

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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JAN 20 11 32 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Department of Commerce, Labor  
and Environmental Resources  
Division of Environmental Protection

AGENCY: \_\_\_\_\_ TITLE NUMBER: 47

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §20-5N-8

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO XX

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

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

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

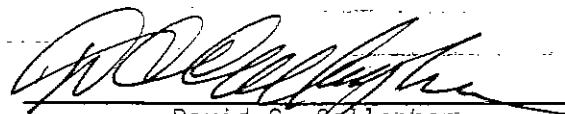
TITLE OF RULE BEING PROPOSED: "Solid Waste Landfill Closure Assistance  
Program Regulations"

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 February 26, 1993 AT 4:30 pm

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

DEP Rule Comments  
1356 Hansford St.  
Charleston, WV 25301  
Attn: Public Information

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



David C. Callaghan  
Director

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

480



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

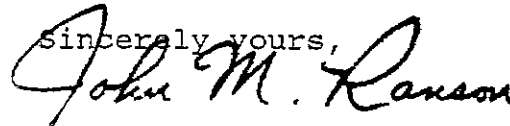
Mr. David C. Callaghan, Director  
 Division of Environmental Protection  
 #10 McJunkin Road  
 Nitro, West Virginia 25143-2506

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

OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

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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.

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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  
SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM 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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FILED

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

JAN 20 11 33 AM '93

SERIES 38C  
COMMERCIAL SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM  
REGULATIONS

OFFICE OF WEST VIRGINIA  
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 5F 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 Information

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

3.2.8.b 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 3.2.8.d

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

3.2.8.c.1 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 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 The statements of changes in financial position will identify the sources and uses of cash by the reporting entity.

3.2.8.c.4 The statements will be accompanied with supporting notes which explain and detail the major items of interest and make necessary disclosures.

3.2.8.c.5 Unaudited statements will be accompanied with supported by copies of filed federal income tax returns.

3.2.8.d 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 The financial information section of these regulations may apply to all parties named in the original disclosure application as required in WV Code 20-5F-4(k).

3.2.9. 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. 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 reasons for the rejection.

3.4. 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 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. All deadlines set forth in West Virginia 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 bond required under 4.2.2 and received approval of the bond from 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.

4.2.3. None of the requirements of Section 4.2.2 may be waived without written approval of the director.

#### 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.

4.4.2. None of the requirements of Section 4.4.1 may be waived without written approval of the director.

#### 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



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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Deputy Secretary of State

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Director, Corporations

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

January 21, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Natural Resources

RULE: New Rule, Series 38C, Solid Waste Landfill Closure  
Assistance Program Regulations

DATE FILED AS AN EMERGENCY RULE: January 20, 1993

DECISION NO. 2-93

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JAN 21 3 54 PM '93

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KEN HECHLER  
Secretary of State

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Deputy Secretary of State

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(Plus all the volunteer  
help we can get)

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

#### DECISION

#### EMERGENCY RULE DECISION (ERD 2-93)

AGENCY: Natural Resources  
RULE: New Rule, Series 38C, Solid Waste Landfill Closure  
Assistance Program Regulations  
FILED AS AN EMERGENCY RULE: January 20, 1993

- par. 1 - The Division of Natural Resources (DNR) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DNR filed this emergency rule with supporting documents with the Secretary of State January 20, 1993 and with the LRMRC January 20, 1993.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §20-5N-8 reads:

The director shall promulgate rules that are necessary for the efficient and orderly implementation and administration of this article no later than the first day of August, 1992. Due to the need for the program provided for in this article to begin as soon as possible the Legislature finds and declares that condition warranting rules to be promulgated as emergency rules does exist and that the promulgation of the initial rules required by this section should be accorded emergency status.

par. 9 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DNR are as follows:

Chapter 20, Article 5N (Solid Waste Landfill Closure Assistance Program) of the WV Code established the "Closure Cost Assistance Fund" with the State Treasury. The Fund was setup to financially assist existing solid waste facilities with closure of the facility. Section 8 of this Article instructs the Division of Natural Resources to promulgate rules to implement the program no later than August 1, 1992. The legislature, under Section 8, finds and declares that a

condition warranting rules to be promulgated as emergency rules does exist and that these rules should be filed on an emergency basis.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g).

par. 14 This decision shall be cited as Emergency Rule Decision 2-93 or ERD 2-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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