

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**  
Form #7

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**FILED**

**JUL 8 9 10 AM '93**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: DCL&ER, Division of Environmental Protection TITLE NUMBER: 47

CITE AUTHORITY: §20-5F-2b(b)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

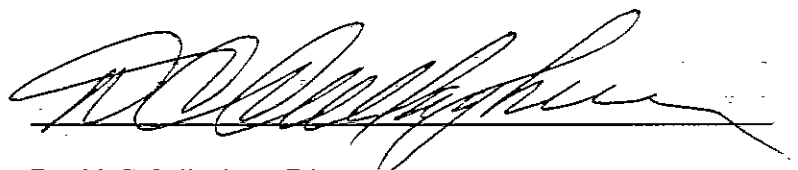
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 38D

TITLE OF RULE BEING FILED AS AN EMERGENCY: Sewage Sludge Management Regulations

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST. The FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional Sheets If Necessary) : Authorized by legislation, §20-5F-2b(b).



David C. Callaghan, Director  
Division of Environmental Protection

6.46



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
 OFFICE OF THE SECRETARY  
 State Capitol, Room M-146  
 Charleston, West Virginia 25305-0310  
 Telephone: (304) 558-0400  
 Fax No.: (304) 558-4983

GASTON CAPERTON  
 Governor

JOHN M. RANSON  
 Cabinet Secretary

May 24, 1993

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

OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

May 24 4 30 PM '93

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Re: Proposed Rule - Title 47, Series 38D (Sewage Sludge Management Regulations)

Dear Mr. Callaghan:

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

I am authorizing the proposal of this rule, including the provisions of §6 regarding fees, in order to initiate the public comment and review period. However, I am directing that the question of the fees imposed in §6 be thoroughly reviewed during the comment period, in order to determine whether the amounts set in the proposed rule are appropriate. I therefore reserve judgment on that issue.

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*  
 John M. Ranson  
 Cabinet Secretary

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FISCAL NOTE FOR PROPOSED RULE

Rule Title: Sewage Sludge Management Regulations 47 C.S.R. 38D

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Division of Environmental Protection

Address: #10 McJunkin Road, Nitro, West Virginia 25143-2506

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$200,000		0	200,000	200,000
Personal Services	\$150,000		0	150,000	150,000
Current Expenses	\$ 40,000		0	40,000	40,000
Repairs & Alterations	\$				
Equipment	\$ 10,000		0	10,000	10,000
Other	\$				

2. Explanation of above estimates: The promulgation of these rules will result in the need of personnel, equipment and other related costs to efficiently and orderly regulate sewage sludge. §20-5F-2b(b) establishes that a land application fee be levied and imposed to sufficiently cover the costs of the Sewage Sludge Management Program.

3. Objectives of this rule: To require permits for all facilities and activities which generate, process or dispose of sewage sludge and to develop and implement a comprehensive program for the regulation and management of sewage sludge.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: The agency will require funding support and will use the fees provided for by the legislation to manage the program and provide for environmental remediation.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens: Possible increase in sewage treatment fees to cover the costs of implementing land application requirements.

C. Economic Impact on Citizens/ Public at Large: Same as B. above.

Date:

Signature of Agency Head or Authorized Representative

  
 Director, Division of Environmental Protection

**Date:** July 7, 1993

**To:** Legislative Rule-Making Review Committee

**From:** Department of Commerce Labor and Environmental Resources, Division of Environmental Protection

**Emergency Rule Title:** Sewage Sludge Management Regulations

1. Date of filing: July 7, 1993
2. Statutory authority for promulgating the emergency rule: §20-5F-2b(b)
3. Date of filing the proposed legislative rule: July 7, 1993
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule: The emergency rule adopts new language.
5. Has the same or similar emergency rule previously been filed and expired: No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare: N.A.
7. If the emergency rule was promulgated in order to comply with a time limit established by the code or federal statute or regulation, cite the code provision, federal statute or regulation and time limit established therein: Requirement of §20-5F-2b(b).
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest: N.A.

