

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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OCT 12 4 13 PM '93

Effective Date
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Denied 11/16/93 2393

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

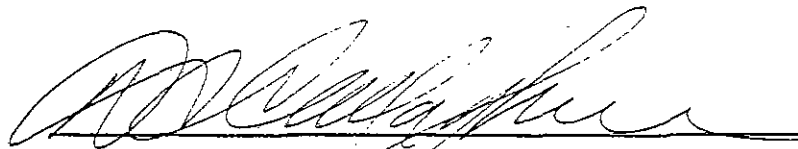
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

8 22



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

October 12, 1993

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Oct 12 4 12 PM '93

FILED

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

Re: Title 47, Series 38D - Emergency Rule - Sewage
Sludge Management Regulations

Dear Mr. Callaghan:

Pursuant to West Virginia Code Section 20-5F-2b(b),
I hereby consent to the filing 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
John M. Ranson
Cabinet Secretary

FARULELTR.RUL

**STATEMENT OF
FACTS AND CIRCUMSTANCES
CONSTITUTING THE EMERGENCY**

for
**Sewage Sludge Management Regulations
47 C.S.R. 38D**

§20-5F-2b(b) in part states "The Legislature finds and declares that conditions warranting a rule to be promulgated as an emergency rule do exist and that the promulgation of the initial rule required by this section should be accorded emergency status."

FISCAL NOTE FOR PROPOSED RULE

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

Type of Rule: X 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	\$500,000		0	500,000	500,000
Personal Services	\$375,000		0	375,000	375,000
Current Expenses	\$100,000		0	100,000	100,000
Repairs & Alterations	\$				
Equipment	\$ 25,000		0	25,000	25,000
Other	\$				

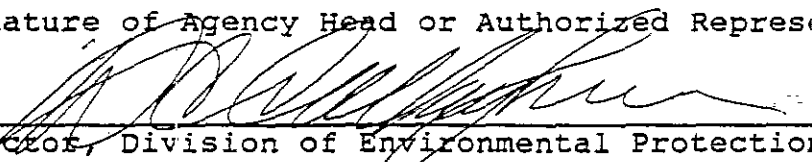
2. Explanation of above estimates: The promulgation of these rules will result in the need of personnel, equipment and other related costs to efficiently and orderly regulate sewage sludge. §20-5F-2b(b) establishes that a land application fee be levied and imposed to sufficiently cover the costs of the 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: October 12, 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: October 12, 1993
2. Statutory authority for promulgating the emergency rule: §20-5F-2b(b)
3. Date of filing the proposed legislative rule: July 8, 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.

**TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION**

**SERIES 38D
SEWAGE SLUDGE MANAGEMENT REGULATIONS
EMERGENCY RULE,**

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TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

FILED

OCT 12 4 12 PM '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 permitting, 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 this rule by reference, the reference is to the statute or regulation in effect on the effective date of this rule.

§47-38D-2. DEFINITIONS.

The following definitions shall apply to this rule 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 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 W. Va. Code §20-5F.

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.

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 (70%) 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.

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 is 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 receiving sewage sludge from any source whatsoever 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 W. Va. Code §20-5F, 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 W. Va. Code §20-5F, 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. "Producer" means any person producing sewage sludge at a publicly owned treatment works (POTW).

2.28. "Publicly owned treatment works" or "POTW" means any device or system used in the conveyance and/or treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by section 502 (4) of the Clean Water Act, any other treatment works treating domestic sewage (TWTDS), or wastewater treatment device or system, regardless of ownership (including federal facilities) used in the storage, treatment, recycling and reclamation of municipal or domestic sewage.

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 W. Va. Code §§20-9 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 W. Va. Code §20-5A, 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 W. Va. Code §20-5E, 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 W. Va. Code §22, 22A, or 22B, 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 W. Va. Code §16-26-8.

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 W. Va. Code §20-5F-2b. Such facility shall be deemed to be situated, for purposes of this rule, 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 W. Va. Code §17-23, 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 the provisions of 40 CFR 503.

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

3.1. Incorporation of Federal Regulations. -- Federal regulations, 40 CFR 503, excluding sections 503.10(b)(1) and 503.20 through 503.29 inclusive, in effect on the effective date of this rule, are hereby fully incorporated and implemented as a part of these sewage sludge management regulations promulgated under the authority of W. Va. Code §20-5F-2b. Provided, That in instances where similar provisions exist, the more stringent requirement (state or federal) shall apply.

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 fifteen percent (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 upon cumulative loading rates of 40 CFR 503.13(b)(2), Table 2 of this rule, and soil testing requirements of this rule.

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 tons 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 of the Office of Water Resources of the Division, 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, or as otherwise authorized by the Chief of the Office of Water Resources of the Division.

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, W. Va. Code §20-5M, and the rules promulgated thereunder.

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 W. Va. Code §§20-5A and 5M, and the rules promulgated thereunder.

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 in compliance with State Water Quality Standards and the permit issued by the Office of Water Resources of the Division.

3.6. Landfill Disposal of Sewage Sludge. -- Sewage sludge disposed at a landfill shall contain at least twenty percent (20%) solids 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. On and after the effective date of this rule, all permitted facilities, whose methods of operation are not currently in compliance with this rule, shall submit an application to modify such permits.

4.1.3. 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 W. Va. Code §20-5A.

4.1.4. For those publicly owned treatment works (POTW's) which produce sewage sludge and are regulated by the Division pursuant to an WV/NPDES permit required under W. Va. Code §20-5A, 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 approved by the Chief of the Office of Water Resources of the Division.

4.1.5. Facilities which are surface disposal sites as defined in 40 CFR 503, Subpart C, are hereby defined as "landfills" and must meet all requirements of 47 CSR 38 applicable to landfills.

4.1.6. Permits applied for under paragraph 4.1.1 of this rule, shall be subject to the provisions of 47 CSR 38, section 3 (excluding the provisions for Liner Requirements) and the closure requirements of 47 CSR 38, section 6.

4.1.7. Permits issued under paragraph 4.1.4 of this rule, 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 46 CSR 2 and are not subject to the procedures outlined in paragraphs 4.1.5, 4.1.6 and 4.1.8 of this rule.

4.1.8. Permits issued under paragraph 4.1.5 of this rule, shall be subject to the procedures of 47 CSR 38, section 3 and the closure requirements of 47 CSR 38, section 6.

4.1.9. Permits issued under paragraph 4.1.3 of this rule, except for land application modifications made in WV/NPDES permits under paragraph 4.1.4 of this rule, shall be subject to the permit issuance procedures (subsections 3.17 through 3.29 inclusive) of 47 CSR 38, and are not subject to the procedures outlined in paragraphs 4.1.5, 4.1.6 and 4.1.8 of this rule.

4.2. General, Processing Facility, and Land Application Permit Requirements. -- Persons required to obtain a permit pursuant to this rule must provide the following information, in the form and manner prescribed by the Chief of the Office of Waste Management or the Office of Water Resources of the Division as appropriate. The form may require information in addition to that required by this subsection.

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, and moisture (percent solids) 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 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 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; and

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

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

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

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

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

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

4.2.2.c.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.c.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.c.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.d. A description of the design of the facility, including:

4.2.2.d.A. The type, size, and associated detention times of equipment used in the handling, processing, and storage of sewage sludge;

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

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

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

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

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

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

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

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

4.2.3. Land Application Permit Requirements. -- Persons performing land application of sewage sludge or materials derived from sewage sludge must submit the following information to the Chief of the Office of Water Resources of the Division in addition to that required under paragraph 4.2.1. of this rule:

4.2.3.a. Soil analysis for all land application sites including but not limited to pH; potassium, phosphorus, nitrogen, all metals listed in Table 1 of this rule and any additional chemical analysis required by the Director;

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 this rule;

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, and this rule;

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 paragraph 4.2.1 of this rule, any additional chemical analyses of sewage sludge(s) or material(s) derived from sewage sludge, requested by the Chief of the Office of Water Resources of the Division, 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 this rule shall contain the following:

5.1.1. Any requirement of 40 CFR 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 and sewage sludge product quality and reporting the results of those analyses for pH, percent solids, organic nitrogen, potassium, phosphorus, calcium, magnesium, total nitrogen, ammonia nitrogen, pathogen test results vector attraction verification and all heavy metals listed in Table 1 of this rule, except that the frequency of monitoring shall be as described in Appendix A of this rule;

5.1.1.c. Requirements relative to reporting and certification;

5.1.1.d. Requirement to pay fees as identified in section 6 of this rule;

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 not to exceed a commercial solid waste facility's tonnage limits, where applicable;

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

5.2. Processing Facility Permit Requirements. -- In addition to the requirements of subsection 5.1 of this rule, 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 503.32 and its Appendix B;

5.2.2. Operational requirements relative to vector attraction reduction in accordance with 40 CFR 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, and kiln dust, except that the frequency of monitoring shall be as described in Appendix A of this rule;

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 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; and

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

5.3. Land Application Permit Requirements. -- In addition to the requirements of subsection 5.1 of this rule, 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 subsection 3.2 of this rule;

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 503.32(b);

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

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

§47-38D-6. FEE AND BONDING REQUIREMENTS.

6.1. Applicability. -- Any producer or importer of sewage sludge 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. The fees established herein in paragraphs 6.4.1 and 6.4.2 of this rule shall be assessed on forms prescribed by the Chief of the Office of Water Resources of the Division and shall be paid to said Chief quarterly.

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 W. Va. Code §20-5A-6a except as otherwise specified herein.

6.3. Bonding. -- The Director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the cost of future environmental remediation from producers and importers of sewage sludge.

6.4. Fee Assessments.

6.4.1. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee of \$2.00 per ton for sludge with maximum metals concentrations not exceeding those listed in Table 1 of this rule.

6.4.2. Producers and importers of sewage sludge or material derived from sewage sludge for land application shall be assessed a sewage sludge management program fee of \$3.00 per ton for sludge with maximum metals concentrations exceeding those listed in Table 1 of this rule, but not exceeding the maximum metals concentrations contained in Table 2 of this rule.

6.4.3. 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 tipping and other fees as levied on the disposal of solid waste under W. Va. Code §20; Provided, That no such fees, excepting assessment fees required by this section, shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with the statute and this rule.

APPENDIX A

FREQUENCY OF MONITORING

AMOUNT OF SEWAGE SLUDGE RECEIVED (actual tons per 365 day period)	FREQUENCY OF MONITORING
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

TABLE 1

POLLUTANT CONCENTRATION OF METALS IN SEWAGE SLUDGE

Metal	Concentration (mg/kg)
Arsenic	41
Cadmium	25
Chromium	1000
Copper	1000
Lead	300
Mercury	15
Molybdenum	18
Nickel	200
Selenium	36
Zinc	2500

TABLE 2

MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE FOR LAND APPLICATION

Metal	Concentration (mg/kg)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

October 12, 1993

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Dear Mr. Hechler:

On July 8, 1993, the Division of Environmental Protection proposed emergency regulations, Title 47, Series 38D, "Sewage Sludge Management Regulations," with your office. On August 11, 1993, I received your letter questioning whether the agency had exceeded its statutory authority in certain areas. The issues were delineated in your correspondence. The agency felt it would be appropriate to take adequate time to review your concerns prior to developing a response. We therefore withdrew the proposed rule and have modified it for a formal resubmittal as an emergency rule. We intend to submit the modified version to the Legislative Rule-Making Committee at the appropriate time.

The revised submission has been modified to reflect not only your concerns but issues which the agency has since been informed are necessary for potential assumption of the federal program. In addition, changes were made to conform this rule to the relevant portions of an opinion we received from the Attorney General's office on September 10, 1993. The following discussion will summarize the concerns expressed in your letter, provide an explanation of the agency's position and describe revisions made to the regulations:

1. Compatibility of 40 CFR 503, the federal regulations, with the proposed rule.

40 CFR 503 encompasses all forms of sewage sludge disposal and, subsequent to its promulgation in November of 1992, represents the minimum requirements to be imposed on all producers in the nation. At 3.1 of the regulations, the agency excluded certain provisions of 40 CFR 503 which did not adequately address the intent of the West Virginia statute (S.B. 288). The current modification recognizes that the statutory intent was to be more restrictive in some instances than 40 CFR 503. The proposed rule now includes language which requires that the more stringent provisions of each regulation applies.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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The agency has been involved in negotiations with the U.S. Environmental Protection Agency on the possibility of assuming primacy for the federal program. This would prevent dual permitting and possible conflicting requirements for sewage sludge disposal in the state. During negotiations, EPA suggested that a definition be included for Treatment Works Treating Domestic Sewage (TWTDS) in order to address sewage sludge from all domestic sludge generated by NPDES permitted facilities not just Publicly Owned Treatment Works (POTW's). In response, the definition of publicly owned treatment works has been modified at 2.28.

2. Exemption for solid waste authorities.

Apparently there is a misunderstanding of this section of the regulations. 3.2.3 is taken verbatim from the statute at Chapter 20-5F-2b(b)(7) and addresses "facilities" not "authorities".

3. "Wet" versus "dry" ton for the assessment of land application fees.

The agency attempted to develop a fee assessment strategy which would provide adequate support for the sewage sludge management program from fees generated by the producers and importers. Initially the agency attempted to assess the fee against actual tons (wet) but encountered strong opposition from the municipal facilities which would be forced to pay significant fees for land application. The revised fee for "dry" tons was an attempt to provide some relief to those facilities. In either event, the fee to be imposed is a land application fee, and is not intended to replace nor circumvent any fees which currently exist under solid waste laws. The agency now assesses the fee on an actual per ton basis.

