Regulations."

AUTHORITY: West Virginia Code §20-5N-8.

ACTION: Filing of a Proposed Rule and Notice of a Thirty-Day  
Comment Period.

ADDRESS: Written comments can be sent to the following address:

DEP Rule Comments  
1356 Hansford Street  
Charleston, West Virginia 25301

SUMMARY: During the 1991 Special Legislative Session, Senate Bill  
18 was passed. The Bill created Article 5N under Chapter 20 of the  
West Virginia Code. Today's filing proposes regulations to  
implement Article 5N (Solid Waste Landfill Closure Assistance  
Program).

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38C  
COMMERCIAL SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM  
REGULATIONS

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TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38C  
COMMERCIAL SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM  
REGULATIONS

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SECRETARY OF STATE

47-38C-1. General.

1.1. Scope and Purpose - This legislative rule establishes requirements for the operation of the Landfill Closure Assistance Program pursuant to WV Code Chapter 20 Article 5N, as amended. Article 5N 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 - WV Code § 20-5N-8

1.3. Filing Date \_\_

1.4. Effective Date \_\_

1.5. Short Title: Closure Assistance Program

1.6. Incorporation by Reference - Whenever federal or state statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on July 1, 1992.

47-38C-2. Definitions.

2.1. "Cost of project" includes the cost of the services authorized in sections three and ten of WV Code Chapter 20 Article 5N, as amended, 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;

2.2. "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;

2.3. "Landfill" means any solid waste facility for the disposal of solid waste on land, and 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. Such facility shall be deemed to be situated, for purposes of these regulations, in the county where the majority of the spatial area of such facility is located;

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

2.5. "Project" means the providing of closure assistance to one or more landfills under these regulations;

2.6. The definitions provided in WV Code Chapter 20 Article 5A Section 2, and the regulations promulgated thereunder, to the extent they are applicable, apply to these regulations.

#### 47-38C-3. Closure Assistance Application.

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

3.2. The application may request the following information:

3.2.1. Name of Permittee;

3.2.2. Mailing Address of Permittee;

3.2.3. Name of Facility;

3.2.4. General Location of Facility;

3.2.5. Solid Waste Facility Permit No. or  
Permit Application No., as applicable;

3.2.6. NPDES Permit No. and Effective Date or  
Application No. or

General Permit No., as applicable;

3.2.7. Type of Bond in Effect, Amount, and Expiration Date;

3.2.8. Financial Statements from Permittee (reserved);  
and

3.2.9. Any other information required by the director in order to determine acceptance into the program.

3.3. 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. The notice shall contain the reasons for rejection.

3.4. All deadlines set forth in WV Code Chapter 20 Article 5N Section 6 are applicable.

#### 47-38C-4. Conditions for Closure Assistance Application Approval.

4.1. The applicant must currently have in his possession a valid landfill facility permit in compliance with the Solid Waste Management Act (WV Code Chapter 20 Article 5F) containing an approved closure plan for the landfill facility.

4.1.1. 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. That landfill facility permit must contain, in the form of a modification, the landfill facility NPDES requirements of the Water Pollution Control Act (WV Code Chapter 20 Article 5A).

#### 4.2. Bonding.

4.2.1. The applicant must have submitted the full amount of the required bond and received approval of the director.

4.2.2. The bonding requirements set forth in WV Code Chapter 20 Article 5F and in Section 3.13 of Title 47, Series 38, Solid Waste Management Regulations are applicable.

#### 4.3. Violations.

4.3.1. All closure-related DEP Notices of Violation(s) shall have been abated.

4.3.2. All closure-related DEP Civil Administrative Penalties shall have been paid, or reflected in a payment schedule contained in subsequently-issued Solid Waste Administrative Orders.

4.3.3. All terms and conditions of any prior closure-related Administrative Orders shall have been resolved.

4.3.4. 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. None of the requirements of Section 4.3 may be waived without written approval of the director.

4.4. Legalities.

4.4.1. All pending magistrate, Water Resources Board, State Court, Federal Court, or other legal actions must have been resolved.