PREAMBLE TO A PROPOSED RULE  
CONCERNING  
SEWAGE SLUDGE MANAGEMENT REGULATIONS

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

REGULATION: Title 47, Series 38D, "Sewage Sludge Management Regulations."

ACTION: Filing of an agency approved rule, filing with the Legislative Rule-Making Review Committee, and filing of an emergency rule.

SUMMARY: During the 1993 Legislative session, Senate Bill No. 288 amended §20-5F of the West Virginia Code, in part, by adding Section 2b. This section provided for the management of sewage sludge, and authorized the filing of rules along with their emergency filing. The filed rules implement a comprehensive sewage sludge management program in West Virginia.

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

JUL 8 9 10 AM '93

SERIES 38D  
SEWAGE SLUDGE MANAGEMENT REGULATIONS  
EMERGENCY RULE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§47-38D-1. GENERAL.**

1.1. Scope and Purpose. -- This legislative rule establishes requirements for the siting, bonding, installation, establishment, construction, modification, and operation of any facility that generates, processes, recycles and/or disposes of sewage sludge by whatever means, including, but not limited to, land application, composting, incineration, mixed waste composting, or any other method of handling sewage sludge within the state. This rule applies to any person who owns or operates a sewage sludge facility or who is responsible for the processing or disposal of sewage sludge.

1.2. Authority. W. Va. Code 20-5F-2b.(b)

1.3. Filing Date.

1.4. Effective Date.

1.5. 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 the effective date of these regulations.

**§47-38D-2. DEFINITIONS**

The following definitions shall apply to these rules unless otherwise specified herein:

2.1. "Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed: (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and (2) To minimize the amount of nitrogen in sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

2.2. "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director of the division of environmental protection may specify, including the following: Spouses, parents, children and siblings.

2.3. "Approved solid waste facility" means a solid waste facility or practice which has a

valid permit under Chapter 20, Article 5F.

2.4. "Backhauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

2.5. "Bulking Agent" means materials such as yard waste, wood chips, leaves and other living or dead plant tissues approved by the chief as suitable to promote the passage of air through a static pile or windrow.

2.6. "Chief" means the chief of the office of waste management of the division of environmental protection.

2.7. "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

2.8. "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

2.9. "Composting" means the aerobic, thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

2.10. "Composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

2.11. "Curing area" means an area where organic material that has undergone the rapid initial stage of decomposition is further stabilized into a humus-like material.

2.12. "Director" means the director of the division of environmental protection.

2.13. "Distributor" is a person who prepares the product for distribution and marketing and is responsible for distributing and marketing the product.

2.14. "Division" means the division of environmental protection .

2.15. "Domestic septage" means either liquid or solid material (septage) removed from

a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

2.16. "Energy recovery incinerator" means any solid waste facility at which solid waste are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

2.17. "Importer" means any person bringing in or receiving sewage sludge from any outside source for the purpose of processing .

2.18. "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

2.19. "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

2.20. "Landfill" means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of Chapter 20, Article 5F, in the county where the majority of the spatial area of such facility is located.

2.21. "Materials recovery facility" means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

2.22. "Mixed solid waste" means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

2.23. "Mixed waste processing facility" means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling or composting.

2.24. "Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

2.25. "Open dump" means any solid waste disposal which does not have a permit under Chapter 20, Article 5F, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

2.26. "Person" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever .

2.27. "Pretreatment Publicly Owned Treatment Works" means a publicly owned treatment works that has developed and received approval of a program to control the discharge of non-domestic (industrial) wastewater into its treatment works pursuant to 40 CFR, Part 403. In general, pretreatment publicly owned treatment works are greater than 5 million gallons per day in design and accept wastewater from significant industrial users.

2.28. "Producer" means any person producing sewage sludge at a publicly owned treatment works (POTW).

