

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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FILED

MAY 20 3 43 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

Department of Commerce, Labor and Environmental Resources

AGENCY: Division of Environmental Protection TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES , NO

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

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

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

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1005

SECTION 64-3-17 (h), PASSED ON March 16, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: June 1, 1994





Authorized Signature
Roger T. Hall
Special Asst. to Director



KEN HECHLER
Secretary of State

MARY P. RATLIFF
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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

March 18, 1994

G. Max Robertson
Natural Resources
Ofc. of Waste Management
1356 Hansford St.
Charleston, WV 25301

SB 1005 authorizing, **Title 47, Series 38C, Solid Waste Landfill Closure Assistance Program Regulations**, passed the Legislature on **March 16, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 1005, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 1005** section **64-3-17(h)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

LEGISLATIVE HISTORY ABSTRACT

SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM REGULATIONS

47 CSR 38C - 1 ET. SEQ.

Division of Environmental Protection
Office of Waste Management
PPOD Section
Rulemaking Coordinator - Randy Huffman 558-7763

Jan 20, 1993	Initial Filing With Secretary Of State
Jan 20, 1993	Filed As Emergency Rule
Feb 26, 1993	Public Hearing Date
Apr 23, 1993	Filed With Secretary Of State And LRMRC
Sep 28, 1993	Modified And Approved By LRMRC
Oct 27, 1993	Modified Rule With Secretary Of State
Mar 16, 1994	Completed Legislative Action
Apr 6, 1994	Approved By The Governor

1994 REGULAR LEGISLATIVE SESSION

Jan 28, 1994	To Natural Resources Then Judiciary
Jan 31, 1994	Filed For Introduction
Jan 31, 1994	Introduced In Senate
Jan 31, 1994	To Natural Resources Then Judiciary
Jan 31, 1994	To Natural Resources
Feb 11, 1994	Reported To Pass, But First To Judiciary
Feb 11, 1994	To Judiciary

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38C
COMMERCIAL SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM

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 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 - 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 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 WV Code 20-5N-3 and 10, 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 so 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. The definitions provided in WV Code 20-5F-2, and the regulations promulgated thereunder, to the extent they are applicable, apply to 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 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 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 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 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 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 20-5F-1 et seq. and in 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 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 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 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 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 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 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 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 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 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.

SENATE BILL NO. 164

(By Senators Anderson, Grubb, McNaughtan and
Munera)

[Introduced January 31, 1994; referred to the
Committee on

NATURAL RESOURCES

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10 A BILL to amend and reenact section seventeen, article three,
11 chapter sixty-four of the code of West Virginia, one thousand
12 nine hundred thirty-one, as amended, relating to authorizing
13 the division of environmental protection to promulgate
14 legislative rules relating to the solid waste landfill
15 closure assistance program.

16 Be it enacted by the Legislature of West Virginia:

17 That section seventeen, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred thirty-one,
19 as amended, be amended and reenacted, to read as follows:

20 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND
21 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-3-17. Division of environmental protection.

23 (a) The legislative rules filed in the state register on the
24 eleventh day of October, one thousand nine hundred ninety-one,

1 modified by the division of environmental protection to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the ninth day of November, one
4 thousand nine hundred ninety-two, relating to the division of
5 environmental protection (operator's designation of bona fide
6 future use of oil and gas wells - qualification for inactive
7 status), are authorized.

8 (b) The legislative rules filed in the state register on the
9 third day of September, one thousand nine hundred ninety-two,
10 modified by the division of environmental protection to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the nineteenth day of February,
13 one thousand nine hundred ninety-three, relating to the division
14 of environmental protection (oil and gas wells and other wells),
15 are authorized.

16 (c) The legislative rules filed in the state register on the
17 third day of September, one thousand nine hundred ninety-two,
18 modified by the division of environmental protection to meet the
19 objections of the legislative rule-making review committee and
20 refiled in the state register on the nineteenth day of February,
21 one thousand nine hundred ninety-three, relating to the division
22 of environmental protection (abandoned wells), are authorized.

23 (d) The legislative rules filed in the state register on the
24 eighteenth day of September, one thousand nine hundred
25 ninety-two, modified by the division of environmental protection

1 to meet the objections of the legislative rule-making review
2 committee and refiled in the state register on the nineteenth day
3 of February, one thousand nine hundred ninety-three, relating to
4 the division of environmental protection (underground storage
5 tank assessment fees), are authorized.

6 (e) The legislative rules filed in the state register on the
7 eighteenth day of September, one thousand nine hundred
8 ninety-two, relating to the division of environmental protection
9 (underground storage tanks), are authorized.