4.5. Closure Funds.

4.5.1. All funds available at the time of closure that have been dedicated to closure, as may have been required by the PSC, shall have been expended for closure, in compliance with Title 47 Series 38 Section 6, or donated to the Closure Cost Assistance Fund as outlined in WV Code Chapter 20 Article 5N Section 4(a).

4.6. Additional Closure Items.

4.6.1. The applicant shall have complied, or begun to comply with the following permit, or regulatory requirements, as outlined in Section 6 of Title 47, Series 38, Solid Waste Management regulations. These items are ineligible for coverage by closure assistance program:

4.6.1.a. Legal Advertisement

4.6.1.b. Notification to Users

4.6.1.c. Notification to Chief

4.6.1.d. Posting of Signs on the Fence

4.6.1.e. Denial of Entry/Restricted Access

4.6.1.f. Notification to Solid Waste Authority, State Solid Waste Management Board, etc.

4.6.1.g. Deed Notation

4.6.2. 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 the acquisition, construction or equipping landfills qualifying for assistance.

4.7. An approved application provides a basis for the chief to modify the permit in accordance with the provisions of Section 6 of Title 47, Series 38, Solid Waste Management Regulations in order to meet the requirements of the Closure Assistance Program.

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

47-38C-5. Interim Status Assistance.

5.1. 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 WV Code Chapter 20 Article 5F 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. Post Closure Assistance.

6.1. Unless otherwise specified by the director, all post closure monitoring, maintenance, sampling, testing, and water treatment will be conducted by the DEP.

47-38C-7. Contracting.

7.1. All funds expended from the Closure Assistance Fund for the purposes of fulfilling the requirements of WV Code Chapter 20 Article 5N will be in accordance with Department of Administration laws, rules, and procedures.

7.2. Landfill closure assistance provided by the Director shall be contingent upon the availability of revenues from the Closure Cost Assistance Fund.

47-38C-8. Final Closure Assistance Priority.

8.1. 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.

## Closure Assistance Application

- 1) Name of Permittee: \_\_\_\_\_
- 2) Mailing Address  
of Permittee: \_\_\_\_\_  
\_\_\_\_\_
- 3) Name of Facility: \_\_\_\_\_
- 4) General Location  
of Facility: \_\_\_\_\_  
\_\_\_\_\_
- 5) Solid Waste Facility:  
Permit No. \_\_\_\_\_ or Permit Application No. \_\_\_\_\_
- 6) NPDES:  
Permit No. \_\_\_\_\_ Effective Date \_\_\_\_\_  
or  
Application No. \_\_\_\_\_  
or  
General Permit No. \_\_\_\_\_
- 7) Type of Bond Used: \_\_\_\_\_  
Amount: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_
- 8) Financial data from Permittee (attached)
- 9) Any other information needed by the Director in order to  
determine acceptance into the program (attached)
- 10) Any information deemed by the permittee to be relevant  
(attached)

LANDFILL CLOSURE ASSISTANCE PROGRAM

PRIORITY EVALUATION MATRIX

LANDFILL NAME: \_\_\_\_\_  
 COUNTY: \_\_\_\_\_  
 USGS QUADRANGLE: \_\_\_\_\_  
 LATITUDE: \_\_\_\_\_  
 LONGITUDE: \_\_\_\_\_

	Low	High	Multiply By	Score
Potential Adverse Impact on Human Health & Safety	0 1 2 3 4 5 6 7 8 9 10		20	_____
Adverse Impact on Groundwater	0 1 2 3 4 5 6 7 8 9 10		15	_____
Adverse Impact on Surface Water	0 1 2 3 4 5 6 7 8 9 10		15	_____
Adverse Impact on Air Quality	0 1 2 3 4 5 6 7 8 9 10		15	_____
Degree of Surface Instability	0 1 2 3 4 5 6 7 8 9 10		10	_____
Adverse Impact on Improved Property	0 1 2 3 4 5 6 7 8 9 10		10	_____
Adverse Impact on Fish, Wildlife & Plant Habitat	0 1 2 3 4 5 6 7 8 9 10		10	_____
Potential for Development	0 1 2 3 4 5 6 7 8 9 10		5	_____
<b>TOTAL SCORE . . . . .</b>				_____

\_\_\_\_\_  
 Signature of Evaluator & Date