2.29. "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, that mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of Chapter 20, Articles 9 and 11.

2.30. "Representative sample" means a sample collected from a population or whole that exhibits the average or typical properties of the larger population or whole.

2.31. "Sewage sludge" means solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator."

2.32. "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for land application, incineration or disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic digestion and anaerobic digestion.

2.33. "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

2.34. "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant, water supply

treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under Chapter 20, Article 5A, or source, special nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under Chapter 20, Article 5E, or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil, and gas and other mineral resources placed or disposed of at a facility which is regulated under Chapter 22, 22A, or 22B, of the Code, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters.

2.35. "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

2.36. "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to Chapter 16, Article 26, Section 8 of the Code.

2.37. "Solid waste facility" 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, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, composting facilities and other such facilities not herein specified but not including land upon which sewage sludge is applied in accordance with Chapter 20, Article 5F, Section 2-(b) of the Code. 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: Provided, That a salvage yard licensed and regulated pursuant to the terms of Chapter 17, Article 23, is not a solid waste facility.

2.38. "Source separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

2.39. "Source separated organic waste " means readily degradable organic material such as food waste, yard waste and wood waste, except pressure-treated wood waste, which is collected separately from the mixed solid waste stream. It does not include sewage sludge or domestic septage.

2.40. "Stabilization" means the decomposition of organic material to the point where it neither reheats when wetted nor gives off offensive odors and does not include pathogens, toxins or vectors in excess of Federal regulations 40 CFR, part 503.

**§47-38D-3. STANDARDS FOR USE, DISPOSAL AND PROCESSING OF SEWAGE SLUDGE.**

3.1. Incorporation of Federal Regulations. Federal regulations 40 CFR part 503, excluding 503.10(b)(1) and 503.20 through 503.29 inclusive, as in effect on the effective date these rules, are hereby fully incorporated and implemented as a part of these sewage sludge management regulations promulgated under the authority of Chapter 20, Article 5F, Section 2b.

3.2. Sewage Sludge Land Application Siting Restrictions and Location Standards.

3.2.1. Sludge will not be applied to land that meets any of the following conditions:

3.2.1.a. Land that is frozen, snow-covered, or known to be flooded on a regular basis unless the applicant can demonstrate to the Director that the land application will not cause runoff into streams or wetlands.

3.2.1.b. Land within 50 feet of surface water to include streams, springs, ponds, wetlands, or other collection points for surface water.

3.2.1.c. Land within 200 feet of drinking water supply wells or other personal water supply.

3.2.1.d. Land within 200 feet of an occupied dwelling.

3.2.1.e. Land within 50 feet of a federal or state highway.

3.2.1.f. Land within 100 feet of an adjacent property owner's property line.

3.2.1.g. Land from which drainage leads into a sinkhole.

3.2.1.h. Land that has been tested and determined to have a pH of less than 6.2, unless the pH is adjusted to 6.2 or greater.

3.2.1.i. Land that has a slope greater than 15%.

3.2.1.j. Land that has a seasonal high groundwater table less than 2 feet from the surface.

3.2.1.k. Land that has less than 6 inches of soil over bedrock or an impervious pan.

3.2.1.l. Land containing soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

3.2.2. No person or entity shall be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc, to be determined based, at a minimum, upon cumulative loading rates of 40 CFR, 503.13(b)(2) and 503.12(e)(2) and soil testing requirements developed under these regulations.

3.2.3. No land, except a solid waste facility, shall be allowed to accept or store so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry ton per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land.

3.2.4. No person shall be allowed to store sewage sludge at a land application site for a period longer than one week; except, storage shall be allowed for no longer than three months where provisions, approved by the Chief, have been made to prevent leachate runoff into surface or groundwater. Septage storage shall only be allowed in-tank and for no more than three days.