10 (f) The legislative rules filed in the state register on the
11 eighteenth day of September, one thousand nine hundred
12 ninety-two, modified by the division of environmental protection
13 to meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the nineteenth day
15 of February, one thousand nine hundred ninety-three, relating to
16 the division of environmental protection (hazardous waste
17 management), are authorized.

18 (g) The legislative rules filed in the state register on the
19 third day of March, one thousand nine hundred ninety-two,
20 modified by the division of environmental protection to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the eighteenth day of February,
23 one thousand nine hundred ninety-three, relating to the division
24 of environmental protection (groundwater protection act fee
25 schedule), are authorized.

1 (h) The legislative rules filed in the state register on the
2 twenty-third day of April, one thousand nine hundred ninety-
3 three, modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twenty-seventh
6 day of October, one thousand nine hundred ninety-three, relating
7 to the division of environmental protection (solid waste landfill
8 closure assistance program), are authorized.

9
10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to the Solid Waste Management Landfill Closure
13 Assistance Program.

14
15 Strike-throughs indicate language that would be stricken from
16 the present law, and underscoring indicates new language that
17 would be added.

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H. B. 4249

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on the Judiciary)

10 A BILL to amend and reenact section seventeen, article three,
11 chapter sixty-four of the code of West Virginia, one thousand
12 nine hundred thirty-one, as amended, relating to authorizing
13 the division of environmental protection to promulgate
14 legislative rules relating to the solid waste landfill
15 closure assistance program.

16 Be it enacted by the Legislature of West Virginia:

17 That section seventeen, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred thirty-one,
19 as amended, be amended and reenacted, to read as follows:

20 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND
21 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-3-17. Division of environmental protection.

23 (a) The legislative rules filed in the state register on the
24 eleventh day of October, one thousand nine hundred ninety-one,

4249

1. modified by the division of environmental protection to meet the
2. objections of the legislative rule-making review committee and
3. refiled in the state register on the ninth day of November, one
4. thousand nine hundred ninety-two, relating to the division of
5. environmental protection (operator's designation of bona fide
6. future use of oil and gas wells - qualification for inactive
7. status), are authorized.

8 (b) The legislative rules filed in the state register on the
9. third day of September, one thousand nine hundred ninety-two,
10. modified by the division of environmental protection to meet the
11. objections of the legislative rule-making review committee and
12. refiled in the state register on the nineteenth day of February,
13. one thousand nine hundred ninety-three, relating to the division
14. of environmental protection (oil and gas wells and other wells),
15. are authorized.

16 (c) The legislative rules filed in the state register on the
17. third day of September, one thousand nine hundred ninety-two,
18. modified by the division of environmental protection to meet the
19. objections of the legislative rule-making review committee and
20. refiled in the state register on the nineteenth day of February,
21. one thousand nine hundred ninety-three, relating to the division
22. of environmental protection (abandoned wells), are authorized.

23 (d) The legislative rules filed in the state register on the
24. eighteenth day of September, one thousand nine hundred
25. ninety-two, modified by the division of environmental protection

1 to meet the objections of the legislative rule-making review
2 committee and refiled in the state register on the nineteenth day
3 of February, one thousand nine hundred ninety-three, relating to
4 the division of environmental protection (underground storage
5 tank assessment fees), are authorized.

6 (e) The legislative rules filed in the state register on the
7 eighteenth day of September, one thousand nine hundred
8 ninety-two, relating to the division of environmental protection
9 (underground storage tanks), are authorized.

10 (f) The legislative rules filed in the state register on the
11 eighteenth day of September, one thousand nine hundred
12 ninety-two, modified by the division of environmental protection
13 to meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the nineteenth day
15 of February, one thousand nine hundred ninety-three, relating to
16 the division of environmental protection (hazardous waste
17 management), are authorized.

18 (g) The legislative rules filed in the state register on the
19 third day of March, one thousand nine hundred ninety-two,
20 modified by the division of environmental protection to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the eighteenth day of February,
23 one thousand nine hundred ninety-three, relating to the division
24 of environmental protection (groundwater protection act fee
25 schedule), are authorized.

1 (h) The legislative rules filed in the state register on the
2 twenty-third day of April, one thousand nine hundred ninety-
3 three, modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twenty-seventh
6 day of October, one thousand nine hundred ninety-three, relating
7 to the division of environmental protection (solid waste landfill
8 closure assistance program), are authorized.

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10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to the Solid Waste Management Landfill Closure
13 Assistance Program.

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15 Strike-throughs indicate language that would be stricken from
16 the present law, and underscoring indicates new language that
17 would be added.