

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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DEC 21 9 37 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY WV Code Chapter 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"

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



3.40

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

FILED

DEC 21 9 37 AM '93

SERIES 38C
COMMERCIAL SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM REGULATIONS

OFFICE OF THE SECRETARY OF STATE WEST VIRGINIA

RULES

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 4N, as amended 20-5N-1 et seq. 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. "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 sections three and ten of WV Code Chapter 20-5N-3 and 10, 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;

2.3. "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 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 Such facility shall be deemed considered to be situated, for purposes of these regulations, this rule, in the county where the majority of the spatial area of such 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 these regulations this rule;

2.7. The definitions provided in WV Code Chapter 20 Article 5F Section 2 20-5F-2, and the regulations promulgated thereunder, to the extent they are applicable, apply to these regulations this rule.

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, and the Bond's 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 the 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 Section 3.2.8.d of this rule.

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; and

3.2.8.c.5 Unaudited statements will be accompanied with and 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 this rule may apply to all parties named in the original disclosure application as required in WV Code 20-5F-4(k); and

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 reason(s) 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 20-5N-6 are applicable.

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

4.1. The applicant must currently have in his or her possession a valid landfill facility permit in compliance with the Solid Waste Management Act (WV Code Chapter 20 Article 5F 20-5F-1, et seq.) 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 20-5A-1 et seq.).

4.2. Bonding.

4.2.1. The applicant must have submitted the full amount of the bond required under Section 4.2.2 of this rule and received approval of the bond from the director.

4.2.2. The bonding requirements set forth in WV Code Chapter 20 Article 5F 20-5F-1 et seq. and in Section 3-13 of Title 47, Series 38, Solid Waste Management Regulations Division of Environmental Protection Solid Waste Management Regulations 47 CSR 38 Section 3.13, are applicable.

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

4.3 Violations.

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

4.3.2. All closure-related Division of Environmental Protection Civil Administrative Penalties shall have been paid, are 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 4.3 of this section 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 of this rule 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 Public Service Commission, shall have been expended for closure, in compliance with Title 47 Series 38 Section 6, Division of Environmental Protection, Solid Waste Management Regulations 47 CSR 38 Section 6 or donated to the Closure Cost Assistance Fund as outlined in WV Code Chapter 20 Article 5N Section 4(a) 20-5N-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, Division of Environmental Protection, Solid Waste Management Regulations 47 CSR 38 Section 6. These items are ineligible for coverage by the 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; and

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 Division of Environmental Protection Solid Waste Management Regulations 40 CSR 38 Section 6 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 20-5F-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. 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 Division of Environmental Protection.

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 20-5N-1 et seq. will be in accordance with Department of Administration laws, rules, and procedures.

7.2. Landfill closure assistance provided by the director shall be is 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.



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-152, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

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OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair
 Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

September 28, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: David C. Callaghan, Director
 Division of Environmental Protection
 10 McJunkin Road
 Nitro, WV 25143-2506

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Solid Waste Landfill Closure Assistance Program
 Regulations

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: G. Max Robertson, Chief, Waste Mgmt.
 Randy C. Huffman, Asst. Chief