3.2.5. No person shall be allowed to land apply sludge except during the hours of daylight.

### 3.3. Sewage Sludge Processing Facility Operational and Design Requirements

3.3.1. Sewage sludge processing facilities must adhere to the following requirements:

3.3.1.a. Areas used for processing, curing and storage of raw materials, intermediate and final products, loading and unloading areas, impoundments, pipelines, ditches, pumps and drums, sumps and tanks, must be designed, constructed and operated to prevent release of contaminants to the groundwater and surface water. Storage of finished products from the facility shall be limited to one year.

3.3.1.b. The facility must be designed and operated to control vectors and odors.

3.3.1.c. The facility must not be operated or constructed within the one hundred year flood plain unless provisions have been made to prevent the encroachment of flood waters upon the facility.

3.3.1.d. All land areas within the boundaries of a sewage sludge processing facility upon which sewage sludge, intermediate or final products come in direct contact with the land surface must be protected in accordance with the Groundwater Protection Act, Chapter 20, Article 5M.

### 3.4. Leachate Management Requirements.

3.4.1. Any liquid which comes in contact with sewage sludge at a sewage sludge processing facility must be handled as leachate and is subject to the requirements of West Virginia Code Chapter 20, Articles 5A and 5M.

### 3.5. Storm Water Requirements.

3.5.1. Storm water drainage must be directed around and away from the operating area. All storm water must be collected and discharged into a receiving stream under permit issued by the division.

3.6. Landfill Disposal of Sewage Sludge. Sewage sludge disposed at a landfill shall contain at least twenty percent (20%) solid by weight. This requirement may be met by adding or blending sand, sawdust, lime, or soil. Alternative sludge disposal methods can be utilized upon obtaining prior written approval from the chief.

3.6.1. Sewage sludge may not represent more than twenty-five percent (25%) by weight of the total weight of waste disposed of at the landfill on any working day.

## **§47-38D-4. PERMITS REQUIRED**

### 4.1. Applicability.

4.1.1. No person may construct or operate a sewage sludge processing facility (including mixed waste composting facilities which utilize sewage sludge) or a commercial solid waste facility which processes or handles sewage sludge or materials derived from sewage sludge without first obtaining a solid waste facility permit; provided, That land upon which sewage sludge is applied is not a solid waste facility.

4.1.2. No person may land apply sewage sludge without first obtaining a land application permit; provided, That land application permit requirements may be incorporated into a modification of a facility's WV/NPDES permit required under Chapter 20, Article 5A.

4.1.3. For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to an WV/NPDES permit required under Chapter 20, Article 5A, a sewage sludge processing facility modification will be obtained by the applicant as a part of the existing WV/NPDES permit and shall include a sewage sludge management plan.

4.1.4. Facilities who are a surface disposal site as defined in 40 CFR, part 503, Subpart C, are hereby defined as "landfills" and must meet all requirements of Title 47, Series 38 applicable to landfills.

4.1.5. Permits issued under section 4.1.1. of these regulations, shall be subject to the procedures of Title 47, Series 38, Section 3 (excluding the provisions for Liner Requirements) and the closure requirements of Title 47, Series 38, Section 6.

4.1.6. Permits issued under section 4.1.3, of these regulations, shall be subject to the permit issuance procedures, procedures for permit modifications, suspension and revocation, procedures for transfer of permits, and the procedures for permit appeals of Title 46, Series 2 and are not subject to the procedures outlined in 4.1.5, 4.1.7 and 4.1.8.

4.1.7. Permits issued under section 4.1.4., of these regulations, shall be subject to the procedures of Title 47, Series 38, Section 3 and the closure requirements of Title 47, Series 38, Section 6.

4.1.8. Permits issued under section 4.1.2. of these regulations, except for land application modifications made in WV/NPDES permits under 4.1.3, shall be subject to the permit issuance procedures (Sections 3.17 through 3.29 inclusive) of Title 47, Series 38, and are not subject to the procedures outlined in 4.1.5, 4.1.6 and 4.1.7.