4. Use of the word "intended" at 6.3 of the proposed regulations.

The fees described in Section 6 of the regulation of the regulations are exclusively land application fees. The word intended has been removed to prevent confusion.

5. Confusion as to the applicability of Chapter 20 fees.

The language of 6.3.3 has been modified in new Section 6.4.3 to resolve any confusion.

The Honorable Ken Hechler
Page 3
October 12, 1993

6. Grandfathering of existing solid waste facilities.

This rule will apply to all existing solid waste facilities permitted and operating and all reporting requirements, plus every other requirement of this regulation will become effective and enforceable upon emergency promulgation. Section 4.1.2 requires that all existing and permitted facilities come into compliance with this rule.

I hope this addresses the concerns. We hereby respectfully resubmit the "Sewage Sludge Management Regulations" as amended herein, for filing as emergency. Should you have any questions, please do not hesitate to contact this office. Thank you.

Sincerely,



David C. Callaghan
Director

DCC/asb

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

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November 16, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

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

DATE FILED AS AN EMERGENCY RULE: October 12, 1993

DECISION NO. 23-93

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.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION (ERD 23-93)

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

- par. 1 The Division of Natural Resources has filed the above new 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 Division of Natural Resources filed this emergency rule with supporting documents with the Secretary of State October 12, 1993 and with the LRMRC October 12, 1993.

par. 7 It is the determination of the Secretary of State that the Division of Natural Resources 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 20-5f-2b(b) reads:

The director shall promulgate rules necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. The Legislature finds and declares that conditions warranting a rule to be promulgated as an emergency rule do exist and that the promulgation of the initial rule required by this section should be accorded emergency status. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:

(1) That entities either producing sewage sludge within the state or importing sewage sludge into the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

(ii) The amount of sewage sludge actually generated or imported;

(iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and

(iv) 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;

(2) That the division engage in reasonable and periodic monitoring of all sewage sludge related activities and to monitor data supplied by sewage sludge producers or importers to ensure compliance with state and federal regulations;

(3) That representatives of the division have the ability to enter onto any land application site for the purposes of inspecting and analyzing the effects of sewage sludge application on that site;

(4) That no permit for the processing or disposal of sewage sludge will be issued until there is an accurate finding that it has been adequately tested and shown not to contain heavy metals, pathogens, toxins or vectors in excess of regulatory standards;

(5) That the director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of future environmental remediation from producers and importers of sewage sludge;

(6) That no person or entity 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;

(7) That no land except solid waste facility, be allowed to accept or store so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons 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;

(8) That information relating to the disposal of sewage sludge is available to affected communities;

(9) That all sewage sludge processing facilities contain sufficient design specifications to protect ground and surface waters;

(10) That regulation of composting facilities varies according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer or importer, be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of section six-a [§20-5A-6a], article five-a of this chapter. The fee schedule shall vary according to the volume of materials handled and contaminant level of the sewage sludge and shall be subject to the provisions of article three [§29A-3-1 et seq.], chapter twenty-nine-a of this code.

par. 9 It is the determination of the Secretary of State that the Division of Natural Resources has 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 Division of Natural Resources are as follows:

Authorized by legislation, §20-5F-2b(b).

par. 13 It is the determination of the Secretary of State that this proposal does not qualify under the definition of an emergency as defined in §29A-3-15(g). . . The Division of Natural Resources has exceeded the scope of its statutory authority.

par. 14

This decision shall be cited as Emergency Rule Decision 23-93 or ERD 23-93 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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

November 22, 1993

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
RECEIVED
David C. Callaghan
Director
Ann A. Spahr
Deputy Director

The Honorable Ken Hechler
Secretary of State
Capitol Complex, Suite 157-K
Charleston, WV 25305

Dear Secretary Hechler:

Re: Emergency Rule Decision
(ERD23-93)

I received your decision dated November 16, 1993, regarding the sewage sludge management regulations filed by my agency. I was shocked and dismayed at the level of error and misinformation displayed in your decision. The decision is directed at the WRONG state agency! The Division of Environmental Protection (DEP), and NOT the Division of Natural Resources, (DNR), filed this rule and the similar emergency rule on sewage sludge management filed by DEP in July. The Office of Waste Management has been within the Division of Environmental Protection since July 1992 by operation of a Governor's Executive Order. The DEP was created in October 1991, two years ago. No less than nine (9) times throughout the body of this decision, the DEP is referred to as the DNR. The two agencies are separate and distinct and have nothing to do with one another on the issue of sewage sludge management.

The most vexing deficiency in your decision is that no reason is given for rejecting the rule. The numbered paragraphs 1-14 of your decision appear to be a meandering stream of discussion about what your statutory duties are with regard to emergency rulemaking. The errors in your letter are as follows:

Paragraph 1: We are not the Division of Natural Resources. The DEP has filed a revised emergency rule to comply with the statutory mandate of Senate Bill 288.

Paragraph 2: West Virginia Code Section is cited here as "29A-3-a" requiring the Secretary of State to review all emergency rules. This is, of course, an incorrect citation. Emergency rule regulation appears in Chapter 29A-3-15 of the Code. The requirements set forth in paragraph 2 appear to be those contained in §29A-3-15(a)(1). DEP has filed this emergency rule in complete compliance with that section. The agency has not exceeded the scope of its authority in promulgating this emergency rule. The Legislature declared that an emergency did exist justifying the promulgation of an emergency rule. See §20-5F-2b(b).

The Honorable Ken Hechler
Page 2
November 22, 1993

Paragraph 3: Again, the Secretary of State has cited an erroneous Code section. I believe the reference is to the section which outlines the disapproval of emergency rules by the Secretary of State, which appears at Code 29A-3-15a(b). The agency, DEP, reiterates its position that we have complied fully with requirements of this section.

Paragraph 4: Simply sets forth the statutory procedural requirements that appear in Code 29A-3-15.

Paragraph 5: Simply reiterates emergency rule filing procedures which have been complied with by the DEP in this instance. See paragraph 7 below.

Paragraph 6: Again, refers to the filing agency incorrectly as the DNR and notes that we filed the emergency rule with supporting documents with the Secretary of State on October 12, 1993 and with the Legislative Rulemaking Review Committee. This paragraph omits any mention of the fact that Senate Bill 288 required the DEP to file these rules "no later than 90 days from the effective date" of the article. The article was effective April 10, 1993, and the agency first filed the proposed emergency rule on July 8, 1993. As your office knows, due to numerous letters and comments, the agency withdrew the rule and addressed the concerns raised by you prior to refileing it on October 12, 1993.

Paragraph 7: We agree with the conclusion in this paragraph that the Secretary of State found that the DEP (not DNR) complied with procedural requirements.

Paragraph 8: Simply restates the exact language from SB 288 authorizing the agency, DEP, to promulgate this emergency rule, finds the conditions existing justify an emergency rule, and outlines twelve (12) specific requirements to be included in the rule. You should note the requirement in subsection (b)(12), that DEP include a fee to be paid by the producer or importer of sewage sludge sufficient to cover the cost of the sewage sludge management program. All wastewater treatment facilities in West Virginia are producers of sewage sludge. The fact that the law required DEP to assess a fee for land application of sludge through these regulations was clear from passage.

Paragraph 9: In a terse statement, the Secretary of State concludes that "DNR" (sic) read as DEP, "has exceeded its statutory authority in promulgating this emergency rule." I request further explanation. On what facts or documents do you base that conclusion? How or where in this rule has DEP exceeded any of the authorities granted in the statute?

Paragraphs 10-12: These paragraphs undertake a review of West Virginia Code 29A-3-15(g), which defines the nature of an emergency

The Honorable Ken Hechler
Page 3
November 22, 1993

rule. These provisions are inapplicable and irrelevant with regard to the sewage sludge management emergency regulation. Subsection 15(g), in our view, gives guidance to how the Secretary of State can determine whether an emergency exists IN THE ABSENCE OF clear legislative direction. However, because of the paragraph cited above, §20-5F-2b(b), the Legislature specifically found that this rule was required to be promulgated as an emergency.

Paragraph #13 is a complete contradiction. It is difficult to imagine how the Secretary of State could have made a determination that the rule doesn't qualify as an emergency when in stark and blaring contrast the Legislature has expressly found that "conditions warranting a rule to be promulgated as an emergency do exist..." The DEP is alleged thereby to have exceeded the scope of our statutory authority in carrying out the legislative mandate. Please explain how this is possible.

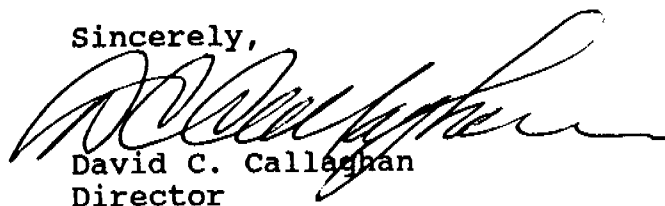
Paragraph 14: This final paragraph simply identifies your decision, notes its availability and again attributes the rule incorrectly to DNR.

Mr. Hechler, as you can see, the confusion and machinations surrounding this particular rule promulgation is epidemic. We are compelled to comply with the law as it is written. That is what we have done in filing and subsequently refiling the emergency rule. Likewise, you have certain statutory duties with regard to review and promulgation of emergency rules. I would hope that the errors and concerns pointed out in this letter will allow you to re-examine your decision to reject the emergency rule filing and allow the law to be followed to make the rule effective as an emergency rule, as the Legislature required.

In the upcoming legislative session the law can be changed or the rule can be changed. Prior to that time, I believe it is necessary for our two agencies of government to carry out our responsibilities lawfully.

I look forward to your reply.

Sincerely,



David C. Callaghan
Director

DCC/asb

cc: Delegate Brian A. Gallagher
Senator Joe Manchin, III
John Ranson
Renee Coe
Ann Spaner



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

November 9, 1993

Mr. Rick Clay
Grafton City Manager
Grafton, WV

Dear Mr. Clay:

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To Rick Clay	From Judy Cooper	
Co. City of Grafton	Co. Ad Law Div	
Dept. City Managers	Phone #	
Fax # 265-0119	Fax #	

This is a follow-up to the letter I sent you this morning concerning "sewage sludge" regulations.

Your comments on this regulation really need to be here no later than 10:00 a.m. tomorrow morning -- November 10, 1993. We would appreciate it if you would submit written comments. You may fax them to this office; our fax number is 558-0900.

We need to hear from you as soon as possible so we can continue with our decision to either approve or disapprove this regulation.

Thank you for your interest and your cooperation.

Sincerely,

Judy Cooper, Director
Administrative Law Division

TRANSMIT CONFIRMATION REPORT

NO. : 009
RECEIVER : 912650119
TRANSMITTER : SECRETARY-OF-STATE
DATE : NOV 09'93 16:35
DURATION : 00'45
MODE : STD
PAGES : 01
RESULT : OK



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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WILLIAM H. HARRINGTON
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help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

November 9, 1993

Mr. Rick Clay
Grafton City Manager
Grafton, WV

Dear Mr. Clay:

Yesterday you called Ken Hechler and asked him if you could come to our office Friday to discuss "sewage sludge".

I called you back yesterday to tell you that Friday would not be possible. We would like to set up a telephone conference call to you if that is agreeable with you. If possible, we would like to do this either this afternoon or first thing tomorrow morning.

You may contact me at 558-6000. My fax number is 558-0900. Please let me know as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Judy Cooper".

Judy Cooper, Director
Administrative Law Division

TRANSMIT CONFIRMATION REPORT

NO.	:	005
RECEIVER	:	912650119
TRANSMITTER	:	SECRETARY-OF-STATE
DATE	:	NOV 09 '93 13:54
DURATION	:	00'55
MODE	:	STD
PAGES	:	01
RESULT	:	OK



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

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

FACSIMILE COVER SHEET

DATE 11/1/93

NUMBER OF PAGES INCLUDING COVER 12

TO: Ann Spanner, Deputy Director

COMPANY: Div. of Environmental Protection

FAX NUMBER: 9-759-0526

FROM: Renee Coe, Deputy Sec. of State

If you do not receive all of the above pages, or if they are not legible, please contact me at (304) 558-6000. Our fax number is (304) 558-0900.

COMMENTS:



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

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help we can get)

FAX: (304) 558-0900

November 29, 1993

The Hon. Robert K. Holliday
The Senate of West Virginia
161 High Street
Fayetteville, WV 25840

Dear Senator *Bob* Holliday,

Thank you for your letter concerning Mayor John Steven LeRose's comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." Enclosed is a copy of my response to Mayor LeRose.

If I can help, please call. Thank you.

Sincerely,

Ken
Ken Hechler
Secretary of State

ROBERT K. HOLLIDAY
THE SENATE OF WEST VIRGINIA

161 High Street
Fayetteville, WV 25840
574-0709



State Capitol
Charleston, WV 25305
357-7825

STANDING COMMITTEES:
Health & Human Resources (Chair)
Agriculture
Government Organization
Judiciary
Labor
Small Business
**
Employees' Award Committee

Senate Chair,
Jail and Corrections
Oversight Committee

Senate Chair,
WV Health Care Planning
Commission Oversight Committee

TO Legislative Rule-Making Review Committee, Capitol, Charleston, WV 25305

SUBJECT Sewerage sludge management in Summersville

DATE Nov. 17, 1993

Would you comment so as to give me some suggestions for being of helpfulness to Mayor Steven LeRose?

To those I have copied in on this question, I also would appreciate a prompt reply in order for me to try to be helpful. I want to be reasonable, but it's most vital that we promote and insist upon having a clean environment assuring us, among many benefits, of having healthier people.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Holliday", written over a horizontal line.

Robert K. Holliday

cc: ✓ Secretary of State Hechler, WV Environmental Protection

CITY OF SUMMERSVILLE
400 NORTH BROAD STREET
P.O. BOX 525
SUMMERSVILLE, WEST VIRGINIA 26651

TELEPHONE (304) 872-1211

November 8, 1993

JOHN STEVEN LEROSE - MAYOR

The Honorable Ken Hechler
WV Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305-0770

Re: Proposed sludge regulations

Dear Mr. Secretary:

We are in receipt of the May Sludge Regulations and the new recently filed emergency rule concerning Sewage Sludge Management Regulations.

When we recently upgraded our wastewater treatment plant, we opted for liquid sludge disposal, which the States' regulatory agencies approved. The cost of this particular piece of equipment was \$85,000.00 and it is designed for liquid sludge disposal only. With this in mind, the sludge disposed of with this operation under the new emergency rule will cost the city more money than if another method was used. The consistency of the material removed at our facility is approximately five to seven percent (5% to 7%) solids, with the remainder to be water. In other modes of operation at other facilities, this amount may be as much as a fifty percent (50%) solids and fifty (50%) water. Had the city known of these proposed regulation changes we would have possibly gone to another type of operation.

Under current operating procedures, the wastewater treatment plant disposes of approximately two million (2,000,000) gallons of sludge per year. These figures are calculated on current plant loadings with no regard to growth or increased plant loadings to allow for more sludge production.

The Honorable Ken Hechler
Secretary of State
November 8, 1993

Page -2-

The calculations for cost estimates are as follows:
2,000,000 gallons x weight of one (1) gallon (8.34 lb.) =
16,680,000 pounds, which is equal to 8,340 tons. At \$2.00
per ton "proposed tipping fee" the cost would be \$16,680.00.
If we divide the total \$16,680.00 by the number of sewage
customers, which is approximately 1,400, it amounts to
\$11.91 per year per customer or roughly \$1.00 per month per
customer.

These additional charges could not be paid out of the
current water/sewer budget; therefore, rate increases would
have to be introduced. Along with this expense, further
monies may have to be generated to meet the new regulations.
In addition, some in-house changes will have to be made to
comply with regulations. An estimate of these costs have
not yet been calculated until regulations are decided upon.

The initial regulations proposed by the Department of
Environmental Protection stated that \$200,000.00 was needed
to support the regulatory program. However, their latest
revised edition calls for \$500,000.00 for regulatory
purposes. Our question would be why the \$300,000.00
increase from the original proposal?

This so called "tipping fee", calculations for which
were described in paragraph four (4) of this letter, may be
the tip of the iceberg as far as the city's cost is
concerned. Considerable costs may be incurred if our
current sludge removal practices have to be modified to meet
the new regulations.

At several meetings which our wastewater treatment
plant superintendent and I attended, Department of
Environmental Protection representatives suggested that we
would have to pay only on a "dry basis." If this were the
case, we would possibly be able to absorb the costs without
initiating a rate increase. At a recent meeting some
representatives of the D.E.P. seemed to have a different
perception of what we thought was originally agreed upon.
They seemed completely indifferent to costs or burdens to
the utilities.

The Honorable Ken Hechler
Secretary of State
November 8, 1993

Page -3-

We agree that regulations need to be instituted and would also agree that some charges are inevitable. However, we do not feel that we should be punished for the type of disposal practices we follow. It is our contention that we could be charged for sludge disposal on a dry basis which would be fair and equitable to all parties concerned.

The City of Summersville is currently under several D.E.P. orders to correct inflow and infiltration problems. We agree that these problems need to be corrected and we initiated an ongoing program to do so. However, if regulatory agencies continue to develop programs which cost us more money to operate, we will be forced into proceedings which would create increased inflation to customers and therefore inhibit growth to an otherwise growing community.

In conclusion, we feel that the emergency rule concerning sewage sludge management regulations should not be approved but rather follow the legislative process to give municipalities an opportunity to present their views before the Legislative Rule-Making Review Committee.

Sincerely,



John Steven LeRose, Mayor
CITY OF SUMMERSVILLE

JSLeR: jt

cc: Senator Robert Holliday
Senator Randy Schoonover
Delegate C. Farrell Johnson

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Doyle Coakley
P. O. Box 245
Cowen, WV 26206

Dear Doyle,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

FILED

P.O. Box 245
Cowen, WV 26206
Nov. 3, 1993

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Mr. Ken Hechler
WV Secretary of State
Building 1, Suite 157-K
State Capitol Complex
Charleston, WV 25305

RE- Sewage Sludge Management Regulations, Title No. 47.

Dear Mr. Hechler:

I am very concerned about the Emergency Sewage Sludge Management Regulations filed with your office on Oct. 12, 1993 by Mr. David C. Callaghan, Director West Virginia Division of Environmental Protection. I am particularly concerned about the regulations that will deal with the use of sewage sludge in the reclamation of surface mine land.

I live downstream and down-road of a large surface mine (Juliana Coal Company) that is owned by Mr. John Faltis. For the past twelve years they have tried to lease or buy my farm for stripping and one time to locate a mega landfill behind it. They have also tried to lease or buy right-of-ways for roads and power lines. One of the bargaining tools they have used to try and make me see things their way is Route 28.

Route 28, a county road through my farm is used to truck coal from the surface mine to the cleaning plant and to truck the resulting refuse back to the mining area to be disposed of. They constantly gouge the banks, tear up and cover up my fences. They spill coal, refuse and at one time fly-ash. All these leaks and spills either becomes dust, part of the road or is washed into the stream Amos Run or into my fields.

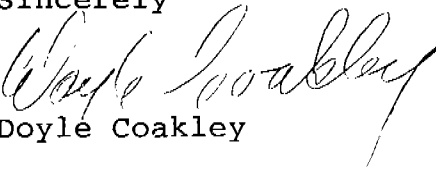
Just imagine what a coal company could do with sewage sludge if they used it as a bargaining tool also when they want to strip or buy a piece of property. Then try real hard to imagine the West Virginia Division of Environmental Protection enforcing just one regulation to stop them with out being told to do so by a court order or the United States Office of Surface Mining.

Sludge is a wet substance and should be treated as such for fee assessments and determining the amounts that can be applied per acre. You can believe that calculating dry weight for ether of the above is only a scheme to make money for the coal company's disposing of this stuff.

There should also be a limit, or cap, on how much sludge can be applied at any one location, strip mine or water shed.

Bonding should not be at the discretion of any one, certainly not by Mr. Callaghan. Bonding should be required by law, based upon the location and amount of sludge to be applied.

Sincerely

A handwritten signature in cursive script, appearing to read "Doyle Coakley". The signature is written in dark ink and is positioned above the printed name.

Doyle Coakley



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

November 18, 1993

John Steven LeRose, Mayor
City of Summersville
P. O. Box 525
Summersville, WV 26651

Dear Mayor LeRose,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Ken Hechler".

Ken Hechler
Secretary of State

CITY OF SUMMERSVILLE
400 NORTH BROAD STREET
P.O. BOX 525
SUMMERSVILLE, WEST VIRGINIA 26651

TELEPHONE (304) 872-1211

JOHN STEVEN LEROSE - MAYOR

November 8, 1993

The Honorable Ken Hechler
WV Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305-0770

Re: Proposed sludge regulations

Dear Mr. Secretary:

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Nov 9 9 02 AM '93

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The Honorable Ken Hechler
Secretary of State
November 8, 1993

Page -2-

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The Honorable Ken Hechler
Secretary of State
November 8, 1993

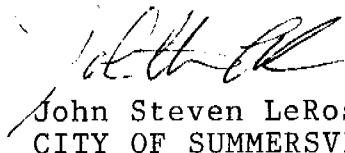
Page -3-

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Sincerely,



John Steven LeRose, Mayor
CITY OF SUMMERSVILLE

JSLeR:jt

cc: Senator Robert Holliday
Senator Randy Schoonover
Delegate C. Farrell Johnson



The Senate of West Virginia
Charleston

Nov. 10, 1993

ROBERT K. HOLLIDAY
161 HIGH STREET
FAYETTEVILLE 25840

SENATE
CAPITOL
CHARLESTON, WV 25305

COMMITTEES:
HEALTH AND HUMAN RESOURCES
(CHAIRMAN)
AGRICULTURE
GOVERNMENT ORGANIZATION
JUDICIARY
LABOR
SMALL BUSINESS
SENATE CHAIR,
JAIL AND CORRECTIONS
OVERSIGHT COMMITTEE

Hon. John Steven LeRose, Mayor
City of Summersville
Summersville, WV 26651


Dear Mayor LeRose:

I just received a copy of your letter to Secretary State Ken Hechler, and I must study the question as you have expounded on it to me. I do most sincerely hope that I can be of assistance to you.

As you well know, some predicaments are most complicated to solve, but whenever I may serve you with your governing demands, please call upon me.

Please anticipate that I will seek to reach you by letter as soon as possible.

Sincerely,


Robert K. Holliday

cc: Secretary of State Hechler and Legislative Services

OFFICE OF THE SECRETARY OF STATE

Nov 15 3 05 PM '93

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Herbert L. Heiss
Halt Out-of-state Garbage, Inc.
RD 1, Box 148
New Martinsville, WV 26155

Dear Herbert,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State



Halt Out-of-state Garbage, Inc.

~~RD 1, Box 148~~
New Martinsville, WV 26155
Nov. 1, 1993

Chairman: Herbert L. Heiss
304-455-3668

Secretary: Colleen Moore
304-337-2697

Ms. Judy Cooper
Sec. of State
Adm. Law Div.
Capitol Bldg.
Charleston WV 25305

Dear Ms. Cooper:

Following are comments re the revised title 47, ser 38 sludge regulations proposed by the DEP 10/12/93. Although these regulations are improved over those issued previously, some of the defects still remain. Some of the following comments are therefore similar or identical to those in our 7/10/93 response.

1. The term "% solids" appears often in the regs, so it is important that it be specifically identified in the definitions. We suggest that the standardized, accepted analytical method used to determine total solids or % solids be specified to prevent any future confusion. Experience has shown that ambiguities in the regs only create future enforcement problems.

2. Section 3.6 states that sludge to be buried in a landfill must be at least 20% solids (as received), and that "sawdust, lime or soil" may be added to achieve the 20% value. But definition 2.5 states that bulking agents added to sludge during composting include only "...living or dead plant tissues". Then section 5.2.3 allows the use of "kiln dust" (which can include a variety of contaminants) during sludge processing. To eliminate these contradictions the regs should specify that the only materials that can be added to sludge prior to or during processing should be those included in section 2.5. And therefore any low solids sludge destined for use in composting can only be "thickened" with these same additives (ie no sand or soil as mentioned in 3.6).

This is important because we understand that devious parties have been adding all sorts of undesirable materials to sewage sludge, calling the mixture "mixed compost materials" in attempts to avoid regulations pertaining to solid waste. If the regs allow any loopholes, one can be assured that someone will exploit them.

3. Section 3.3.1.a specifies that at a composting facility "storage of finished products from the facility shall be limited to

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

one year". This is to prevent unscrupulous operators from appearing to recycle sludge into compost for beneficial use elsewhere when in reality they are merely "going through the motions" so as to increase their income and possibly exceed their limits. So it is also important to limit how much or for how long unprocessed sludge can be stored at a facility while it awaits composting.

4. Re item 3, the only foolproof way to control real vs phony composting is to specify that ALL materials (solid waste, sludge, woodchips, sawdust, contaminated soil, etc.) entering a facility are included in the limits (at the actual weights on the facility scales) and subject to appropriate fees. If and when the properly composted material leaves the facility for beneficial use elsewhere, THEN a proper allowance for tonnage and fees will be given to the facility.

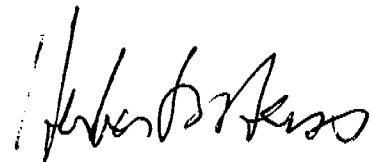
5. Section 3.1 concerns land application of "sewage sludge" and sets certain limits. We assume this pertains to raw or unprocessed sludge. Ditto section 5.3. What about the regulation of land application of composted sludge? It still contains heavy metals, for example. Are there no limits on how much composted sludge can be applied to a certain area? The proposed regs are still unclear as to any differentiation between raw and composted sludge.

6. It seems that "grandfathering" may still be with us. Section 4.1.2 can be interpreted in different ways. "...all permitted facilities whose methods of operation are not in compliance with this rule shall submit an application to modify such permits". Does "this rule" refer to the latest 10/12/93 version of the proposed regs? And we have learned to be suspicious of the term "compliance". A compliance schedule seems to mean that a facility is in the process of meeting operational requirements, but may not yet have done so. For example, over the past 6 years the Wetzel landfill has buried an estimated 1 1/4 million tons of garbage in an unlined area while operating under a series of "compliance schedules" with the blessing of the DEP and predecessor DNR. During that time they heavily polluted Peach Fork and Point Pleasant Creek and still have not installed the required ground water monitoring system. Their present system for handling sludge doesn't seem to me to meet series 38D requirements. Yet, since the DEP saw fit to issue them a class A permit in Nov. 1992 (at present under appeal with the WRB), can 4.1.2 be construed to mean that they are not "not in compliance", and therefore

do not have to apply for permit modification? And, by the way, we would consider this a MAJOR permit modification requiring local approval. But the point is, 4.1.2 is too ambiguous, perhaps intentionally so.

Previous to SB 288 WV had no specific regulations for sludge composting, only for sludge burial. That does not provide opportunity for some operator to decide unilaterally that (1) sludge composting constitutes recycling and (2) therefore is exempt from all tonnage and fee requirements. The DEP seriously erred in agreeing to these proposals, and instead should have informed Mascaro that he would have to wait until the WV legislature decided how this was to be handled. The fact that a state agency made an invalid decision does not condemn the residents of WV to suffer the consequences. The Mountaineer Park lottery situation sets a good precedent. The WV Supreme Court recently ordered that all machines must be removed because the lottery commission erred in approving their installation in the absence of appropriate legislation. There is to be no "grandfathering" in this instance. Similarly, the Mascaro landfills cannot be exempted from the intent of SB 288 because of DEP malfeasance.

Yours truly,

A handwritten signature in cursive script, appearing to read "Robert R. Kasso".

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Tom Degen
HC 75 Box 324
Chloe, WV 25235

Dear Tom,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

FILED

Oct 29 9 51 AM '93

October 26, 1993
Tom Degen
HC 75 Box 324
Chloe, WV 25235

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
To: **Ken Hechler, Secretary of State**
Building 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Mr. Hechler,

I am writing you concerning the Title 47, Series 38D SEWAGE SLUDGE REGULATIONS that the Division of Environmental Protection resubmitted to your office on October 12, 1993. Although several of the concerns relative to the Division exceeding the scope its statutory authority have been addressed, there are still areas where the provisions of the rule are not consistent with the intent of the enacting legislation, S.B. 288.

1. §47-38D-3.1. Incorporation of Federal Regulations.

The incorporation of 40 CFR 503, the federal rule, is still troublesome. The Title 47, Series 38D rule still does not contain the appropriate language from the 503 rule. If we are to be governed by a rule, it would seem appropriate for the provisions to appear in writing so that they could be known. For the DEP to refer to certain provisions of the federal rule as being stricken does not clarify the situation; we don't know what is being excluded any more than we know what is being included. The simple phrase "Provided, That in instances where similar provisions exist, the more stringent requirements (state or federal) shall apply." is tantamount to the DEP saying "Here, you figure it out!", or more appropriately, "Here, let your attorneys figure it out!"

There are areas where the federal rule is incompatible with the intent of S. B. 288. By way of example I would like to focus on the issue of concentrations of pollutants in sludges that are land applied. §20-5F-2b (b) (6) provides "That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants . . ." (emphasis added). The intent here is that sludge not be applied in such a manner as to increase the pollutant levels already present in the soil. The cumulative loading rates of 50 CFR 503 and the rates in Table 2 of the 38D rule are not tied to current levels in soils; those figures were arrived at using risk assessment studies that attempt to project how high the concentrations in soils can be increased before

significant health risks are encountered. Section 3.2.2 of the 38D rule provides that "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. . . . to be determined based upon cumulative loading rates of 40 CFR 503.13(b)(92), Table 2 of this rule. . ." This wording combines two completely incompatible approaches to determining pollutant concentrations in sludges, and renders the intent of the legislation meaningless.

The area of reporting requirements is another one where the differences between the two regulations are quite different. There are also exemptions throughout the 503 rule that are not contemplated by S. B. 288.

I feel strongly that the provisions of 503 that are relevant to the intent of S. B. 288 should be written into the 38D rule, thereby yielding one coherent rule.

2. Section 6, FEE AND BONDING REQUIREMENTS.

Although the word "intended" has been removed, the language in subsections 6.1, 6.4.1, and 6.4.2 is constructed in such a way as to continue the meaning of "intended". The way these subsections are written, it appears as though the land application fee will be levied before the sludge is actually land applied. Although the rule states that the other disposal assessment fees levied under WV Code §20 do not apply to sludge that is land applied, it appears to levy both the disposal fees and the land application fees at the same time without providing a mechanism for determining which fee is applied to which sludge. The Code, however makes it clear that the land application fee is to be levied upon the land application of sewage sludge, not upon the producers and importers of sewage sludge [intended] for land application.

§20-5F-2b(b)(12) provides "That a fee, to be paid by the producer or importer, be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. . ." (emphasis added).

§20-5F-2b(e) provides that ". . . no such fees excepting assessment fees provided for in subdivision (12), subsection (b) of this section [the land application fee] shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with this section." (emphasis added).

The attorney general's opinion, which the DEP requested, make this point quite clear with the following language:

"However, there appears to be an exemption of certain sewage sludge solid waste from **disposal fees**. W. Va. Code §20-5F-5a; §20-5N-4; 20-11-5a; §20-11-5b; and §20-9-13 assess fees upon the disposal of waste. But SB 288, W. Va. Code §20-5F-2b(e) (1993) exempts from such fees sewage sludge *which is land applied* (emphasis added) outside a solid waste facility:

'... Provided, however, That no such fees [levied by Chapter 20], excepting assessment fees provided for in subdivision (12), subsection (b) of this section [land application fees for sewage sludge] shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with this section.' Id.

This statutory provision appears to require a credit or refund of the disposal fees assessed for sewage sludge received and handled at a solid waste facility, *if the sewage sludge actually leaves the facility for land application* (emphasis added) outside of a solid waste facility according to applicable standards."

In any event, the rule does not promulgate a mechanism that explains how the fee situation is to be handled. The attorney general's opinion does a better job of it than the rule does, but the DEP has ignored the attorney general's opinion. If this is not to be addressed in the rule, then where or when is it to be addressed?

To exacerbate the problem, §47-38D-6.4.3. has omitted some key language that is in W. Va. Code, §20-5F-2b(e) (1993). Following is §20-5F-2b(e) in its entirety with the language that has been omitted from the rule underlined:

"(e) 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 of environmental protection, shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility's total tonnage, subject to the limitations established in this article and the provisions of article nine of this chapter: *Provided, That no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: *Provided however,** that no such fees, excepting assessment fees provided for in subdivision (12), subsection (b) of this section shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with this section."

One of the key components of the emergency that the legislature is addressing in S. B. 288 is the fact that certain facilities were not including sewage sludge in their total tonnage, and the fact that the DEP was allowing this to occur, even though sewage sludge was, and still is, specifically mentioned in the definition of "solid waste". The absence of the language "... and shall be included in said facility's total tonnage. ..." from the rule is a glaring omission.

The language "*Provided* That no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less. ..." is meant to prevent facility operators from exploiting the provisions of Section 3.2.3. of the rule.

The applicable language from 3.2.3 is "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 tons per acre per year, whichever is less. ..." Solid waste facilities are exempted from this requirement because to process and/or dispose of sewage sludge, they would obviously have to be allowed to accept sewage sludge at a rate that exceeds the agronomic rate or fifteen tons per acre. However, in the case of landfills, there is often much acreage within the permitted boundaries of the facility besides the actual lined disposal area. The exemption in 3.2.3. could be used as the basis for extremely large "land application" proposals on this unlined acreage, and in fact, such proposals had been made. The aforementioned proviso in W. Va. Code §20-5F-2b(e) is intended to insure that land applications (permanent applications) on this unlined acreage within solid waste facilities adhere to the same requirements as all other land application projects. For the rule to omit this language opens a loophole through which enormous amounts of unregulated sewage sludge can be poured.

3. Section 4. PERMITS REQUIRED.

§47-38D-4.1.2. reads "On and after the effective date of this rule, all permitted facilities, whose methods of operation are not currently in compliance with this rule, shall submit an application to modify such permits."

The phrase "... whose methods of operation are not currently in compliance with this rule. ..." clearly implies that a certain class of facilities, namely those whose methods of operation are currently in compliance with

this rule, do not have to go through the permitting process. That this language is in here is unbelievable!

W. Va. Code §20-5F-2b (d) (1993) states that "On and after the effective date of this section, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the regulation provided for in subsection (b) of this section is effective." The Code does not make exception for facilities that are somehow judged to be in compliance with a rule that is not yet promulgated, the Code says any facility seeking to process sewage sludge shall first apply for a permit.

The Division of Environmental Protection submitted a request for an opinion concerning certain provisions of S.B. 288 to the Office of the Attorney General, dated August 18, 1993. In this request, the following question was asked: "May this new statute legally alter permit rights retroactively?" In the resultant opinion, dated September 9, 1993, the response to this question was a full page long. I have enclosed this page as an attachment to my comments, but the conclusionary statement is "Thus, in our opinion, SB 288's language does not authorize 'grandfathering' existing sludge-related operations from relevant tonnage-related requirements and standards, permitting, other solid waste regulations and approvals, applicable fees, substantive environmental protection standards, and other provisions of the law."

In a letter from Ken Hechler to David C. Callaghan dated August 11, 1993 is found the following request: "Please explain how the rule ensures that all currently licensed solid waste facilities will comply with §20-5F-2(b) (sic), particularly the reporting requirements that are contained in 4.2.1, 4.2.2, and 5.1.1. since these appear to apply only to new applicants for permits."

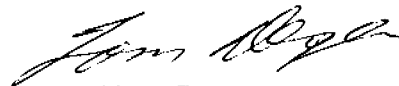
Attached to this rule is a letter from David C. Callaghan to Ken Hechler dated October 12, 1993. On page three of this letter is found the following: "Section 4.1.2. requires that all existing and permitted facilities come into compliance with this rule." And yet, after all the attention that has been focused on this issue, Section 4.1.2. has language in it that would allow certain facilities to escape the provisions of the law. The best face that I can put on this is that it must be typographical error. Section 4.1.2. should read: "On and after the effective date of this rule, all permitted facilities, ~~whose methods of operation are not currently in compliance with this rule,~~ shall submit an application to modify such permits."

The language "... whose methods of operation are not currently in compliance with this rule ..." opens a loophole that constitutes a slap in the face to the legislature, the attorney general's office, the secretary of state's office and the citizens of the state.

Once again, I am asking that your office look very carefully at this rule and my comments, and refuse to file this as an emergency rule on the grounds that it does not implement the intent of the legislation. I feel very strongly that the DEP should withdraw this rule and promulgate one that truly implements the intent of Senate Bill 288. If this rule is filed in it's present form, it will not protect us from the emergency that the legislature has declared, it will exacerbate the emergency.

I do not make this request lightly, and I would appreciate your serious consideration of this matter. I would be more than happy to discuss my concerns with you and your staff, over the phone or in person, at any time that would be convenient for you.

Sincerely,



Tom Degen

encl: Waste Not #241
page 9 of Attorney General's Opinion of 9/9/93
regarding solid waste legislation

cc: Senator David Grubb
Delegate Brian Gallagher
Senator Don Macnaughton
Senator John Chernenko
Norm Steenstra, environmental coordinator, Citizens' Action Group

The opinion request letter's question number 3 asks whether Senate Bill 288 generally may "legally alter permit rights retroactively".

First, as discussed above, we do not believe that SB 288's provisions respecting the inclusion of all sewage sludge on an actual tonnage basis for fee and tonnage calculations, under one tonnage cap, were a retroactive change in the law.

Second, the generic question which is asked cannot be fully answered in the abstract, as to all possible "permit rights"; the term used is simply too broad and uncertain. It should be noted that no "permit right" which contravened applicable law would in any event be legitimate or enforceable.

Third, with the above caveats, in response to the opinion request letter's question number 3, it is our opinion that the relevant provisions of SB 288 are intended to and should be applied across-the-board, including to those who were handling sewage sludge prior to the bill's passage, and who had some sort of "permit" that related to their sludge handling.

SB 288 calls for a "comprehensive" program for the management of sewage sludge, not just "some" sewage sludge. Permits are authorized for "all" facilities which handle sewage sludge in any way. Reporting is required by entities "producing" or "importing" sludge. Monitoring is required for "all sewage sludge related activities." "No person or entity" may be allowed to exceed contaminant levels. "All" facilities must meet design specifications. Existing POTWs must obtain permits, and "any facility" seeking to land apply, etc. sludge must obtain a sludge permit. And "all sludge" handled pursuant to any DEP permit is subject to disposal fees and tonnage calculation inclusion. (Specific citations omitted).

The bill's language is broadly inclusive. And while explicit provisions for "grandfathering" appear in West Virginia solid waste management statutes, no such explicit grandfathering is evident in SB 288, in relation to "permit rights" or otherwise.

Thus, in our opinion, SB 288's language does not authorize "grandfathering" existing sludge-related operations from relevant tonnage-related requirements and standards, permitting, other solid waste regulations and approvals, applicable fees, substantive environmental protection standards, and other provisions of the law.

Fourth, even actual, clear and substantive "retroactive" effects of governmental regulation are not inherently fatal to such regulation, see Shell v. Metropolitan Life Ins. Co., 380 S.E.2d 183 (W. Va. 1989); and see Keystone Bituminous Coal Assn. v

A publication of *Work On Waste USA, Inc.*, 82 Judson, Canton, NY 13617 315-379-9200

July 1993

The following is reprinted, with permission, from *Composting Frontiers*, Spring 1993, page 23. Editor: Susan Mazzocchi.

This is an excellent quarterly newsletter that is designed to provide "direction on composting for waste management."
Available for \$35 for members of environmental/citizens' groups; \$20 students; \$70 for government, consultants, businesses.
Canadian and Mexican subscribers add \$6; Europeans add \$12. Send check to

Composting Frontiers, 19 Girard Place, Maplewood, New Jersey 07040-3107. Tel: 201-762-4912. Fax: 201-761-5415.

Comparison of United States, Dutch, German and Canadian Compost Quality Standards *mg/kg dry weight*

UNITED STATES COMPOST QUALITY STANDARDS												
	ARSENIC	BORON	CADMIUM	CHROMIUM	COBALT	COPPER	LEAD	MERCURY	MOLYBDENUM	NICKEL	SELENIUM	ZINC
Arizona	-	-	10	1000	-	450	250	10	-	50	-	900
Florida	-	-	15	-	-	450	500	-	-	50	-	900
Iowa	-	-	4.4	-	-	450	500	-	-	125	125	-
Maine	-	-	10	1000	1000	1000	700	10	-	200	-	2000
Massachusetts	-	300	2	1000	-	1000	300	10	10	200	-	2500
Minnesota	-	-	10	1000	-	500	500	5	-	100	-	1000
New Hampshire	-	-	10	1000	-	1000	500	10	-	200	-	2500
New York	-	-	10	1000	-	1000	250	10	-	200	-	2500
North Carolina	-	-	10	1000	-	800	250	10	-	200	-	1000
Pennsylvania	-	-	-	1000	-	1000	1000	10	-	200	-	2500
Vermont	-	-	10	1000	-	1000	250	10	-	200	-	2500
Stds. For CWA 503												
High Quality Sludges/ Sludge Composts	41	-	39	1200	-	1500	300	17	18	420	36	2800
CWA 503 Ceiling Concentrations	75	-	85	3000	-	4300	800	57	75	420	100	7500
DUTCH COMPOST SLUDGE QUALITY STANDARDS												
Compost until 12/31/94	25	-	2	200	-	300	200	2	-	50	-	900
Clean Compost Until 12/31/94	15	-	1	70	-	90	120	0.7	-	20	-	280
Compost After 1/1/95	15	-	1	50	-	60	100	0.3	-	20	-	200
Very Clean Compost After 1/1/95	5	-	0.7	50	-	25	65	0.2	-	10	-	75
Sludge	15	-	1.25	350	-	75	100	0.75	-	30	-	300
GERMAN COMPOST & SLUDGE QUALITY STANDARDS												
Compost	-	-	1.5	100	-	100	150	1.0	-	50	-	400
Sludge	-	-	1-1.5	10	-	6	100	1.0	-	5	-	150- 200
CANADIAN COMPOST QUALITY STANDARDS												
Ontario	10	-	3	50	25	60	150	0.15	2	60	2	500
British Columbia	13	-	2.6	210	-	100	150	.8	-	50	-	500
National Guide- line on Compost	13	-	2.6	210	26	128	83	0.83	7	32	2.6	315

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Fred Sampson
Sr 3, Box 25
Ivydale, WV 25113

Dear Fred,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

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Nov 2 10 15 AM '93

Sr 3, Box 25
Ivydale, WV 25113

November 1, 1993

The Honorable Ken Hechler ^{OFFICE OF WEST VIRGINIA}
Secretary of State ^{SECRETARY OF STATE}
Building 1, Suite 1571C
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Dear Mr. Hechler;

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

Ref: Division of Environmental Protections Mr. David C. Callaghan,
Director Letter to you dated October 12, 1993, Paragraph 3, Item 1.

Mr. Callaghan states in Ref#1, Item 1, that:

"40 CFR 503 encompasses all forms of sewage sludge disposal..."
which does not agree with page 10 (final november 25, 1992)
which states in paragraphs (d), (e), (f), etc that this does NOT
cover "industrial facility", "hazardous sewage sludge", "sewage
sludge with high PCB concentrations", etc.

Please refrain from issuing these regulations on emergency basis
until WV D.E.P. and the Federal regulations establish requirements.

Ref: #1, item \$6, concerning "grandfathering" of existing solid
waste facilities. I do not see that that Mr. Callaghan has answered
your request concerning this item. Mr. Callaghans comments on this
question are ambiguous. Please make sure that these regulations
assure that NO solid waste facility is "GRANDFATHERED".

The following are my comments on title 47, Legislative rules
series 38D:

Page 1, Para 1.1, sentence 5, First word, "incineration".
I cannot find that any regulations allow incineration of SOLID WASTE.,
In fact, I think that solid waste INCINERATORS are banned in West
Virginia. Therefore, with sewage sludge now defined as SOLID WASTE (
see page 5, Paragraph 2.34), INCINERATION is banned and should
be removed from this regulation.

page 7, Para 3.2.1.h., uses the word, "ADJUSTED", and does not describe
how, or any method to be used for this adjustment. Please correct
to include.

page 7, Para 3.2.1.1. uses the word, "PERMEABILITY", and does not
include any measurement techniques or measurements. Please include.

page 7, Para. 3.2.2, lists 40 CFR 503.13 (b) (2) and also lists
Table #2 of this rule as applicable.
These two do NOT agree as Table 2 of this rule does NOT cover:
"CUMULATIVE LOADING RATES". Also, neither table 2 of this rule or
40 CFR 503 cover requirements or loading rates for "PCB's or DIOXIN".
Please assure that these do NOT exist in sewage sludge and that these
are not allowed in landfills or in land application of sludge.

page 2

page 9, Para 3.6.1. lists, "Max 25% by weight of the total weight of solid waste can be sewage sludge " disposed at landfills. No data has been presented that shows why 25% was selected and not 0% or 100%. The background data needs to be provided to show that this was NOT JUST A "GUESS".

GENERAL COMMENTS

A These regulations do not state what state agency (if any) will determine if a site is suitable for land application of sewage sludge either on agricultural land or on mined out land. This must be clearly spelled out in these regulations to prevent confusion and room for dangerous practices to happen. It is strongly recommended that local agency such as County Solid Waste Authorities, NOT state have control over this item and that they must approve prior to D.E.P. issuance of any kind of permit for this type facility. Also the County Solid Waste Authorities must have approval of any modification of any existing WV N.P.D.E.S. permit to allow sewage sludge disposal.

Ref#1, last Paragraph. Mr. Callaghan requests you to file these as emergency rules. I respectfully request that you NOT file these until these discrepancies are resolved in the best interests of the citizens of West Virginia.

Mr. Hechler;

Please excuse my tardiness in getting these comments to you. I believe that these rules as written do NOT properly address the above and should not be issued until they are corrected in the best interests of the people of West Virginia. I believe that they must be rewritten to properly address the desires of the state legislators and to properly protect our groundwater and the Health and Safety of the Citizens of our great state.

Thanks for your help.

Sincerely



Fred Sampson
Sr 3, Box 25
Ivydale, WV 25113
286-2204

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
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DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

James Kotcon
Sierra Club WV Chapter
P. O. Box 4142
Morgantown, WV 26504

Dear James,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State



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SIERRA CLUB WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

Oct. 31, 1993

Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Dear Sec. Hechler:

I am writing regarding the emergency SEWAGE SLUDGE regulations resubmitted to your office by the WV Division of Environmental Protection on October 12, 1993. Although some of our original concerns have been addressed in this version, three serious problems relating to environmental protection continue to make these rules incompatible with the intent of the Legislature when they passed SB 288 authorizing emergency rules. I urge you to again refuse these rules until the problems are corrected.

1. The incorporation of federal regulations creates an unworkable regulatory structure and directly contradicts the Legislature's intent to establish more stringent environmental standards. Most specifically, SB 288 clearly established a mandate that land application of sewage sludge would not pollute West Virginia soils with excessive levels of heavy metals and other toxic pollutants. Land application, if done properly, is a beneficial use of waste products and, as such, should actually be beneficial to the land. Yet the federal standards for heavy metals, adopted in these sewage sludge regs, allows substantial pollution of soils with these toxins. The levels set in the federal regs were intended to be a minimal health risk-based level of protection, but were weakened well beyond what was scientifically credible by then-Vice President Quayle's Council on Economic Competitiveness. That standard (allowing as much as possible up to the level that would make someone sick) is a much weaker standard than the anti-degradation standard in SB 288. To base West Virginia's rules on this standard is not only counter to SB 288, it is down right embarassing.

2. The fee and bonding requirements continue to leave West Virginia state government liable to substantial economic risk. The failure to establish needed bonding means that the state has no recourse if a site becomes excessively contaminated. These weaknesses in coal mine bonding requirements have left the state with huge fiscal liabilities. Similar liabilities are possible for sewage sludge sites under the rules as currently written.

An additional problem with the current language deals with the actual mechanism for assessing fees, particularly for facilities processing sludge for land application. The rules do not clarify how tipping fees would be reimbursed once the sludge is actually applied to land. This problem is being faced by a

new sludge composting facility proposed in Marion County. This facility would compost sludge with other materials such as yard waste, paper, etc., and would ultimately land apply the compost. Such a facility would be liable for either the tipping fees or the land application fees, but these rules do not specify which fees are appropriate, how the appropriate fees would be obtained, or at what point they would be assessed.

3. The grandfathering of existing facilities appears to remain intact in these regs, directly contrary to Legislative intent and subsequent legal opinions from the state Attorney General. Section 4.1.2 should be rewritten to eliminate the implied exemption from permitting requirements for existing facilities "whose methods of operation are currently in compliance with this rule".

In conclusion, these problems with the rules make them unacceptable and leave open gaping loopholes for the continuation of the emergency that caused the Legislature to act. I urge you to again refuse to implement these rules on the grounds that they do not implement the intent of the Legislature. I urge you to also adopt the excellent comments of Tom Degen on these rules. While he and I have discussed these rules, we have independently arrived at similar conclusions. Thank you.

Sincerely,



James Kotcon
Chapter Chair

cc:
Senator Don Macnaughton
Senator Joe Manchin
Del. Brian Gallagher

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Martha Huffman
Wetzel County Solid Waste Authority
200 North St., Box 9
New Martinsville, WV 26155

Dear Martha,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

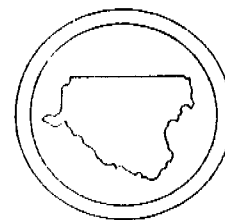
If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

WETZEL COUNTY SOLID WASTE AUTHORITY

200 North Street, Box 9, • New Martinsville, WV 26155 • Phone: (304) 455-5262



OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OCT 27 9 44 AM '93

FILED

Administrative Law Division
Secretary of State
Capitol Bldg.
Charleston, WV 25305

October 26th, 1993

Dear Ms. Cooper:

On behalf of the Wetzel County Solid Waste Authority, I am responding to the title 47, Series 38D, "Sewage Sludge Management Regulations filed with the Secretary of State on October 12, 1993. While the revised regulations are an improvement upon the regulations filed in July, there are still many obvious incongruities between the statute and the regulations as filed. I understand the Secretary has 35 days from the date of filing to accept or reject these rules and regulations. With that thought in mind, I will confine my comments to the narrow reasons the Secretary can reject the filed regulations and cite specifically, "They exceed the statutory authority."

In the Division of Environmental Protection's letter addressing the six points you raised to them as exceeding statutory authority:

1. The Secretary's office raised the issue of unilateral incorporation by reference of federal rule would create potential ambiguity. This situation still exists without an independent rule promulgated by West Virginia for West Virginia. The question of primacy only comes into play when state's regulations are less stringent than the federal requirements.

Another problem that arises if you are a person wanting to open a sludge processing facility in West Virginia is that inferred incorporation of federal guidelines and mention of state guidelines with a provision that "the more stringent shall apply" is confusing. (See 38D-3.3.1.) Wouldn't it be easier if West Virginia wrote out their own rule to include the desired federal specifications to give a clear picture of the state requirements? If the EPA approves the program, we

should spell out the requirements in one single document.

2. The Secretary office addressed the exemption of solid waste authorities. This clearly was a typographical error. While 3.2.3. was clearly lifted from 20-5F-2b(b) (7), the provision that was being called into question was 20-5F-2b(e) that states in part "...Provided, That no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less:..." there is no place in the proposed emergency rule where provisions for accommodating the agronomic permanent application of sewage sludge inside a solid waste facility but outside a landfill is addressed. This omission creates the potential for any solid waste facility to exceed the scope of the statute.

3. The only direct reference to how tonnage shall be counted is in 4.2.1.f. "The amount of sewage sludge actually generated or imported". All other references, with the exception of land application at dry ton rates, state the tonnage with no notation of actual or dry.

4. The use of the word "intended" has indeed been removed from 6.3 of this section, however, 6.4.3 states that all sewage sludge handled by a solid waste facility would be subject to the same tipping fees as levied upon the disposal of solid waste. While the attorney general's opinion stated that all sludge handled must count against the tonnage, they also stated that sludge that actually left the solid waste facility and was land applied was subject only to land application fees. This is in accordance with 20-5F-2b(e) that states "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 of Environmental Protection, shall be subject to the same tipping and other fees and shall be included in said facility's tonnage...".

There is no outline for determining when disposal fees are to be paid or how to differentiate between sludge that is ultimately destined for land application and sludge that will be used for disposal. There is no time limit on how long sludge can be stored at a solid waste facility until the sludge is either disposed of or land applied. If a solid waste facility owner wanted to avoid both land application fees as well as land disposal fees for sewage sludge, the intelligent thing to do would be to stock pile the sludge for the next 100 years and escape all fees. This loophole would

undoubtedly exceed the statutory authority of the enabling legislation.

5. Confusion as to the applicability of chapter 20 fees. While 6.3.3. and 6.4.3. won't allow the fees to go into improper accounts, please see our comments on number 4. The ambiguity created by not clearly spelling out how long sludge can be stockpiled at a solid waste facility before being either land applied or disposed of clearly creates another sludge disaster. Our Authority recommends a disposal fee be paid upon receipt and if and when the sludge leaves the facility for land application, the facility would be credited with the sludge that is removed. This would create an incentive for land application instead of land disposal and would give solid waste facilities a financial incentive to not drag their feet.

6. Grandfather of existing facilities. Section 4.1.2. states "On and after the effective date of this rule, all permitted facilities, whose methods of operation are not currently in compliance with this rule, shall submit an application to modify such permits." this provision implies that a "permitted facility" that is in compliance with this rule doesn't need to modify their permit. Since the term "permitted facility" is not defined in either this rule or the statute, there is room for ambiguity. More importantly, 4.1.2. is in direct conflict with 20-5F-2b(d) in part states "...any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. NO PERMIT MAY BE ISSUED UNTIL THE REGULATION PROVIDED FOR IN SUBSECTION (b) OF THIS SECTION IS EFFECTIVE." (Emphasis ours).

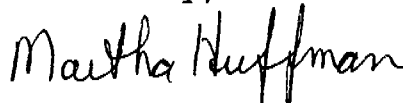
Subsection (b) reads "The director shall promulgate rules necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article...". The language in 4.1.2. ignores the statutory requirement for a permit to be issued after these rules you are considering adopting have been adopted. Instead the DEP chooses to require only a permit modification and that modification applies only to permitted facilities that are not in compliance of this rule you are currently considering. How can any facility have a permit as provided for in 20-5F-2b(d) when the regulation you are considering is not in effect? This appears to be one more example where the DEP has exceeded its statutory authority.

There are other examples, such as 5.2.3. that allows kiln dust to be used as a bulking agent in spite of language

in 20-5F-2b(b)(11) that states "Only living and dead plant tissues may be used as bulking agents. Section 2.5 of the regulations mirrors this definition. The rule in this case exceeds the scope of both the statute and its own definitions.

In view of the many cases where these rules and regulations exceed the statutory authority of the enabling legislation, our Authority respectfully requests the Secretary of State reject the amended Title 47, Series 38D, "Sewage Sludge Management Regulations" filed on October 12, 1992. Thank you for considering our comments.

Sincerely,



Martha Huffman
Vice-chair
Wetzel County
Solid Waste Authority

MH/sm

cc: Hon. Sen. Don Macnaughton
Hon. Sen. John Chernenko
Hon. Sen. David Grubb
Hon. Del. David Pethel
Hon. Del. Brian Gallagher
Dean DelaMater, Esq.
Larry Harless, Esq.
Tom Degen



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Jimmy Gladwell, Mayor
City of Richwood
Richwood, WV 26261

Dear Mayor Gladwell,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

CITY OF RICHWOOD

"Gateway to the Monongahela National Forest"
RICHWOOD, WEST VIRGINIA 26261

Jim Gladwell, Mayor
846-2596

Millie Stinnett, Recorder
846-2597



4 November 1993

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-E
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Dear Mr. Hechler,

Please consider the following comments regarding the Title 47, Series 38D "Sewage Sludge Management Regulations" Rule submitted to your office, on 12 October 1993, by the West Virginia Division of Environmental Protection.

1. We disagree with the change regarding the manner in which land application soils are to be tested for metals. We feel this change was unnecessary and that it will cause needless expenditures of monies that could be put to better use.

2. We disagree with the change regarding the manner in which tonnage fees are to be assessed for land applied sludge. Facilities that land apply dry sludge should be assessed dry weight fees.

We fully understand the need for environmental safeguards, as well as the need to fund this program, but we do not believe that either of the aforementioned rule changes are necessary and/or that their economic impact on facilities such as ours has been properly addressed.

Thank you.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jimmy Gladwell".

Jimmy Gladwell
Mayor, City of Richwood

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

David A. Sutherland
Walnut Grove Farm
RR 1, Box 24
Augusta, WV 26704

Dear David,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

BY FAX

Walnut Grove Farm
RR 1, Box 24
Augusta, West Virginia 26704
October 27, 1993

The Hon. Ken Hechler
Secretary of State
Building 1, Suite 157-K
1000 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Oct 28 8 47 AM '93

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Re: SEWAGE SLUDGE MANAGEMENT REGULATIONS

Dear Sir:

The proposed Sewage Sludge Management Regulations, forwarded to your office by the Division of Environmental Protection on October 12, 1993, have recently come to hand. It appears that this draft has yet to meet all the issues raised in your letter to the Director of August 11, 1993, concerning his first draft. Numbering my observations in accordance with those issues, my comments follow.

1. The recital at §3.1 of the proposed regulations, that the more stringent of state or federal regulation shall govern, does not cure the problems arising from wholesale adoption by reference of federal regulation 40CFR503. An operator from outside the state, who is used to federal regulations, will naturally assume he can operate according to federal regulations here. A person in West Virginia who sets out to process sludge will find that he cannot simply consult our regulations, but must delve into the federal library as well. As is indicated by the analysis of 40CFR503 that follows, some federal sections are inapplicable, some must be integrated with similar state regulations, and others are plain contrary to state law. The program of sludge management required for state regulations must resolve the questions raised rather than leave them to be puzzled out by various sludge operators.

The writer does not intend at length to outline a particular style of drafting. However, in order to show how the West Virginia regulations could be made (almost) complete in themselves, possible disposition of the several sections of 40CFR503 are here suggested.

First, sections dealing with applicability, definitions, and certain sections partly or fully covered in the draft regulations, should be integrated with the draft regulation and the federal reference dropped: 1, 3, 6, 7, 9, 11, 14, and 16.

Second, certain technical standards are found at length in 40CFR503. Without here implying that such standards are high enough, it is suggested that in form such sections might be adopted by reference. Any such section should be printed in an appendix to the state regulations and formally adopted as part of them. These include: 4, 8, 12, 15, 18, and Appendix B.

October 27, 1993

Page Two

Subpart D, §§503.30 through -33 should be adopted and appendecised as to 30 and 31, 32 and 33 being adopted by the draft.

Subpart E is not applicable to anything but two existing sludge incinerators. An express limitation to that effect must be included in the proposed regulations to conform them to statute passed as House Bill No. 2445 of 1993, which prohibits "new municipal and commercial solid waste facilities from utilizing incineration technology for the purpose of solid waste incineration."

§10(a) on applicability is covered by state draft. §10(b)(1) on bulk sewage sludge is expressly excluded and §10(b)(2), its administrative provision, is therefore idle. §10(c) allows case by case requirements for bulk sludge meeting certain standards; it should be excluded because the West Virginia sludge statute does not authorize the Director such discretion. §10(d), which eliminates regulatory requirements entirely for sludge meeting a higher standard, is clearly inapplicable under our statute applying the sludge management program to all sludge handled in the state.

§§10(e), (f), and (g) and 14(e) deal with compost disposed of in bags. They might well be pulled together and copied as a state regulation.

§17 requires many certificates of compliance in the federal regulations. Perhaps this must be adopted in whole, but one wishes the draftsman could consult federal authorities as to how these requirements can be integrated with state management.

§13 and Appendix A, which set maximum limits on pollutants to be applied to land, should not be incorporated by reference without substantial amendment to reflect levels of pollutant already present in the land, as required by Code §20-5F-2b(b)(6) forbidding sludge application "that will result in exceeding the maximum soil concentration for all pollutants..."

§§20 through 29 dealing with surface disposal were very properly excluded from the draft, by bringing any such disposal within all the landfill regulations.

Finally, 40CFR503.2 has no place in West Virginia regulations. It permits relaxation of standards in some cases until February 19, 1995. Code §20-5F-2G(d) specifies that "[o]n and after the effective date of this section, any facility seeking to land apply, compost, incinerate or recycle sewage sludge..." shall take out a permit under the state regulations. The statute leaves no room for delayed compliance by anyone.

If the Division lacks personnel availability to integrate federal regulations so as to produce a single consistent management program as mandated by law, perhaps the Attorney General, who has already explored the subject in his Opinion, might furnish assistance.

2. As the Director says, proposed §3.2.3 is quoted directly from Code §20-5F-2b(b)(7). We may take it that the proposed section implies no permission to accept or store sludge at a solid waste facility except in accordance with regulations pertaining to the handling of solid waste and other regulations pertaining to the handling of sludge.

3. The concept of "dry ton" has properly disappeared from fee calculations in the proposed regulation.

4. Reduction of the phrase "intended for" in proposed §6.1 to "for" does not eliminate the loophole. It still is not clear in §6.4.3 how much of the solid waste fees are exempted out by the proviso for land applied sludge. In short, the Director has still made no attempt to provide for the payment of all waste facility fees by the ton on arrival of sludge at such a facility; followed by a credit for the disposal assessment fees only on tonnage of sludge not disposed of in a landfill but properly applied to the land; and, then further subject to the sludge management program fee. This charge and credit process was outlined, and the statutory basis for it stated, in the Attorney General's Opinion to the Director filed with your office September 15, 1993.

The proviso of §6.4.3, albeit drawn directly from Code §20-5F-2b(e) in the regulation context might appear to reduce in scope the preceding sentence, which actually deals with a different subject, sludge inside a solid waste facility. A separate statement would be necessary to reassert that all sludge, for whatever purpose intended, handled at a solid waste facility, incurs all such fees on arrival. Credit for the disposal assessment fee could be mentioned in relation to the land application assessment fee. Here the Director could address the question of how to measure the credit when the sludge has dried somewhat since it was weighed on arrival but has had a bulking agent added to its weight.

5. Proposed §6.4.3 is further troubling because its literal quotation from Code §20-5F-2(b)(e) omits the concluding phrase "and shall be included in said facility's total tonnage." Because this confirmation of existing law is nowhere else quoted in the proposed regulations, they leave open the idea that sludge, or some kinds of sludge, or sludge intended for some purposes such as "cover material" or "compost," is somehow above and beyond tonnage limitations. This is unwarranted by statute for the reasons stated in the Opinion of the Attorney General, referenced above.

A related provision absent from the proposed regulations is a time limit on storage of raw sludge and intermediate products within a solid waste facility. An operator subject to these regulations may well take the position that "everything not forbidden is allowed." The Code, on the other hand, in §20-5F-2b(3), states "...no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent application of so much sewage sludge as to exceed the agronomic rate..." By failing to negative indefinite storage the proposed regulations may permit violation of the quoted statute. The violation is particularly inviting because federal regulations describe a "dedicated sludge site" exactly as apparently permitted by

the proposed regulation, although it is outlawed in West Virginia by the quoted statute.

6. The undersigned respectfully disagrees with the Director, if he implied to you that all grandfathering has been removed from his draft. §4.1.2 of the proposed regulations would allow "all permitted facilities, whose methods of operation are not currently in compliance with this rule" to process sludge after merely applying to modify their solid waste facility permits. No suggestion is made in the proposed regulation as to how much, if any, of the information required by §§4.2.1 and 4.2.2 is needed in the proposed modification application; and how much, if any, of the review process provided for new sewage sludge processing facility permits is to be undergone by the proposed modifications.

Worse yet, the proposed regulation requires no new permit for a "permitted facility" whose operations are currently in compliance. This invites an operator to take the position that he is in compliance and need not apply for any permit or subject himself to any permit limitations. No answer is provided to the question how it would be timely decided whether or not the operator was in compliance.

These questions need not be decided by regulation because the statute authorizes no distinction between old and new, complying or not. Proper draftsmanship would have taken the line: "No person may construct or operate a sewage sludge processing facility without first obtaining a sewage sludge processing facility permit, unless eligible to proceed as a P.O.T.W. under §4.1.4 below." Any exceptions from such a statement are contrary to Code §20-5F-2b(d): "On and after the effective date of this section, any facility seeking to land apply compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the regulation provided for in subsection (b) of this section is effective." Clearly no credit can be given for any permit issued prior to promulgation of the proposed regulations. Furthermore, the legislature cannot be taken to have intended permission by modification of a solid waste facility permit when it specified modification in the case of P.O.T.W.s, where "a sewage sludge processing permit shall be a part of the existing water pollution control permit..." Code §20-5F-2b(c).

Nor is the Director's statement to you sufficiently reassuring that "Section 4.1.2 requires that all existing and permitted facilities come into compliance with this rule." The statute requires more than that they "come into compliance" by some unspecified abbreviated process; it requires all facilities that intend to handle sludge (other than origination sewer plants) to follow the same full permitting process.

The writer does not intend to burden you with the chemical problems raised by the limits on poisons that are allowed to be spread on the land by federal regulations, incorporated in the proposed regulations §5.1.1a. He looks to the Joint Committee on Rules to consider whether the stricter standards, adopted by other jurisdictions with farming in mind, are in fact required to meet the statutory standard "...no land...to accept or store so much sewage sludge as to exceed the agronomic rate..." Code §20-5F-2b(b)(7). "Agronomic rate" is

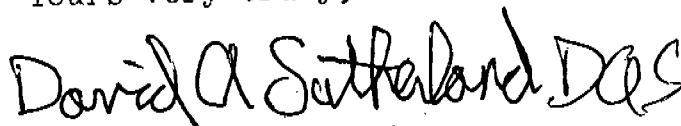
October 27, 1993
Page Five

defined at length at Code §20-5F-2(ff).

The straightforward legislative thinking behind Senate Bill No. 288 of 1993 may have been obscured by the mass of federal and state regulation bearing on the subject. Simply put, the legislative idea is as follows: first, sewage sludge is a solid waste; thus, it must be handled only at proper solid waste facilities (other than N.P.D.E.S. permitted treatment plants where the sludge originates), be stored, processed, or deposited in properly protected portions of such facilities, and be subject to all fees and tonnage limits applicable in such facilities; second, because sludge contains poisonous metals, pathogens, toxins, and vectors not strongly present in municipal solid waste (not hazardous or toxic), a special permit must be taken out for handling sludge; and, third, properly tested sludge or sludge products may be diverted from deposit in a landfill to land application at permitted rates (or as bagged and labelled compost), with the result that the landfill disposal assessment fee only is credited but the fee for regulating land application is incurred.

In the respects noted above, and perhaps in others, the second draft tendered you on October 12, 1993 still fails to carry out the comprehensive program for the regulation and management of sewage sludge required by the legislature. On account of the gaps in coverage that would tolerate sludge being handled less stringently than required by law, the draft appears to the undersigned to exceed the scope of the Division's statutory authority. Accordingly, it is requested that you consider again disapproving the proposed rule.

Yours very truly,



David A. Sutherland

CC: Chairmen of the Joint Committee on Rules
Tom Degan, WVEC

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Clarence Cox, Jr.
Superintendent, Sanitary Board
City of Parkersburg
125 Nineteenth St.
Parkersburg, WV 26101

Dear Superintendent Cox,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State



The Sanitary Board City of Parkersburg

125 NINETEENTH STREET • PARKERSBURG, WV 26101 • (304) 424-8535

October 4, 1993

The Honorable Ken Heckler
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Re: Title 47, Series 38D - Emergency Rule
Sewage Sludge Management Regulations

Dear Mr. Heckler:

Parkersburg Sanitary Board personnel have reviewed the October 12, 1993 filing of regulations referenced above. In addition to the presently proposed regulations, we have reviewed Mr. Callaghan's letter to you dated October 12, 1993. We have not had the opportunity to review comments from the Attorney General's office referenced in Mr. Callaghan's letter.

Most revisions to the July 8, 1993 filing of proposed regulations are minor language changes and clarifications. However, we have the following comments:

FISCAL NOTE

We find it interesting that the presently proposed regulations are projected to generate 150% more revenue than those filed in July. However, the explanations provided in the Fiscal Note are identical to those provided in the July filing, and they address neither the manner nor the justification for a 150% increase in revenue to be generated.

We recognize nothing in the October 12, 1993 filing which justifies an increase in proposed revenue from \$200,000 to \$500,000. In order to have this money available to be paid to the State as required in the proposed regulations, sanitary sewer systems must collect the money from sewer system customers. Our experience has been that when we find it necessary to request an increase in our own revenue, we are also expected to explain in detail why the increase is needed and how it will be expended. The same should be required of the current Sewage Sludge Management Fee proposal.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Nov 8 2 32 PM '93

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October 4, 1993
Page 2

METALS ANALYSES OF SOIL

A provision has been added to paragraph 4.2.3.a which requires analysis of all land application sites for those metals listed in Table 1 on page 20. We can agree that analysis of the soil for metals prior to application of sludge is a reasonable step to take. It provides baseline data on metals in the soil at each site.

Testing for metals is an expensive undertaking, but can be done within reason, if the procedure for available metals is utilized. It has been suggested by some that the total metals procedure be required. This procedure is not justified to investigate for the particular metals of interest. In addition, it is a far more difficult, and thus more expensive, procedure than the available metals procedure. Also, total metals testing is available at only a few locations throughout the country.

A requirement for total metals testing would be an unjustified burden for sanitary sewer customers throughout West Virginia, due to excessive expense and major time delays to get the test results needed for compliance with land application program requirements. For these reasons, we are opposed to suggestions that total metals testing be required. It is simply not necessary to provide the metals information needed for a safe land application program.

ENVIRONMENTAL REMEDIATION

We are pleased to see that the unjustified surcharging of sewer systems operating industrial pretreatment programs has been eliminated. We also note that the environmental assessment tonnage fee for land applied sludge has been eliminated, and replaced with a provision which would allow the Director to require a surety bond for future environmental remediation (paragraph 6.3). We have three concerns about the bonding provision.

October 4, 1993
Page 3

First, if bonding is required, it should not be for an extravagant amount of money to address the imagined concerns of a few people. Land application of sewage sludge has been done successfully, to the benefit of both sewer system customers and the environment, for decades in both this country and in Europe. The extensive regulations now being adopted for the land application of sludge will simply further assure that these endeavors will remain a safe and sensible way to recycle and protect our resources.

Second, bonding requirements should be uniform. Above all, we do not wish to see a mechanism whereby the larger sewer systems are required to subsidize in some way the smaller systems, as was the case with the previously proposed remediation fee.

Third, if a sewer system is required to provide a bond, it should be ONLY for the activities of that particular sewer system. One sewer system should not be required to provide a surety bond which could be applied in any way to the activities of another sewer system for which the provider of the bond has neither responsibility nor control.

SEWAGE SLUDGE MANAGEMENT FEE

We note in Section 6.4 that the application of this fee on a dry ton basis has been eliminated. We believe this to be wrong. Application of the fee on a wet ton basis results in the fee being applied to water as well as solids. There are many variables in the circumstances which determine whether a sewer system land applies sludge as a liquid or a solid. Any particular wastewater system will generate a specific volume of solids over a given time. Whether applied to the land in liquid or solid form, a month's volume of solids is the same, and the total quantity of nitrogen, phosphorous, metals, etc. is the same.

October 4, 1993

Page 4

Requirement for payment of a sludge management fee for the water content of sludge is not justified, and can place a significant financial burden on a sewer system which applies sludge in liquid form. Sludge from drying beds can be 50% or greater in solids, while mechanically dewatered sludge is commonly 25% solids and liquid sludge is frequently 5% solids. If for example, a sewage plant produces one ton of solids per day, the management fee for that ton of solids would vary as follows:

50% solids - \$4.00 (\$2.00 for ton of solids and \$2.00 for ton of water)

25% solids - \$8.00 (\$2.00 for ton of solids and \$6.00 for 3 tons of water)

5% solids - \$40.00 (\$2.00 for ton of solids and \$38.00 for 19 tons of water)

The fee as presently proposed represents a 128% increase in annual cost for Parkersburg when compared with the fee structure in the July filing, and Parkersburg does not apply sludge in liquid form. For our 1992 sludge production, the July filing would have required payment of \$3,528 in fees. The present proposal would require payment of \$8,034 in fees for the same production of sludge. If that same production of sludge were to be land applied as a liquid at 5% solids, the present proposal would require Parkersburg to pay a sludge management fee of \$40,320 for the year.

To require those who have already invested large sums of money in liquid sludge application equipment to now pay much more in management fees than those who apply sludge in solid form is grossly unfair. A fee structure based upon dry ton measurement is not only more reasonable, but fits quite well with the documentation required for land application of sludge. The application rates for soil are based upon dry tonnage, and the management fee should also be based upon dry tons of sludge applied to the land.

October 4, 1993
Page 5

SLUDGE MANAGEMENT FEE ACCOUNTABILITY

The regulations provide no mechanism for us to track the use of sludge management fee money. Sewer systems will be required to collect from their customers hundreds of thousands of dollars in fees and to then give it to the State of West Virginia. We are told the fees will be used to do good and proper things, but we have no way of actually knowing what will be done with the money, and apparently, there are no specific restrictions on the use of the money. Those customers from whom we collect the money hold us accountable for its use. Therefore, we believe it only reasonable that those to whom we are required to give the money also provide us periodically with an explanation of what has been done with the money.

A case in point is the extent to which the annual amount of money proposed to be collected in sludge management fees increased from \$200,000 to \$500,000. This occurred during refileing of the proposed regulations to address other matters. We have not found justification for this 150% increase in revenue addressed anywhere in the refileing. When we asked DEP personnel why this significant increase was needed, we were told it is to pay for the same 8 additional people and equipment for which the original \$200,000 was requested.

DEP personnel have stated that the \$500,000 revenue estimate is based upon sludge volume information available to DEP for 1991. They also have acknowledged that this information was not all-inclusive, and that they expect the actual amount of revenue generated to be greater than \$500,000.

We do not object to a request for the money legitimately needed to provide the services required. However, we also believe it reasonable and prudent to request there be a requirement in the Sludge Management Regulations for DEP to annually provide us with an accounting of how much Sludge Management Fee money was collected, how much was spent and for what purposes it was spent. If it is not reasonable for us to be told where and how the money we provide is utilized, then it is even less reasonable for us to be expected to provide an unknown amount of money to be used for unknown purposes.

October 4, 1993
Page 6

COMMERCIAL SOLID WASTE FACILITY

It is common for sewage treatment plants to accept for treatment the material pumped from grease traps at local restaurants and sludge from small package treatment plants in the area. This is done not because it is required, but to assist the community in maintaining a clean environment. We have been advised by DEP personnel that the definitions of "solid waste" and "commercial solid waste facility" included in the sludge management regulations and the solid waste regulations have been interpreted to mean that a treatment plant accepting wastes as described above is by definition a "commercial solid waste facility" if those wastes are discharged at the plant anywhere other than the headworks (inlet) of the plant. A "commercial solid waste facility" must be permitted as such according to the proposed sludge management regulations. We were also told by DEP personnel it will require 3-5 years to obtain such a permit.

In the case of grease, this is a problem for us. This material is not discharged at the headworks of our plant because it spreads throughout our primary clarifiers and adds to the cost and difficulty of operating the plant. The material is pumped directly to our digesters for treatment. We have been told the regulations require that we must either begin discharging grease at the plant headworks and suffer the added cost and difficulty, cease accepting grease and/or spend the time and money required to obtain a commercial solid waste facility permit.

We object to this interpretation for the following reasons:

1. The definitions make no reference to the specific point of discharge.
2. The definition of "commercial solid waste facility" (paragraph 2.8) includes a provision which excludes "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..." This service which we provide is not for profit and thus is excluded by definition.

October 4, 1993
Page 7

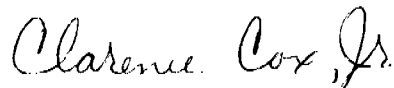
We understand this and similar strict "interpretations" of the proposed regulations are being pushed by a small group of people who apparently have adequate political influence to do so. Their purpose is clear. They wish to utilize Sewage Sludge Management Regulations and any other mechanism available to them in order to address their concerns about out-of-state solid waste being disposed of in West Virginia.

Although we respect the concerns of these people, we cannot agree that sewer system users throughout West Virginia should be required to cope with unnecessarily stringent and expensive sludge disposal costs and requirements in a futile effort to cease the importing of solid waste from other states. In reality, the importation of solid waste will continue because it will remain cost-effective to do so. Demands for excessively stringent management practices will simply increase the costs to be paid by all West Virginia residents, making a difficult situation even worse.

We sincerely appreciate the opportunity to comment upon proposed Sewage Sludge Management Regulations as filed in your office on October 12, 1993, and we trust our observations are worthy of consideration by those responsible for approval and implementation of those regulations.

Very truly yours,

PARKERSBURG SANITARY BOARD



Clarence Cox, Jr.
Superintendent

cc:
Mayor and Board Members
Mayor-Elect
Joseph Brown, Attorney
Legislative Representatives

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Philip F. Hertz
City Manager, City of Martinsburg
232 North Queen St.
Martinsburg, WV 25401

Dear Philip,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State



CITY OF MARTINSBURG
WEST VIRGINIA

232 NORTH QUEEN STREET
MARTINSBURG, WEST VIRGINIA 25401
(304) 264-2131
Telecopier: (304) 264-2136

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOV 10 1 53 PM '93

FILED

November 8, 1993

West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Attention: Mr. Ken Hechler

Subject: Sewage Sludge Management Regulations

Dear Mr. Hechler:

The City of Martinsburg recently received the DCL and ER Division of Environmental Protection (DEP) Title 47, Cite Authority 25-5F-2b(d) proposed rule change to Sewage Sludge Management Regulations.

While the City supports reasonable regulations on sewage sludge applied to farmland, it also opposes certain overly broad and discretionary rules as those emergency rules proposed by the DEP.

It appears that the rules are aimed at POTW's with little or no regulation of the private septage hauler although that is not a municipal concern in so long as it does not infringe on farmland permitted and utilized by POTW's.

The City of Martinsburg 3.0 MGD plant generates 800 wet tons of sludge annually. The sludge is processed through a belt filter press with the 24% sludge cake hauled to farmland by City owned vehicles. Sludge is hauled to farmland due to:

1. High landfill costs
2. Recycling of a usable waste
3. Economic benefits to farmers
4. Preservation of landfill space

The City of Martinsburg has the following comments relative to the proposed emergency rules concerning Sewage Sludge Management Regulation.

SECTION

COMMENT

3.2.3 The words "or store" should be removed from this section. The agronomic rate should not be applicable to the storage pile.

Reason - The City hauls its sludge to farms for the reasons sited above. Due to farmland crop rotation, crop harvest, field preparation, weather conditions, soil conditions (frozen & snow covered), and length of precipitation all of which impact the number of days sludge can be applied to farmland causes storage problems. Farmers can apply sludge to farmland for less than 60 days during the year. Sludge must be hauled to farmland as it comes off the belt press as City storage is limited and the time frame for the farmer to get the sludge applied to the land before planting is extremely limited, thus the reason for storage at the site.

3.2.4 Again the storage in this section is a factor. Storage should be considered at the land permitting level. On site storage is critical to the success of the agricultural utilization program. If storage must be limited it should be a requirement of the permit rather than a unilateral rule. Wet periods, thaws, crop rotation and hauling would severely impact the use of sewage as a fertilizer due to a one week storage limit.

6.1 This section should apply only to private haulers. This is another state mandate without a state subsidy.

6.3 This section should not be applicable to political subdivisions of the state. This requirement adds major costs to the already financially overburdened utility. Municipalities are not like the private hauler that can go out of business or relocate out of state.

6.4.1. Strike the entire section or at least make the political subdivisions an exception. The limiting sludge characteristic for crop production is almost always Nitrogen which invalidates the purpose of this section.

6.4.2. This fee assessment does not specify whether the \$2.00/ton is to be assessed on wet or dry tons.

Strike the entire section. Sewage sludge exceeding the maximum metal concentration listed in Table 1 should not be allowed on farmland period.

All of the proposed emergency rules will impact the economic operations of the POTW as indicated in the fiscal note for proposed rules. The City cannot determine the economic impact without clarification of the rules.

Sincerely,

CITY OF MARTINSBURG


Philip F. Hertz
City Manager

PFH/d11

cc: W.V. Municipal League
Sondra Lucht, Senator
Vicky Douglas, Delegate



CITY OF MARTINSBURG
WEST VIRGINIA

232 NORTH QUEEN STREET
MARTINSBURG, WEST VIRGINIA 25401
(304) 264-2131
Telecopier: (304) 264-2136

November 8, 1993

West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Attention: Mr. Ken Hechler

Subject: Sewage Sludge Management Regulations

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It appears that the rules are aimed at POTW's with little or no regulation of the private septage hauler although that is not a municipal concern in so long as it does not infringe on farmland permitted and utilized by POTW's.

The City of Martinsburg 3.0 MGD plant generates 800 wet tons of sludge annually. The sludge is processed through a belt filter press with the 24% sludge cake hauled to farmland by City owned vehicles. Sludge is hauled to farmland due to:

1. High landfill costs
2. Recycling of a usable waste
3. Economic benefits to farmers
4. Preservation of landfill space

The City of Martinsburg has the following comments relative to the proposed emergency rules concerning Sewage Sludge Management Regulation.

- | <u>SECTION</u> | <u>COMMENT</u> |
|----------------|---|
| 3.2.3 | <p>The words "or store" should be removed from this section. The agronomic rate should not be applicable to the storage pile.</p> <p>Reason - The City hauls its sludge to farms for the reasons sited above. Due to farmland crop rotation, crop harvest, field preparation, weather conditions, soil conditions (frozen & snow covered), and length of precipitation all of which impact the number of days sludge can be applied to farmland causes storage problems. Farmers can apply sludge to farmland for less than 60 days during the year. Sludge must be hauled to farmland as it comes off the belt press as City storage is limited and the time frame for the farmer to get the sludge applied to the land before planting is extremely limited, thus the reason for storage at the site.</p> |
| 3.2.4 | <p>Again the storage in this section is a factor. Storage should be considered at the land permitting level. On site storage is critical to the success of the agricultural utilization program. If storage must be limited it should be a requirement of the permit rather than a unilateral rule. Wet periods, thaws, crop rotation and hauling would severely impact the use of sewage as a fertilizer due to a one week storage limit.</p> |
| 6.1 | <p>This section should apply only to private haulers. This is another state mandate without a state subsidy.</p> |
| 6.3 | <p>This section should not be applicable to political subdivisions of the state. This requirement adds major costs to the already financially overburdened utility. Municipalities are not like the private hauler that can go out of business or relocate out of state.</p> |
| 6.4.1. | <p>Strike the entire section or at least make the political subdivisions an exception. The limiting sludge characteristic for crop production is almost always Nitrogen which invalidates the purpose of this section.</p> |
| 6.4.2. | <p>This fee assessment does not specify whether the \$2.00/ton is to be assessed on wet or dry tons.</p> |

Strike the entire section. Sewage sludge exceeding the maximum metal concentration listed in Table 1 should not be allowed on farmland period.

All of the proposed emergency rules will impact the economic operations of the POTW as indicated in the fiscal note for proposed rules. The City cannot determine the economic impact without clarification of the rules.

Sincerely,

CITY OF MARTINSBURG


Philip G. Hertz
City Manager

PFE/dll

cc: W.V. Municipal League
Sondra Lucht, Senator
Vicky Douglas, Delegate

CITY OF SUMMERSVILLE
400 NORTH BROAD STREET
P.O. BOX 525
SUMMERSVILLE, WEST VIRGINIA 26651

TELEPHONE (304) 872-1211

JOHN STEVEN LEROSE - MAYOR

FAX TRANSMITTAL SHEET

CITY OF SUMMERSVILLE

FAX NO.: 304-872-3313

TO:

RENÉE COE, DEPUTY SECRETARY OF
STATE

FAX NO.:

558-0900

NO. OF PAGES:

4 including this page

DATE:

11/08/93

FROM:

Mayor John Steven LeRose

DEPARTMENT:

SEWER

NOTES:

RE: RESPONSE to Div. of ENVIRONMENTAL
PROTECTION EMERGENCY RULE SERIES
No. 38D - ORIGINAL OF ACCOMPANYING
LETTER WILL BE MAILED TODAY - (11/08/93)

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Paul L. Villers, Mayor
City of Pennsboro
422 Main St.
Pennsboro, WV 26415

Dear Mayor Villers,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

City of Pennsboro

Incorporated 1885

422 Main Street • Pennsboro, West Virginia 26415 • (304) 659-2377

MAYOR

Paul L. Villers

COUNCIL MEMBERS

*Marshall Doak
K.K. McCullough
Denny Nelson
Donnie K. Jones*

CITY ATTORNEY

Richard A. Hayhurst

November 5, 1993

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Nov 9 9 02 AM '93

FILED

Mr. Ken Hechler
Secretary of State
Building 1, Suite 157-K
State Capitol Complex
Charleston, WV 25305

RE: Title 47 Series 38d
Sewer Sludge Management
Regulations

Dear Secretary Hechler:

As currently proposed the Sewer Sludge Management Regulations will cause a financial hardship to small municipalities operating a wastewater treatment plant. We strongly urge that these regulations not be implemented as emergency rules, but, be given the open debate and consideration of the legislative process before implementation, not after.

Specifically, the issue of wet tons vs. dry tons and the range of metals required to be tested have the potential for unnecessarily costing us thousands of dollars and, therefore, causing us to raise the sewer rates even more.

We are not opposed to reasonable regulations in this matter. However, we do not believe that the Division of Environmental Protection has adequately considered the impact of the proposed rules. We do not believe this rule should be implemented until that has been accomplished.

Sincerely,

Paul L. Villers
Paul L. Villers
Mayor

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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SECRETARY OF STATE

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Robert Bricker
766 Weaver St.
Morgantown, WV 26506

Dear Robert,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

ROBERT WICKER
766 WEAVER ST.
MORGANTOWN, WV
26506
(304) 296-4573

FILED

Nov 12 2 21 PM '93

TO: THE HONORABLE KEN HECHLER
OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE, WV

RE: EMERGENCY SEWAGE SLUDGE MANAGEMENT REGS

Dear Mr. Hechler,

I urge you to disapprove Title 47, Series 38D "Sewage Sludge Management Regulations". The regulations submitted do not adequately protect water quality when sewage sludge is land applied for beneficial use. Paragraph 3.2.1.K under Standards for Use, Disposal and Processing of Sewage Sludge (847-38D-3) allows for a minimum 6 inches of soil over bedrock or impervious pan where sewage sludge is applied. Such thin soils are typically porous and overly weathered beds of fractured bedrock. Briefly, six inches of soil is not adequate for filtering pathogens and other pollutants from land applied sludge. Even if downward flow is impeded by an impervious pan, lateral flow would prevail possibly carrying pollutants into local surface drainage or even off-site.

* As minimum soil thickness of 18 inches to an impervious pan or bedrock is advisable. A minimum thickness more practical in WV is 1 foot. I realize that mine soils are typically only six inches thick. If an exception must be made for reclamation then it should be written as such in these regulations.

In addition, the rules promulgated by WVDEP do not specify more stringent standards for metals of concern than set forth in 40 CFR 503 (Clean Water Act, "Part 503"). For the protection of citizens of West Virginia, and our soil and water resources, it is possible to have more stringent standards for 'High Quality Sludge' and Ceiling Concentrations without burdening our own Wastewater Treatment Works. Other States have done so, including New York, Pennsylvania, and North Carolina. The Netherlands, Germany and Canada also have higher, more stringent, standards than established in Part 503.

If you have found it necessary to approve these emergency regulations, then do so with the urging to promulgate permanent regs more in line with the quality of life in West Virginia and the concern of ordinary citizens for their own health and safety. Thank you, Mr. Hebler, for your consideration.

Sincerely
Robert B. Bickel, Jr.
B.S. AGRICULTURE, WVU 1992
(Soil Science)

kinko's

**174 Willey Street
Morgantown, WV 26505**

the copy center

**Tel: (304) 296-6455
Fax: (304) 296-0205**

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FAX Phone: 558 - 0900

Voice Phone:

From: ROBERT BRICKER

Voice Phone:

Date: 11/12

**No. of Pages,
including cover:**

Special Instructions:

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

R. Terry Honaker,
Executive Director
The Sanitary Board of Bluefield
P. O. Box 998
Bluefield, WV 24701

Dear Terry,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

THE SANITARY BOARD OF BLUEFIELD

OFFICE NUMBER
304-325-3681

P.O. BOX 998
BLUEFIELD, WEST VIRGINIA 24701

FAX NUMBER
304-325-6838

November 16, 1993

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-k
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Re: Sewage Sludge Management Regulations.
DCL&ER Division of Environmental Protection
Title Number 47
Authority §20-5F-2b(b)
Series Number 38D

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOV 17 11 22 AM '93

Dear Mr. Hechler:

The following is in response to the above referenced emergency rule.

Section 3.1 - The Federal Regulations have classifications of sludges (ie CLASS A, CLASS B). There is no reference to the classification of sludge in the proposed State Regulations. The Federal Regulations also allow for alternatives treatment processes and the proposed State Regulation do not.

Section 3.2.1.h - This article does not take in to consideration lime stabilized sludges or sludges with a pH higher then 11.5 std. units.

Section 6.4.1 - In most cases there is no income derived from the production of sludge and with the implementations of these new regulation there will be additional cost incurred by the sludge producers. For this reason, a \$1.00 reduction in the fee assessment would aid in keeping the cost down, especially the larger facilities.

Section 6.4.2 - Same as Section 6.4.1.

Thank you for the opportunity to respond to this matter.

Sincerely,


R. Terry Honaker,
Executive Director

cc: Nelson B. Robinson

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

November 18, 1993

Sue Maguire
Rt. 1-Box 48
Auburn, WV 26325

Dear Sue,

Thank you for sending me your comments on the Division of Environmental Protection's, Title 47, Series 38D, "Sewage Sludge Management Regulations." After reviewing the Division of Environmental Protection's proposed emergency rule I have decided to disapprove it.

While no single concern that has been raised provides sufficient basis to disapprove the rule, the accumulation of varying concerns persuades me that the rule should not be permitted to go into effect prior to full legislative consideration.

If you have any further questions, please don't hesitate to call our office. Thank you.

Sincerely,

Ken Hechler
Secretary of State

To: Ken Hechler, Secretary of State
November 15, 1993

RE: Comments on Title 47, Series 38D SEWAGE SLUDGE REGS.

1. Adoption of 503 is cumbersome, confusing, perhaps unconstitutional.
2. Loading rates, pollutant concentrations in rule not tied to levels in soils in any way, contrary to 288 provision.
3. Sludge disposal sites appear to be outlawed, as per 288, yet later on they are exempted from background check, liner requirements, even the fees!
4. Rule still allows for grandfathering, contrary to 288.
5. Emergency rule provides for bonding, but no specifics.
6. Rule is unclear as to how land application fee is to be collected. Should be that all disposal assessment fees are charged on actual tonnage as materials enter the facility, then when the material is actually land applied, credit is given for the disposal assessment fees and the land application fee is charged. The credit could be computed for the tonnage that arrived at the facility or given for the actual tonnage that is land applied; I prefer the latter.
7. Rule has no provisions for the storage of unprocessed sludge.
8. §47-38D-6.4.3. of the resubmitted emergency rule has omitted some key language that is in W. Va. Code, §20-5F-2b(e) (1993), namely the provision that all sewage sludge is counted toward the facility's tonnage limitation.
9. Record keeping requirements - do they do what 288 requires yet?
10. The first rule was too strict on technical requirements at facilities, the liner provisions were overkill. Then all requirements were removed and replaced with the provision that the groundwater bill be complied with. There should be some minimal requirements, tied to quantities handled.
11. Yard waste composting facilities have to have their operators trained and certified, sludge processors should have the same requirements.
12. Land application should be in the hands of soil people, such as farmers, soil scientists and the like, NOT waste management people.

Thank you for your attention to this matter.



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