4.2. General, Processing Facility, and Land Application Permit Requirements. Persons required to obtain a permit pursuant to these regulations must provide the following information, in the form and manner prescribed by the Chief. The form may require information in addition to this section.

4.2.1. Permit Application General Requirements. All applicants must provide the following information:

4.2.1.a. The name, address, and location of the facility;

4.2.1.b. A description of the activities conducted or to be conducted by the applicant;

4.2.1.c. The operator's and owner's name, address, telephone number, ownership status, and status as a federal, state, private, public or other entity;

4.2.1.d. Other environmental permits issued by any local, state or federal agency;

4.2.1.e. A description of the specific source(s) of sewage sludge;

4.2.1.f. The amount of sewage sludge actually generated or imported;

4.2.1.g. The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge;

4.2.1.h. Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;

4.2.1.i. Information relative to the quality of the sewage sludge(s) or product(s) derived from sewage sludge as required by 40 CFR, Part 503, and

4.2.1.j. A detailed design and a description of the method to collect and control leachate and surface water runoff, including the method for treatment and disposal of leachate generated.

4.2.2. Sewage Sludge Processing Facility Permit Requirements. All applicants for permits for sewage sludge processing facilities, except facilities located at the site where sewage sludge is generated, must submit the following additional information:

4.2.2.a. An engineering report for an application for a permit to construct must contain, at a minimum, the following:

4.2.2.a.A. A regional map, or maps, (of appropriate scale) that delineate the entire service area of the proposed facility (both existing and proposed); existing and proposed collection, processing, and disposal operations; the location of the closest population centers; and the transportation systems including highways, airports, railways and waterways.

4.2.2.a.B. A vicinity map (minimum scale of 1"=2000') that delineates the area within one mile of the facility boundaries, zoning and land use, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the project.

4.2.2.a.C. A site plan (minimum scale of 1"=200' with five foot contour intervals) that delineates property boundaries, the location of existing and proposed soil boring, monitoring wells, buildings and appurtenances, fences, gates, roads, parking areas, drainage, culverts, storage facilities or areas, loading areas; existing and proposed elevation contours and direction of prevailing winds; and the location of residences, potable wells, surface water bodies, and drainage swales located within the site and in the site plan area.

4.2.2.a.D. A map indicating wetlands and flood plains within 1,000 feet of the site, if any.

4.2.2.b. Every applicant shall file a disclosure statement with the director at the time the application is filed except publicly owned and operated facilities in accordance with section 3.14 of the solid waste management regulations (title 47, series 38).

4.2.2.c. A description of the operation of the facility, detailed engineering plans and specifications for the entire facility, must be submitted by the applicant including at a minimum:

4.2.2.c.A. A schedule of operation, including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;

4.2.2.c.B. Anticipated daily traffic flow to and from the facility, including the number of trips by private or public collection vehicles, and the quantity of material contained in each vehicle;

4.2.2.c.C. The procedure for unloading trucks (including frequency, rate, and method);

4.2.2.c.D. Special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;

4.2.2.c.E. A description of the ultimate use for the finished compost or other product, method for removal from the site, and a plan for use or disposal of those finished products that cannot be used in the expected manner due to poor quality or change in market conditions;

4.2.2.c.F. A (description) copy of the label or other information source, by the distributor, that outlines the type of waste the compost product was received from, a list of any restrictions on use, and recommended safe uses and application rates;

4.2.2.c.G. Identification of the personnel required to operate and maintain the facility and their job descriptions/responsibilities;

4.2.2.c.H. A detailed description of the source, and anticipated quality, and quantity of any bulking agent to be used in the process; and

4.2.2.c.I. A detailed description of the quantity, quality and specific source of the sewage sludge received or anticipated to be received.

4.2.2.d. The permit application must contain an operating engineering report which must include, at a minimum, the following:

4.2.2.d.A. Detailed engineering plans and specifications for the entire sewage sludge processing facility, including manufacturer's performance data for the selected equipment;

4.2.2.d.B. Contingency plans detailing corrective (or remedial) action to be taken in the event of equipment breakdown; air pollution (odors); unacceptable waste delivered to the facility; groundwater contamination; spills; and undesirable conditions such as fires, dust, noise, vectors, lack of a market for the compost product and unusual traffic conditions; and

4.2.2.d.C. An Operation and Maintenance manual. The manual must contain general design information, detailed operational information and instructions. In addition, the manual must list the specific procedures used or to be used in monitoring, sampling and analyzing sewage sludge and the finished product, and record keeping requirements.

4.2.2.e. A description of the design of the facility, including:

4.2.2.e.A. The type, size, and associated detention times for the handling, processing, and storage equipment;

4.2.2.e.B. The method of measuring, shredding, mixing, and proportioning input materials;

4.2.2.e.C. A description and sizing of the storage facilities for amendment, bulking agent, and finished product;

4.2.2.e.D. The separation, processing, storage, and ultimate disposal of materials that cannot be composted, if applicable;

4.2.2.e.E. The location of all temperature and any other type of monitoring points, and the frequency of monitoring;

4.2.2.e.F. A process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

4.2.2.e.G. The aeration capacity of the system;

4.2.2.e.H. The method of supplying and regulating airflow;

4.2.2.e.I. The expected mass balance through the composting system;

4.2.2.e.J. A description of how the (temperature) monitoring equipment will ensure that facility qualifies as a process to further reduce pathogens, toxins, heavy metals and/or vectors;

4.2.2.e.K. If applicable, a description of the air emission collection and control technologies;

4.2.3. Land Application Permit Requirement . Persons performing land application of sewage sludge or materials derived from sewage sludge must submit the following information in addition to that required under section 4.2.1. of these regulations:

4.2.3.a. Soil analysis for all land application sites including but not limited to pH, potassium, phosphorus, and nitrogen;

4.2.3.b. Information relative to the nitrogen content of the sludge(s) or product(s) derived from sewage sludge to be land applied;

4.2.3.c. A soils map with application sites clearly defined;

4.2.3.d. An agreement between the preparer of sewage sludge(s) or material(s) derived from sewage sludge, the applier, and the owner of the land application site indicating each party's concurrence with the application, and certifying that each will comply with applicable requirements of 40 CFR 503 and these regulations;

4.2.3.e. A description of existing and future uses of the land application site;

4.2.3.f. Information relative to past application(s) of sewage sludge or material(s) derived from sewage sludge as necessary to comply with 40 CFR 503.12;

4.2.3.g. Information relative to past fertilizer applications to the site;

4.2.3.h. In addition to the chemical analyses required in 4.2.1, any additional chemical analyses of sewage sludge(s) or material(s) derived from sewage sludge, requested by the Chief, including, but not limited to sodium, chloride, fluoride, calcium and sulfates;

4.2.3.i. A description of the methods to be used for land application.

4.2.3.j. A description of the methods for transportation of sludge to the site;

4.2.3.k. For sewage sludge or material derived from sewage sludge, which has been imported, a copy of the POTW's NPDES permit;

4.2.3.l. For sewage sludge or material derived from sewage sludge, which has been imported, information relative to the significant industrial users of the POTW from which the sludge or material originated;

4.2.3.m. For sewage sludge or material derived from sewage sludge, which has been imported, a description of the methods by which pathogen control and vector attraction reduction are being achieved; and

4.2.3.n. A description of the methods to be utilized to adjust and maintain the soil to a minimum pH of 6.2 for at least 5 years from the date of application.

**§47-38D-5. GENERAL, PROCESSING FACILITY, AND LAND APPLICATION PERMIT REQUIREMENTS.**

5.1. Permit General Requirements. All permits issued pursuant to these regulations shall contain the following:

5.1.1. Any requirement of 40 CFR, part 503, including but not limited to:

5.1.1.a. Limitations on the concentrations of pollutants (heavy metals), toxins, vectors and pathogens in the sewage sludge or sewage sludge products;

5.1.1.b. Requirements relative to monitoring sewage sludge or sewage sludge product quality and reporting the results of those analyses for all heavy metals listed in 40 CFR, 503.13, pH, percent solids, organic nitrogen, potassium, phosphorus, calcium, magnesium, total nitrogen, ammonia nitrogen, pathogen test results and vector attraction verification; except that the frequency of monitoring shall be as described in Appendix A;

5.1.1.c. Requirements relative to reporting and certification;

5.1.1.d. Requirement to pay fees as identified in Section 6 of these regulations;

5.1.1.e. Requirements for the proper collection, control and disposal of leachate and stormwater runoff for the protection of ground and surface waters;

5.1.1.f. Requirements to retain records for the facility for a minimum of five years;

5.1.1.g. Requirements to monitor and report monthly to the Division the quantity of sewage sludge produced or imported and the specific source of the sewage sludge produced or imported;

5.1.1.h. Requirements to provide copies of monthly reports to the county or regional solid waste authority in which the facility or land application site(s) is located;

5.1.1.i. Any other requirements, including additional monitoring, determined to be necessary by the Chief to insure compliance with state and federal regulations;

5.2. Processing Facility Permit Requirements. In addition to the requirements of 5.1., any solid waste facility permit issued to a sewage sludge processing facility, pursuant to the sewage sludge regulations, must contain the following:

5.2.1. Operational requirements relative to pathogen control in accordance with 40 CFR, Part 503.32 and its Appendix B;

5.2.2. Operational requirements relative to vector attraction reduction in accordance with 40 CFR, Part 503.33;

5.2.3. Requirements to routinely monitor and report information relative to the quality of raw materials used in the sewage sludge processing facility including but not limited to: sewage sludge, bulking agents, kiln dust; except that the frequency of monitoring shall be as described in Appendix A;

5.2.4. Limitations for the pollutant concentrations of the end product of the sewage sludge processing facility;

5.2.5. Labeling requirements as per 40 CFR, Part 503.14.e., if applicable;

5.2.6. Requirements for the implementation of practices to prevent the contamination of ground and surface waters, including liners if necessary;

5.2.7. For commercial sewage sludge processing facilities, requirements for reporting in accordance with Section 4.12 of the Solid Waste Management Regulations (Title 47, Series 38);

5.3. Land Application Permit Requirements. In addition to the requirements of 5.1, any land application permit issued pursuant to the sewage sludge regulations shall contain the following:

5.3.1. Requirements delineating the sites for which land application is approved;

5.3.2. Limitations on the maximum amount of sewage sludge allowed to be land applied;

5.3.3. Requirements implementing the siting restrictions and location standards of 3.2 of these regulations;

5.3.4. Requirements limiting the types of crops that may be grown on land used for application of sewage sludge and the time between application of sewage sludge and the harvesting of crops, in accordance with 40 CFR, Part 503.32(b);

5.3.5. Restrictions on animal grazing and public access, in accordance with 40 CFR, Part 503.32(b);

5.3.6. Applicable vector attraction reduction requirements of 40 CFR, Part 503.33.

**§47-38D-6. FEE REQUIREMENTS.**

6.1. Applicability. Any producer or importer of sewage sludge intended for land application shall be subject to non-refundable fees, as described herein, which shall be used to cover the costs of the sewage sludge management program and to cover the costs of future environmental remediation.

6.2. Water Quality Management Fund. Fees collected for land application shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of 20-5A-6a except as otherwise specified herein.

6.3. Fee Assessments

6.3.1. Producers and importers of sewage sludge or material derived from sewage sludge intended for land application shall be assessed an environmental remediation fee. The fee shall be \$1.00 per dry ton of sewage sludge or material derived from sewage sludge *originating* from pretreatment publicly owned treatment works. The fee shall be \$0.50 per dry ton of sewage sludge or material derived from sewage sludge originating from non-pretreatment publicly owned treatment works. Regulations governing the management and disposition of the remediation fund and a cap limitation will be developed separately.

6.3.2. Producers and importers of sewage sludge or material derived from sewage sludge intended for land application shall be assessed a sewage sludge management program fee of \$2.50 per dry ton.

6.3.3. All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the division, shall be subject to the same fees levied by Chapter 20, Article 5F, Section 5a.(h)(1); Except that only the fees established by 6.3.1. and 6.3.2. of these regulations shall apply to the application of sewage sludge or material derived from sewage sludge to land outside a solid waste facility, and shall be deposited in the "Water Quality Management Fund".

**APPENDIX A**

**FREQUENCY OF MONITORING**

<b>AMOUNT OF SEWAGE SLUDGE RECEIVED (actual dry tons per 365 day period)</b>	<b>FREQUENCY OF MONITORING</b>
Greater than zero but less than 290.....	once every 6 months
Equal to or greater than 290 but less than 1,500 .....	once per quarter (4 times per year)
Equal to or greater than 1,500 but less 15,000 .....	once per month (12 times per year)
Equal to or greater than 15,000.....	once per week



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**SECRETARY OF STATE**

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Charleston, WV 25305-0770

December 17, 1993

**NOTICE OF ADDENDUM TO CORRECT EMERGENCY RULE DECISION BY  
THE SECRETARY OF STATE**

**AGENCY:** Division of Environmental Protection

**RULE:** New Rule, Series 38D, Sewage Sludge Management Regulations

**DATE FILED AS AN EMERGENCY RULE:** October 12, 1993

**DECISION NO. 23-93(A)**

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

This addendum is to make corrections in the text of the original emergency rule decision, ERD 23-93. This addendum only contains the paragraphs that are being corrected to emphasize that this is not a reconsideration of my original decision. Paragraphs 1-3, 6, 9, 13 and 14 in the original text of ERD 23-93 are hereby replaced with the paragraphs contained in the attached, which are correspondingly numbered.

\_\_\_\_\_  
KEN HECHLER  
Secretary of State

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Dec 17 3 56 PM '93

FILED

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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#### ADDENUM TO CORRECT EMERGENCY RULE DECISION [ERD 23-93(A)]

AGENCY: Division of Environmental Protection  
RULE: New Rule, Series 38D, Sewage Sludge Management Regulations  
FILED AS AN EMERGENCY RULE: October 12, 1993

- par. 1 The Division of Environmental Protection (DEP) has filed the above new emergency rule under Title 47.
- par. 2 West Virginia Code 29A-3-15a 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-3-15a(b))].
- par. 6 The DEP filed this emergency rule with supporting documents with the Secretary of State October 12, 1993 and with the LRMRC October 12, 1993.
- par. 9 It is the determination of the Secretary of State that the DEP has exceeded its statutory authority in promulgating this emergency rule and, therefore, notwithstanding paragraphs 7 and 13, this rule shall be denied pursuant to West Virginia Code §29A-3-15a.
- par. 13 It is the determination of the Secretary of State that, pursuant to West Virginia Code §20-5F-2b, the Legislature has deemed that conditions exist that satisfy the definition of emergency as defined in West Virginia Code §29A-3-15(g).

par. 14

This decision shall be cited as Addendum to Correct Emergency Rule Decision 23-93 or ERD 23-93(A) and may be cited as precedent. This addendum corrects technical errors contained in Emergency Rule Decision 23-93 issued on November 16, 1993, and in no way changes or alters the effect of that decision. This decision is available from the Secretary of State and has been filed with the Division of Environmental Protection, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

FILED

DEC 17 3 56 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE