



# Administrative Guide

For West Virginia Solid Waste Authorities

## **Disclaimer**

The Administrative Guide (The Guide) is being made available by the WV Solid Waste Management Board (SWMB) for educational and informational purposes only. Solid Waste Authority (SWA) members should feel comfortable referring to this guide whenever a general question regarding solid waste authority business, procedures, duties or responsibilities arises.

Information contained in The Guide is compiled from the most current information from related agencies, websites, WV Code and Rules. When conflicts exist information from current websites, Code and Rules should take precedence.

The Guide should not be considered a substitute for competent legal advice or advice from an otherwise licensed professional.

The SWMB will revise and update The Guide periodically and will advise SWA members of changes, additions or deletions.

# SOLID WASTE MANAGEMENT BOARD

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# **SOLID WASTE MANAGEMENT BOARD**

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The West Virginia Solid Waste Management Board (SWMB), originally called the Resource Recovery-Solid Waste Disposal Authority, was created in 1976 in response to the federal Resource Conservation and Recovery Act. The following is only a brief overview of what the SWMB is responsible for.

- Assists with Ethical Issues
- Tracks Legislative Issues
- Monitors Public Service Commission Items
- Distributes Monthly Assessment Checks
- Administers Grant Funds and Reviews Grant Reports
- Tracks Monthly Solid Waste Tonnages
- Conducts Public Solid Waste Facility Performance Reviews
- Reviews Annual Audits
- Administers the State's Revolving Loan Program
- Provides Assistance with Bylaws
- Assists with Employment Issues
- Assists with Comprehensive & Siting Plan Updates
- SWMB Grant Application Process
- Training Opportunities for Solid Waste Authorities
- Produces the Statewide Biennial Solid Waste Management Plan
- Recycling Market Information & Assistance
- Maintains Statewide Solid Waste Authority Board Member Database

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# Chapter 1: Solid Waste Authority Administration

# CHAPTER 1: SOLID WASTE AUTHORITY ADMINISTRATION

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## SOLID WASTE MANAGEMENT BOARD

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The Solid Waste Management Board (SWMB) is the state's primary authority for the funding, acquisition, construction and operation of solid waste disposal projects. The Board is charged with the development of a state solid waste management plan and providing technical assistance to Solid Waste Authorities (SWA or Authority). The SWMB also was responsible for dividing the state into solid waste disposal sheds, which provided for the establishment of dependable, effective, and efficient solid waste projects.

The SWMB is funded through \$1.25 of the \$8.25 special revenue generated by a per ton solid waste assessment fee levied on solid waste disposed of in WV landfills. Fifty percent of the \$1.25 is allocated monthly to the state's 55 counties. The remaining fifty percent is used to fund a grant program exclusively for county and regional SWAs and the administration of the SWMB.

Under certain circumstances the SWMB has supersedure authority over the Solid Waste Authorities that operate commercial solid waste facilities. (W. Va. Code §22C-4-9a). The SWMB's jurisdiction does not include solid waste collectors and haulers who are common carriers governed by the Public Service Commission (PSC). The PSC is required to consult with the SWMB when issuing, modifying or transferring certificates of convenience and necessity for waste haulers (§22C-3-23).

## SOLID WASTE AUTHORITIES

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On January 1, 1989, new county solid waste authorities (SWAs) were created and established as public agencies in every county of the state in accordance with W. Va. Code §§22C-4-3 and 22C-4-4. Counties were given the option of joining together to form regional SWAs within the same wasteshed, with the approval of the SWMB. Their purpose is to protect the public health and welfare of citizens by providing for a comprehensive program of solid waste collection, processing, recycling and disposal. The Authorities also exist to establish programs based on source reduction, recycling, reuse, material recovery and lastly, landfilling.

**County SWA Membership:** County SWAs are managed by a five-member board of directors appointed as follows: one by the Secretary of the Department of Environmental Protection (DEP), two each by the county commission, one by the board of supervisors for the Conservation District (CD) in which the county is situated and one by the Chairman of the PSC.

NOTES

**Regional SWA Membership:** A regional SWA may be formed by two or more counties partnering within the same watershed and with SWMB approval. The board of directors of the regional SWA shall be comprised and appointed as follows: one by the Secretary of the DEP, two by the county commission of each participating county, one appointed by the board of supervisors for each Conservation District in which a county of the region is situated, one by the Chairman of the PSC, and two municipal representatives from each county having one or more participating municipalities to be selected by the mayors of the participating municipality from each county.

**General Information:** Each appointing agency is free to select its appointees based on whatever criteria it sees fit. Once appointments are made, the appointing agency has limited influence over the actions of appointees. The agency may or may not require SWA appointees to report on their activities. Once an appointment is made there are no provisions in the law for removal until the term expires, the member resigns, or they pass away.

Appointments are staggered to ensure not all member's terms expire in the same year. Terms are for four (4) years from July 1<sup>st</sup> to June 30<sup>th</sup>. Attachment 1A shows the schedule for appointing agencies. If the appointing agency has not notified the board member of his reappointment or appointed a successor at the end of their term that board member serves until notified. (W. Va. Code §6-5-2). The management and control of an Authority is vested in and governed by the Board of Directors and Board Members should make every effort to attend every meeting.

**Vacancies:** The SWA should notify the SWMB in writing when there is a change on their Board. Official records will not be changed without written notice. If a SWA member resigns from the Authority, or passes away, the SWA shall inform the appointing body and the SWMB of the action. New appointees shall be reported to the SWMB as soon as possible.

**Conflicts of Interest:** Having a direct financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste does not preclude membership on the SWA. However, a member with such interests shall not vote or act, discuss or ask questions on any matter that directly affects their personal interests. They also need to recuse themselves and leave the room during discussion and any action by the Board. Members should file a financial disclosure with the West Virginia Ethics Commission each year they serve on the Board.

Potential conflicts or the appearance of conflict should be resolved by the Authority member by seeking a legal opinion prior to participating in the decision-making process. Before acting on a topic SWAs should respond to anyone who raises issues regarding the appearance of conflicts. Members who are uncertain

about potential conflicts can seek assistance from the West Virginia Ethics Commission at 304-558-0664 or [www.ethics.wv.gov](http://www.ethics.wv.gov).

NOTES

**Duties and Powers of Solid Waste Authorities:** Solid Waste Authorities have the following eight duties and responsibilities:

1. Develop a Comprehensive Litter and Solid Waste Control Plan in accordance with W. Va. Code §22C-4-8.
2. Develop a Recycling Plan as a component of the Comprehensive Litter and Solid Waste Control Plan in accordance with W. Va. Code §22C-4-8.
3. Develop a Commercial Solid Waste Facility Siting Plan in accordance with W. Va. Code §22C-4-24.
4. Promote and encourage source reduction, reuse and recycling activities in accordance with W. Va. Code §22C-4-8.
5. Identify and prioritize open dumps within the county or region in accordance with W. Va. Code §22C-4-8.
6. Issue certificates of site approval for commercial solid waste facilities in accordance with W. Va. Code §22C-4-25.
7. Coordinate public and private sector solid waste activities in accordance with W. Va. Code §22C-4-9.
8. Implement a mandatory disposal program in accordance with W. Va. Code §22C-4-8.

Additional powers, duties and responsibilities given to Authorities in W. Va. Code §22C-4-23 can be found in [Attachment 1B](#).

## **ADMINISTRATIVE DUTIES**

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**Open Governmental Proceedings Act:** The West Virginia Open Governmental Proceeding Act (OGPA), sometimes referred to as the “Sunshine Law” or “Open Meeting Law” requires public agencies, including SWAs, to open their meetings to the public when those meetings require a quorum (majority of the members) in order to deliberate toward or make a decision. Committee meetings and working sessions are also included under OGPA. W.Va Code § 6-9A deals with OGPA ([Attachment 1C](#)).

As public bodies, the business of SWAs must be carried out in a way that provides access to the general public. To ensure this, SWAs must give notice to the public and news media of the date, time, place and agenda of all regular meetings and the date, time, place and purpose of all special meetings. In the case of an emergency meeting requiring immediate action, notice of the date, time, place, purpose and the facts and circumstances of the emergency, should be given as soon as possible.

**Public Hearings:** Public hearings are an area of concern to SWAs. They are mandated to be held when the adoption and amendment of certain planning

functions are acted upon. SWAs must hold **one** public hearing on both the issuance of certificates of site approval and on the updates or amendments to their Commercial Solid Waste Facility Siting Plans. **Two** public hearings must be held when updating the Comprehensive Litter and Solid Waste Control Plans. Any action taken by a SWA is apt to be overturned by legal means when improper public notice is given.

Public hearings should also be held for the adoption of an annual budget, or when undertaking any large or costly project. Grant applications should not be routinely forwarded without securing public comment. The SWA is not required by law to provide public comment through a formal hearing, but the opportunity to provide is advisable.

Hearings should be recorded by appropriate means. Ordinarily this is accomplished by audio tape. Comments are made and do not need to be sworn testimony. However, when issuing or denying a permit, a SWA should establish an administrative rule provision for taking sworn testimony and using a transcribed record by a court reporter or a videotaped recording. These requirements, together with the fees, should be part of the procedural rules implicit in facilities siting plans.

The public has a right to count on certain procedures being in effect, and applicants for permits and their opponents are entitled to due process of law. This due process protection extends to public comment periods during which written comments may be received on plans or permit applications. SWAs should make documents available for public viewing at their offices, public libraries and other appropriate locations for appropriate time periods prior to hearings.

Public hearings are often scheduled at the beginning, middle or end of a regular or special meeting. The SWA should adhere to conducting the hearing at its scheduled time regardless of other matters.

**Bylaws:** Bylaws for SWAs are necessary because they let members and the public know how business is conducted.

Bylaws should be adopted by all SWAs. These may include organizational structure, establishing certain standing committees, members' duties and responsibilities, officers, terms of office and succession, the process for calling and carrying out meetings, the establishment of quorums, spending guidelines, record keeping requirements, etc.

Bylaws may be enacted or modified at any time by majority vote of the SWA. They are part of the SWAs permanent public records. Each SWA member should be familiar with the bylaws, and deviations from them are discouraged. Regular

review and updating should be done. Legal counsel should review all Bylaw changes prior to a Board vote.

An example of what Authority's bylaws may contain can be found in Attachment 1D.

**Administrative Rules:** In addition to bylaws, SWAs should adopt their own administrative rules. These rules should cover how public hearings are conducted, costs of duplicating SWA records, procedures for enforcing mandatory disposal and other regulatory activities. SWAs that have developed their own Certificate of Site Approval Application shall consider this document part of the SWA administrative rules.

**Record Keeping:** SWA officers keep a multitude of records. The Comprehensive Litter and Solid Waste Control Plan and the Commercial Solid Waste Facility Siting Plan are permanent documents that should always be available for public review. By statute, they are also available in the office of the clerk of the county commission and in the SWA office. Other permanent records may include but are not limited to annual financial examinations, meeting minutes, legal correspondence, active insurance policies, litigation, and property deeds.

Certain other SWA records have a period of suggested retention. These periods have been established through tax codes, federal and state laws and general practice. These are suggested guidelines and do not have the force of law. Attachment 1E lists suggested retention periods.

**Insurance:** SWAs must carry insurance to cover their mandated activities. SWAs will need general liability insurance. SWAs that operate solid waste facilities should also examine the need for environmental assurance insurance and coverage that includes antitrust actions. SWAs can secure insurance coverage either from the West Virginia Board of Risk and Insurance Management, phone 800-345-4669, or from private insurance carriers. Some Authorities have begun using the WV Counties Risk Pool. The SWMB does not advocate any specific insurance company. Also, adoption of a Safety Plan, Emergency Plan, Sexual Harassment Policies, etc. may help reduce the annual insurance premiums.

**Examination of Financial Records:** The State Auditor's Office, Chief Inspector Division (CID), is charged with conducting or assigning the annual examination of the financial reports of every county and regional SWA. Audits are done at least every third year. An 'examination' can be an audit or review. The major difference between the two is that an audit is more in-depth and requires sampling, examining evidence and conducting tests. Even if you qualify to have a review on your financial records, you can only have them for two years in a row and then an audit must be conducted.

An **audit** is an assessment of the SWAs financial statements, comments on compliance with local orders and ordinances and Federal and State regulations. The auditor is also required to study and evaluate the SWAs system of internal controls, to the extent the auditor considers it necessary.

To qualify for a **review**, a SWA must: 1) not be subject to a single audit requirement under federal regulations (you probably are not), 2) not be required by law or contract to undergo an annual audit (you probably are not), and 3) have expenditures from all sources that are less than \$300,000 during a fiscal year. These qualifying items can be found in W. Va. Code §6-9-7(h).

An exit conference between the auditor and the SWA must be conducted after all field work is completed. The purpose is to present the auditor's findings and obtain SWA responses for use in finalizing the auditor's report. This is not a public meeting.

All examinations, whether audits or reviews, must be coordinated through the CID at 304-558-2540. A wealth of information, including current audits on other public entities, may be reviewed on the CID web page located at, [www.wvsao.gov/chiefinspector](http://www.wvsao.gov/chiefinspector). Independent CPA firms that have been approved by the CID may be used, but their use MUST be coordinated through the CID office. A list of Auditors Office contacts, as well as other useful material, may be found at [www.wvsao.gov/chiefinspector/#Manuals](http://www.wvsao.gov/chiefinspector/#Manuals).

**Uniform Chart of Accounts:** In July 2006, a Uniform Chart of Accounts (UCA) became effective for all SWAs. The intent is to create common revenue and expense account names and to give SWAs a more business-like approach to keeping their books. The UCA is updated periodically and can be downloaded at the SWMB website - - click 'Uniform Chart of Accounts'.

Attachment 1K shows an example of how to use this UCA with your current methods of financial reporting. These are only examples and do not fit every SWA. If you have questions on how to use these new account names, call the SWMB at 304-926-0448.

**The Ethics Act** – W.Va. Code §6B-1, applies to all public servants including SWA Board members and staff. The Ethics Act prohibits any misuse of public resources. The basic underlying principle is that those in public service should use their positions for the public's benefit and not for their own private gain or the private gain of another.

Some of the issues overseen by the Ethics Commission include: private gain and interest; gifts; voting and conflict of interest; financial disclosure; moonlighting and dual compensation; lobbying; and nepotism. If in doubt on an issue, contact the Ethics Commission at 304-558-0664 or 866-558-0664.

Information on the Ethics Act and the W.Va. State Code may be found in Attachment 1F and at [www.ethics.wv.gov](http://www.ethics.wv.gov).

**Freedom of Information Act:** It is public policy of the State of West Virginia that all persons are entitled to full and complete information regarding the affairs of the government. Every person has a right to inspect or copy public records of a public body, it is important for SWAs to create and maintain written records reflecting their activities.

For public records to be viewed, a written request should be submitted to the SWA stating with reasonable specificity the information sought. This request should be signed and dated. The SWA must, within a maximum of five business days, furnish copies of the requested information; advise the requestor of the time and place they may inspect and copy materials; or deny the request stating in writing the reasons for denial.

All audits, plans, maps, bylaws, reports, bid documentation, contacts, policies and procedures are public information. However, information of a personal nature, and internal memoranda or letters received or prepared by a public body are among the items exempted from disclosure. If a request for an item involves a member's, employee's or applicant's right to privacy, the matter should be referred to legal counsel since privacy rights are potentially more important than withholding information.

W.Va. Code § 29B-1-4 lists all 16 exemptions to the Freedom of Information Act (FOIA) this can also be found in Attachment 1G. Most of the exemptions do not relate to solid waste authorities. SWAs are encouraged to develop rules or procedures for handling FOIA Requests. Rules might include the protection of the records and/or the prevention of interference with staff's work duties. Reasonable fees may also be established to reimburse the actual cost in making copies of the records. If the records requested exist in magnetic, electronic or computer form, the SWA shall make copies available on magnetic or electronic media, if so requested. Authorities may create their own FOIA Request Form or use the one found as Attachment 1H.

## **SOLID WASTE AUTHORITY MEETINGS AND PROTOCOL**

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Notice of all meetings must also be made in advance to the public and news media and by individually notifying each Board member. Methods of public notification are: The Secretary of State's Online Meeting Notice on their website; The County Courthouse's bulletin board; the local paper or radio station; the SWAs office door or some other highly visible place at the office; and on the SWAs website. SWA bylaws should state when and where meetings are held and how public notice will be given.

NOTES

A guide to West Virginia Open Governmental Proceeding Act and an Open Meetings Checklist may be found in [Attachment 1C](#).

**Agendas** must include every issue that will be discussed and especially any matter requiring official action. A sample Agenda may be found in [Attachment 1I](#).

A typical meeting agenda may include the following elements:

- Open Meeting and Roll Call.
- Approval of Minutes.
- Financial Reports.
- Standing Committee Reports.
- Director's Report (May be Chairman or Recycling Coordinator Report).
- Unfinished Business (specific).
- New Business (specific).
- Miscellaneous Business.
- Public Comment.
- Schedule Next Meeting.
- Adjournment.

A week prior to the upcoming meeting, or as prescribed in the bylaws, each Board member should receive a board packet containing the upcoming meeting notice and agenda, minutes from the previous meeting, financial information, any reports to be presented, significant incoming or outgoing correspondence, unfinished and/or new business to be addressed and the pertinent documentation.

A copy of the meeting notice and agenda should be posted at the County Courthouse at least three business days prior to the meeting. Once the agenda has been issued, it may only be amended up to two business days in advance of the meeting. The meeting should also be advertised in the local paper and copies of the meeting agenda should be available to the general public. Copies should also be kept on file.

**Special meetings** are held when there is a need to address matters before the next regularly scheduled meeting. Public notice for special meetings must include the date, time, place and purpose of the meeting. The Agenda must be posted at least two business days in advance of the meeting.

**Emergency meetings** are meetings called for the purpose of addressing an unexpected event, which requires immediate attention because it poses:

1. A threat to public health or safety.
2. A threat of damage to public or personal property.
3. A potential material financial loss or other potential substantial harm to a public agency.

Public notification must be given as soon as practicable prior to the meeting and include date, time, place and emergency. Meetings may be held by telephone conference or other electronic means, only if all Board members can hear and be heard by each other and by the media or the public present at the meeting.

**Minutes** - W.Va. Code §6-9A-5 requires written minutes to be taken of all SWA meetings. Minutes must include the date, time and place of the meeting; the name of each board member whether they are present or absent; all motions, proposals, etc., the person proposing the action and their disposition; and the results of all votes.

Most Authorities record their meetings then transcribe the minutes. According to Robert's Rules of Order, minutes must be approved by the Board and signed by the Secretary before they are official. Minutes do not have to be typed but must be legible and proper grammar and punctuation should be used. The minutes are an official permanent document representing the SWA. An example of proper minutes may be found in [Attachment 1J](#).

**Executive Sessions:** SWAs may hold an executive session (closed meeting) during a regular, special, or emergency meeting. Prior to convening an executive session, the presiding officer shall identify the authorization, under W. Va. Code §6-9A-4, for holding the session. To enter a session, a majority affirmative vote must be received. Such sessions should be used sparingly, and no decisions may be made in such sessions.

The SWA is not required to keep minutes of such sessions. If minutes are taken, they are subject to the Freedom of Information Act and may be used in litigation.

Executive sessions should be used for interviewing persons making proposals pursuant to a Request for Proposal (RFP), so subsequent interviewers are not given an unfair advantage. Other items that should be discussed behind closed doors include disciplining or discharge of personnel, discussion of certain financial matters and issues relating to pending litigation. Discussions in sessions with legal counsel, employees or others should remain confidential. After the conclusion of an executive session, the regular meeting is reconvened. Discussions held in executive session may result in actions being taken by motion and seconding in an open meeting with or without further discussion.

Executive sessions conducted with permit applicants or opponents are strongly discouraged. It is conceivable that a request for such might be made under some circumstances. In that case, the matter should be promptly referred to legal counsel.

**Public Comment** – SWAs are encouraged to develop rules and procedures for allowing the public the opportunity to address the board during public meetings. Citizens may request to be put on the board’s agenda as part of the regular meeting.

The Ethics Commission has ruled that although public bodies are not required to allow a “public comment period” as a part of their public meetings they are encouraged to do so. SWAs may decide to include public comment as part of their agenda. Limits may be placed on the length of time an individual can speak. A public response from the SWA is not required. All comments should be documented in the meeting minutes.

**Parliamentary Procedure:** The SWAs meeting should follow general parliamentary procedure also known as Robert’s Rules of Order, and the format must be in accordance with the SWAs bylaws. Meetings should start on time. A basic knowledge of parliamentary procedure keeps SWA meeting running smoothly and ensure decisions made by the SWA are done in an administratively correct manner. Parliamentary procedures available to SWAS include all those in use by similar governmental bodies across the United States. All actions should be undertaken by a proper motion and a second to the motion. There should be a motion on the floor in order to discuss certain items of business; this does not apply to minutes, reports or correspondence, which often are accepted at the conclusion of presentation and discussion.

A quorum of three, or in the case of a regional solid waste authority, the majority of members, is required at all meetings to conduct business. Important actions should not be taken without a majority vote. If allowed in the SWAs bylaws, Board members may participate in meetings via conference call.

Consideration may be made when vacancies exist, where a legal quorum is also a majority of available members.

Motions may be made and seconded and then amendments, including the seconding of amendments. Amendments should be voted on in reverse order until the original motion as amended is considered. The Secretary or other person responsible for the minutes must be acutely aware of the correct wording of each motion and amendment.

Items must be reconsidered, tabled or deferred until a subsequent agenda, but all items of unfinished and new business should have some disposition. Minutes and written reports should be acted on as quickly as possible.

**Board Meeting Protocol:** An example of a typical SWA meeting agenda may be seen in [Attachment 1J](#). Agendas must include every issue that will be discussed and especially any matter requiring official action. The Agenda may be amended up to two business days before the meeting then reposted.

**Roll Call:** Meetings are called to order by the Chair, or Vice-chair in the absence of the presiding officer. To conduct business at any regular or special meeting three of the five members or a legal quorum for a county SWA, or a majority of a regional SWAs membership, is required.

**Approval of Minutes:** It is not necessary to read the minutes aloud. The Board can simply vote to approve (or amend if needed).

A record of all SWA minutes must be kept on file permanently. See [Attachment 1J](#) for an example of meeting minutes.

**Financial Reports:** Members and especially the Treasurer should be wary of submitting any large items or unusual transactions as part of the Financial report unless approval has been given in a previous meeting. Monthly or regular routine expenses like rent, utilities and payroll are approved by the acceptance of the Treasurer's report, unless otherwise stated by law or the SWAs bylaws. See [Attachment 1K](#) for an example of a simple Financial Report and an extended Treasurer's Report, incorporating the SWAs Uniform Chart of Accounts.

**Standing Committee Reports.** Authorities may have created standing committees consisting of members, of cooperating agencies or municipal representatives, community group members or private citizens to deal with facility siting, dump cleanups or recycling programs. Reports from these committees and those from consultants are normally received at this time unless the item has been scheduled under old business. It is not advisable to "skip around" on a set agenda, although it is often expedient for matters of time. Changes in the agenda order should be voted on and receive a majority vote.

**Director's Report:** The Director may then report on projects, ongoing programs or incoming/outgoing SWA correspondence. Correspondence consists of any letters or communication received. The person receiving the correspondence should share them with all other SWA members. Unless it must be dealt with in executive session, it should be discussed. A SWA which receives a lot of correspondence may choose not to copy every item for each member but give each member the opportunity to view them. Discretion should be exercised in making correspondence of a confidential nature available to the public.

In lieu of a Director, an authority may choose to provide a Chairman's Report or Recycling Coordinator's Report.

**Unfinished Business** is items, other than reports, that have been dealt with previously and have been carried over from previous meetings.

**New Business** items may be placed on the agenda by any SWA member or a member of the public, who may request the opportunity to address the Authority. The bylaws may require requests to address the Authority be made in writing by a specific time in advance of the meeting agenda being published. This applies to individuals other than members, employees, consultants or cooperating agencies (including appointing agencies, SWMB, county agencies or municipalities). New business should not be raised at special meetings unless provided for in the meeting notice and should generally not be raised from the floor by private citizens, although SWAs should be reasonable in interpreting such rules.

**Miscellaneous Business** should be next on the Agenda. This item is for announcements, comments or anything of a miscellaneous nature, that does not require any action.

**Public Comment** should always be permitted at a meeting. The SWA may limit the number of minutes a non-member may comment. The presiding officer should avoid letting comments turn into a debate on an issue. At the same time, the presiding officer should be as courteous as possible and appreciative of the involvement of concerned citizens. Public comments may be elicited by having citizens use a "sign-up sheet" in advance and should be heard in signature order. The SWA should undertake no action on any issue raised in public comment at that time, but such comment may be made the subject of a special meeting or placed on the agenda of the next regular meeting.

**Next Meeting and Adjournment.** The date, time and place of the next meeting should be announced. The Chair can then adjourn the meeting.

## **PURCHASING AND SPENDING GUIDELINES**

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Spending guidelines should be established by individual SWAs as part of their bylaws. Additionally, a purchasing policy outlining how purchases are made should be developed. The West Virginia Purchasing Division has maintained certain minimum procedures and guidelines applicable to all spending units of the state in W. Va. Code §5A-3 and W. Va. Code Rules §148-1. While not spending units of the state, SWAs are public agencies, spend public monies and should adhere as closely as possible to the guidelines in the WV Purchasing Division's Procedures Handbook. Alternatively, the purchasing policy of your county

commission could be used as an example when developing your policy. WV Purchasing Division's Website:

[www.state.wv.us/admin/purchase/Handbook/default.html](http://www.state.wv.us/admin/purchase/Handbook/default.html).

Purchasing guidelines should set limits above which amounts competitive bids must be taken. Competitive bids may be verbally solicited for certain intermediate priced items but to ensure that each vendor was asked the same questions they should be documented on a standard form. Sealed bids are required for more expensive items. Some inexpensive purchases, the kind made from petty cash, can be made without using the guidelines. Receipts for all petty cash purchases should be kept, reconciled and reported in the treasurer's monthly report. Office supplies typically may be purchased at a store where the SWA maintains an account or the Authority may utilize a state contract.

A threshold should be established for purchases that can be made by the Director without SWA Board approval. Also, the dollar guidelines of the State Purchasing Division may be adapted to fit the size and financial situation of your Authority.

For example, general purchasing guidelines suitable for a SWA that does not operate a solid waste facility may be as follows:

\$0 - \$500: competitive bids recommended, but not required.

\$501 - \$1,000: three verbal bids required (must be documented on standard form).

\$1,001 - \$5,000: three written bids required.

\$5,001 - upward: advertise for Public Bid.

A larger Authority, or one that operates a solid waste facility, may have guidelines closer to the ones below:

\$0 - \$2,500: competitive bids recommended, but not required.

\$2,501 - \$5,000: three verbal bids required (must be documented on standard form).

\$5,001 - \$25,000: three written bids required.

\$25,001 - upward: advertise for Public Bid.

When soliciting written bids, SWAs also should distinguish between Requests For Quotation (RFQ) and Requests For Proposals (RFP).

NOTES

RFQs are used to solicit written bids for all tangible property, such as goods and services. They contain the specifications or scope of work and all contractual terms and conditions. Conformity to the specifications and price are the only factors used for evaluating an RFQ.

Specifications for RFQs should be made available to bidders in advance. Since it is important to have proper specifications available to solicit bids, SWA members should consult with individuals knowledgeable about such matters, even if such consultation is with a potential bidder. It is important that all vendors, not just those registered with the state, have the opportunity to bid in order that the public obtain the most for its money.

RFPs are used for high-value professional services when you are not sure what you want and where price is not the sole determining factor - - award will be based on a combination of cost and technical scores. This is called Best Value Procurement and is used very infrequently.

RFPs are often made for consulting services. The SWA invites vendors or consultants to propose a program or product to fill a certain need and the SWA selects a proposal based on factors other than the mere price and related terms.

A file should be kept on all purchases, bid documentation, etc. for at least five years after your annual financial audit. The WV Purchasing Division's Procedures Handbook provides more detailed information. SWAs are encouraged to purchase recycled content products when feasible.

**State Cooperative Purchasing Program:** SWAs can utilize State contracts for the purchase of many items, without going through the bidding process. If a SWA chooses to order from a State contract, it may do so by writing a State Contract Order (SCO) or Purchase Order. The vendor must honor such orders, treating the local SWA as if it were a spending unit of the State. For more information, contact the WV Division of Purchasing at 304-558-2306 or visit their website, [www.state.wv.us/admin/purchase](http://www.state.wv.us/admin/purchase).

**State Surplus Property:** SWAs may register with the State as a buyer of surplus properties. SWAs may also sell properties through this avenue. For information, you can contact the WV Division of Purchasing, Surplus Property, at 304-766-2626 or toll free at 800-576-7587 or visit their website at: [www.state.wv.us/admin/purchase/surplus](http://www.state.wv.us/admin/purchase/surplus).

## QUESTIONS AND ANSWERS ON SOLID WASTE AUTHORITY ADMINISTRATION

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### **Q. What are Solid Waste Authorities?**

A. Solid Waste Authorities are public agencies, created by the Legislature in 1989. Although they are technically not State or County government, they are public bodies and considered local government. SWAs are not non-profit corporations. They should abide by WV laws and rules as closely as possible.

### **Q. Should solid waste authorities adopt bylaws?**

A. Yes. SWAs should adopt bylaws governing the election of officers, duties, special committees, meetings, etc.

### **Q. How long may a person serve on a SWA?**

A. There is no rule against members serving more than one term.

### **Q. When a Board member's term expires and their reappointment or replacement is not yet known, what should be done?**

A. The Board member serves until either the member is reappointed, or a successor is appointed.

### **Q. When is a member required to abstain from voting on a matter due to conflict of interest?**

A. When a member has a direct financial interest in the outcome of a vote to award a contract, grant, permit or change of policy that affects a business organization (person, partnership or corporation) in which he or she maintains a substantial ownership interest, fiduciary interest, or is employed in a capacity related to the subject matter, he or she must abstain. Engineers, lawyers, accountants and other consultants, and those who do a significant volume of business with such business organizations should decide whether they do or do not have a conflict but should disclose the nature of any potential conflict or perceived potential conflict before voting. When in doubt, call the Ethics Commission at 304-558-0664.

### **Q. What laws regulate the conduct of meetings and other business of solid waste authorities?**

A. Several laws and regulations guide the conduct of solid waste authorities. These include, but are not limited to, the following:

- W. Va. Code §22C-4, entitled County and Regional Solid Waste Authorities.
- Federal and State Tax laws.
- Federal and State Labor laws.
- Purchasing rules and regulations, as adopted by each SWA.
- Freedom of Information Act.

- Open Governmental Proceedings Act.
- Bylaws of the Authority.

SWA meetings should be conducted in accordance with Robert's Rules of Order.

**Q. May an appointing body tell a designated member how to vote on a given issue?**

A. This sort of control is not provided under the statute. Individual members serve a larger constituency than the appointing body and should vote their own consciences. The appointing body has the discretionary power to decline reappointment to any member when the term expires. SWA representatives do not serve at the will and pleasure of the appointing bodies and cannot be removed until their term has expired.

**Q. How often must a SWA have an audit conducted?**

A. A financial examination should be conducted annually. An audit must be done every third year.

**Q. Must SWAs follow the WV Purchasing Division's guidelines?**

A. SWAs should follow WV Purchasing Division's guidelines to the best of their ability, considering they are not technically a spending unit.

# Chapter 1: Attachments

**ATTACHMENT 1A:  
SOLID WASTE AUTHORITY TERM CHARTS**

**County Solid Waste Authorities**

	Previous Terms												New Terms																				
Appointing Agency	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
DEP																																	
Co. Commission																																	
PSC																																	
Co. Commission																																	
Conservation Dist.																																	

**Regional Solid Waste Authorities**

	Previous Terms												New Terms																				
Appointing Agency	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
DEP																																	
Municipality																																	
Co. Commission																																	
PSC																																	
Municipality																																	
Co. Commission																																	
Conservation Dist.																																	

Terms are for a four-year (4) period and start on July 1<sup>st</sup> of the respective year. Regardless of the appointment date during that four-year time period, the ending date for that term is June 30<sup>th</sup> of the set term span. WV Code §22C-4-3(b).

**§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.**

(b) The authority board of directors is comprised of five members who are appointed as follows: One by the director of the Division of Environmental Protection, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by the chairman of the Public Service Commission. The members of the board are appointed for terms of four years for which the initial shall start on July 1, 1988: Provided, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter: Provided, however, That on and after July 1, 2000, the member appointed by the director of the Division of Environmental Protection shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter: Provided further, That the member appointed by the chairman of the Public Service Commission shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

## APPOINTING AGENCY CONTACT INFORMATION

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### Department of Environmental Protection

Austin Caperton, Cabinet Secretary

601 57<sup>th</sup> St. SE

Charleston, WV 25304

Phone: 304-926-0440

Website: [www.dep.wv.gov](http://www.dep.wv.gov)

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### Public Service Commission

Charlotte R. Lane, Chairman

201 Brooks Street

Charleston, WV 25301

Website: [www.psc.state.wv.us](http://www.psc.state.wv.us)

Phone: 304-340-0306

Toll Free: 800-344-5113

For questions regarding appointments, contact:

**Jerry Bird, Director of Government Relations**

Phone: 304-340-0843

**Laura Sweeney, Secretary**

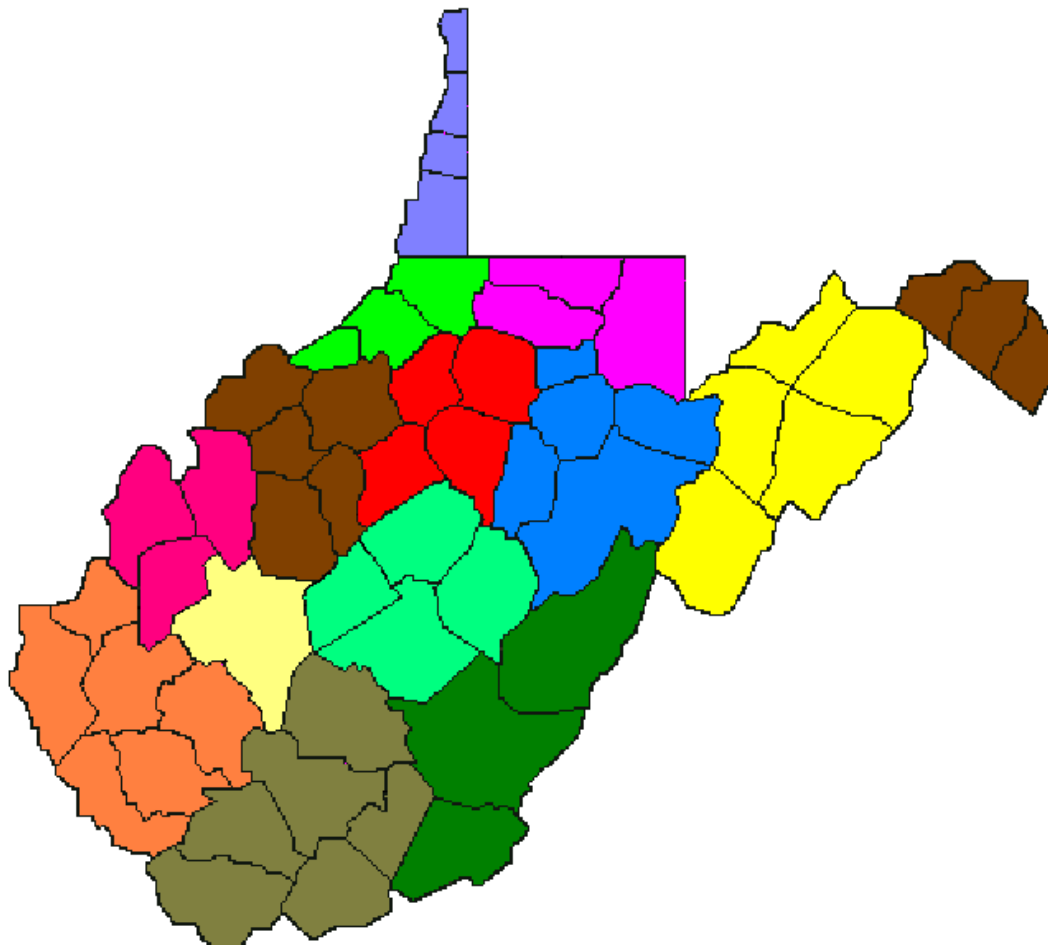
Phone: 304-340-0301

Fax: 304-340-3758

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### WV Conservation Districts

Website: [www.wvca.us](http://www.wvca.us)



## CONSERVATION DISTRICT CONTACT INFORMATION

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### CAPITOL (CCD)

Kanawha

418 Goff Mountain Rd. Suite 102  
Cross Lanes, WV 25313  
Phone: 304-759-0736 Fax: 304-776-5326  
Email: [ccd@wvca.us](mailto:ccd@wvca.us)

### EASTERN PANHANDLE (EPCD)

Berkeley, Jefferson, Morgan

151 Aikens Center, Suite 2  
Martinsburg, WV 25404  
Phone: 304-263-4376 Fax: 304-263-4986  
Email: [epcd@wvca.us](mailto:epcd@wvca.us)

### ELK (ECD)

Braxton, Clay, Nicholas, Webster

740 Airport Road  
Sutton, WV 26601  
Phone: 304-765-2535 Fax: 304-765-9635  
Email: [ecd@wvca.us](mailto:ecd@wvca.us)

### GREENBRIER VALLEY (GVCD)

Greenbrier, Monroe, Pocahontas

179 Northridge Drive  
Lewisburg, WV 24901  
Phone: 304-645-6173 Fax: 304-645-4755  
Email: [gvcd@wvca.us](mailto:gvcd@wvca.us)

### GUYAN (GCD)

Boone, Cabell, Lincoln, Logan, Mingo, Wayne

2631 5<sup>th</sup> Street Road  
Huntington, WV 25701  
Phone: 304-528-5718 Fax: 304-697-4164  
Email: [gcd@wvca.us](mailto:gcd@wvca.us)

### LITTLE KANAWHA (LKCD)

Calhoun, Ritchie, Roane, Wirt, Wood

91 Boyles Lane  
Parkersburg, WV 26104  
Phone: 304-422-9088 Fax: 304-422-9086  
Email: [lkcd@wvca.us](mailto:lkcd@wvca.us)

### MONONGALIA (MCD)

Marion, Monongalia, Preston

201 Scott Avenue  
Morgantown, WV 26508  
Phone: 304-296-0081 Fax: 304-285-3151  
Email: [mcd@wvca.us](mailto:mcd@wvca.us)

### NORTHERN PANDANGLE (NPCD)

Brooke, Hancock, Marshall, Ohio

1 Ballpark Drive  
McMechen, WV 26040  
Phone: 304-238-1231 Fax: 304-242-7039  
Email: [npcd@wvca.us](mailto:npcd@wvca.us)

### POTOMAC VALLEY (PVCD)

Grant, Hampshire, Hardy, Mineral, Pendleton

500 East Main Street  
Romney, WV 26757  
Phone: 304-822-5174 Fax: 304-822-3728  
Email: [pvcd@wvca.us](mailto:pvcd@wvca.us)

### SOUTHERN (SCD)

Fayette, McDowell, Mercer, Raleigh, Summers, Wyoming

463 Ragland Road  
Beckley, WV 25801  
Phone: 304-253-0261 Fax: 304-253-0238  
Email: [scd@wvca.us](mailto:scd@wvca.us)

### TYGARTS VALLEY (TVCD)

Barbour, Randolph, Taylor, Tucker, Upshur

16346 Barbour County Hwy  
Philippi, WV 26416  
Phone: 304-457-3026 Fax: 304-457-6927  
Email: [tvcd@wvca.us](mailto:tvcd@wvca.us)

### UPPER OHIO (UOCD)

Pleasants, Tyler, Wetzel

201 Underwood Street  
Middlebourne, WV 26149  
Phone: 304-758-2512 Fax: 304-758-5007  
Email: [uocd@wvca.us](mailto:uocd@wvca.us)

### WEST FORK (WFCD)

Doddridge, Gilmer, Harrison, Lewis

87 Ollie Lane Ste. 104  
Mt. Clare, WV 26408  
Phone: 304-627-2160 Fax:  
Email: [wfcd@wvca.us](mailto:wfcd@wvca.us)

### WESTERN (WCD)

Jackson, Mason, Putnam

224-C First Street  
Pt. Pleasant, WV 25550  
Phone: 304-675-3054 Fax: 304-675-3054  
Email: [wcd@wvca.us](mailto:wcd@wvca.us)

## COUNTY COMMISSION CONTACT INFORMATION

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### **Barbour County Commission**

Barbour County Courthouse  
26 North Main Street  
Philippi, WV 26416  
Phone: 304-457-4339 Fax: 304-457-5472

### **Boone County Commission**

Boone County Courthouse  
206 Court Street #300  
Madison, WV 25130  
Phone: 304-369-7301 Fax: 304-369-7306

### **Brooke County Commission**

Brooke County Courthouse  
632 Main Street  
Wellsburg, WV 26070  
Phone: 304-737-3668 Fax: 304-737-4023

### **Calhoun County Commission**

Calhoun County Courthouse  
363 Main Street  
Grantsville, WV 26147  
Phone: 304-354-6725 Fax: 304-354-6725

### **Doddridge County Commission**

Doddridge County Courthouse  
108 Court St., Room 102  
West Union, WV 26456  
Phone: 304-873-2631 Fax: 304-873-1840

### **Gilmer County Commission**

Gilmer County Courthouse  
10 Howard Street  
Glennville, WV 26351  
Phone: 304-462-7641 Fax: 304-462-7038

### **Greenbrier County Commission**

Greenbrier County Courthouse  
912 Court Street N.  
Lewisburg, WV 24901  
Phone: 304-647-6689 Fax: 304-647-6694

### **Hancock County Commission**

Hancock County Courthouse  
PO Box 485  
New Cumberland, WV 26047  
Phone: 304-564-3311 Fax: 304-564-4059

### **Berkeley County Commission**

Berkeley County Courthouse  
400 W. Stephen St. Suite 201  
Martinsburg, WV 25401  
Phone: 304-264-1923 Fax: 304-267-5049

### **Braxton County Commission**

Braxton County Courthouse  
300 Main Street  
Sutton, WV 26601  
Phone: 304-765-2835 Fax: 304-765-2093

### **Cabell County Commission**

Cabell County Courthouse  
750 5<sup>th</sup> Avenue, Suite 300  
Huntington, WV 25701  
Phone: 304-526-8634 Fax: 304-526-8648

### **Clay County Commission**

Clay County Courthouse  
PO Box 190  
Clay, WV 25043  
Phone: 304-587-4259 Fax: 304-587-7329

### **Fayette County Commission**

Fayette County Courthouse  
100 Court Street  
Fayetteville, WV 25840  
Phone: 304-574-4290 Fax: 304-574-4255

### **Grant County Commission**

Grant County Courthouse  
5 Highland Avenue  
Petersburg, WV 26847  
Phone: 304-257-4422 Fax: 304-257-9645

### **Hampshire County Commission**

Hampshire County Courthouse  
PO Box 806  
Romney, WV 26757  
Phone: 304-822-5112 Fax: 304-822-4039

### **Hardy County Commission**

Hardy County Courthouse  
204 Washington Street  
Moorefield, WV 26836  
Phone: 304-530-0250 Fax: 304-530-0251

**Harrison County Commission**

Harrison County Courthouse  
301 W. Main Street  
Clarksburg, WV 26301  
Phone: 304-624-8500 Fax: 304-624-8673

**Jefferson County Commission**

Jefferson County Courthouse  
124 E Washington Street  
Charles Town, WV 25414  
Phone: 304-728-3284 Fax: 304-728-7916

**Lewis County Commission**

Lewis County Courthouse  
110 Center Avenue, 2<sup>nd</sup> Floor  
Weston, WV 26452  
Phone: 304-269-8200 Fax: 304-269-2416

**Logan County Commission**

Logan County Courthouse  
300 Stratton Street #103  
Logan, WV 25601  
Phone: 304-792-8626 Fax: 304-792-8511

**Marshall County Commission**

Marshall County Courthouse  
PO Drawer B  
Moundsville, WV 26041  
Phone: 304-845-0482 Fax: 304-843-1074

**McDowell County Commission**

McDowell County Courthouse  
109 Wyoming Street  
Welch, WV 24801  
Phone: 304-436-8548 Fax: 304-436-8572

**Mineral County Commission**

Mineral County Courthouse  
150 Armstrong Street  
Keyser, WV 26726  
Phone: 304-788-5921 Fax: 304-788-4109

**Monongalia County Commission**

Monongalia County Courthouse  
243 High Street  
Morgantown, WV 26505  
Phone: 304-291-7257 Fax: 304-291-7288

**Jackson County Commission**

Jackson County Courthouse  
214 East Main Street  
Ripley, WV 25271  
Phone: 304-373-2220 Fax: 304-373-0245

**Kanawha County Commission**

Kanawha County Courthouse  
407 Virginia St. E  
Charleston, WV 25301  
Phone: 304-357-0101 Fax: 304-357-0788

**Lincoln County Commission**

Lincoln County Courthouse  
PO Box 497  
Hamlin, WV 25523  
Phone: 304-824-7990 Fax: 304-824-2012

**Marion County Commission**

Marion County Courthouse  
200 Jackson Street  
Fairmont, WV 26554  
Phone: 304-367-5400 Fax: 304-367-5431

**Mason County Commission**

Mason County Courthouse  
200 6<sup>th</sup> Street  
Point Pleasant, WV 25550  
Phone: 304-675-1110 Fax: 304-675-4982

**Mercer County Commission**

Mercer County Courthouse  
1501 Main Street, Suite 210  
Princeton, WV 24740  
Phone: 304-487-8306 Fax: 304-487-8370

**Mingo County Commission**

Mingo County Courthouse  
75 East 2<sup>nd</sup> Avenue, Room 308  
Williamson, WV 25661  
Phone: 304-235-0380 Fax: 304-235-0365

**Monroe County Commission**

Monroe County Courthouse  
PO Box 350  
Union, WV 24983  
Phone: 304-722-3096 Fax: 304-772-4191

**Morgan County Commission**

Morgan County Courthouse  
77 Fairfax Street, Room 101  
Berkeley Springs, WV 25411  
Phone: 304-258-8540 Fax: 304-258-7305

**Ohio County Commission**

Ohio County Courthouse  
1500 Chapline Street  
Wheeling, WV 26003  
Phone: 304-234-3628 Fax: 304-234-3827

**Pleasants County Commission**

Pleasants County Courthouse  
301 Court Lane, Room 101  
St. Marys, WV 26170  
Phone: 304-684-3542 Fax: 304-684-7569

**Preston County Commission**

Preston County Courthouse  
106 West Main Street, Suite 202  
Kingwood, WV 26537  
Phone: 304-329-1805 Fax: 304-329-3192

**Raleigh County Commission**

Raleigh County Courthouse  
116 ½ Heber Street  
Beckley, WV 25801  
Phone: 304-255-9146 Fax: 304-255-9166

**Ritchie County Commission**

Ritchie County Courthouse  
115 East Main Street  
Spencer, WV 25276  
Phone: 304-643-2164 Fax: 304-643-2906

**Summers County Commission**

Summers County Courthouse  
120 Ballengee Street  
Hinton, WV 25951  
Phone: 304-466-7100 Fax: 304-466-7146

**Tucker County Commission**

Tucker County Courthouse  
215 1st Street  
Parsons, WV 26287  
Phone: 304-478-2866 Fax: 304-478-2446

**Nicholas County Commission**

Nicholas County Courthouse  
700 Main Street, Suite #1  
Summersville, WV 26651  
Phone: 304-872-7830 Fax: 304-872-9602

**Pendleton County Commission**

Pendleton County Courthouse  
100 S Main St.  
Franklin, WV 26804  
Phone: 304-358-7573 Fax: 304-358-2473

**Pocahontas County Commission**

Pocahontas County Courthouse  
900C Tenth Avenue  
Marlinton, WV 24954  
Phone: 304-799-6063 Fax: 304-799-6747

**Putnam County Commission**

Putnam County Courthouse  
12093 Winfield Road  
Winfield, WV 25213  
Phone: 304-586-0237 Fax: 304-586-0200

**Randolph County Commission**

Randolph County Courthouse  
4 Randolph Avenue  
Elkins, WV 26241  
Phone: 304-636-2057 Fax: 304-636-5969

**Roane County Commission**

Roane County Courthouse  
200 Main Street #1  
Harrisville, WV 25276  
Phone: 304-927-0078 Fax: 304-927-0079

**Taylor County Commission**

Taylor County Courthouse  
214 W. Main Street  
Grafton, WV 26354  
Phone: 304-265-1401 Fax: 304-265-5450

**Tyler County Commission**

Tyler County Courthouse  
PO Box 66  
Middlebourne, WV 26149  
Phone: 304-758-2102 Fax: 304-758-2126

**Upshur County Commission**

Upshur County Courthouse  
38 W. Main Street  
Buckhannon, WV 26201  
Phone: 304-472-0535 Fax: 304-472-2399

**Webster County Commission**

Webster County Courthouse  
2 Court Square Ste G1  
Webster Springs, WV 26288  
Phone: 304-847-5780 Fax: 304-847-5780

**Wirt County Commission**

Wirt County Courthouse  
PO Box 53  
Elizabeth, WV 26143  
Phone: 304-275-4271 Fax: 304-275-3418

**Wyoming County Commission**

Wyoming County Courthouse  
PO Box 309  
Pineville, WV 24874  
Phone: 304-732-8000 Fax: 304-732-2726

**Wayne County Commission**

Wayne County Courthouse  
700 Hendricks St. #103  
Wayne, WV 25570  
Phone: 304-272-6350 Fax: 304-272-6348

**Wetzel County Commission**

Wetzel County Courthouse  
200 Main Street  
New Martinsville, WV 26155  
Phone: 304-455-8217 Fax: 304-455-5256

**Wood County Commission**

Wood County Courthouse  
1 Court Square Ste 203  
Parkersburg, WV 26101  
Phone: 304-424-1984 Fax: 304-424-0194

**ATTACHMENT 1B:**  
**W. Va. Code §22C-4-23**

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**§22C-4-23. Powers, duties and responsibilities of authority generally.**

The authority may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the following:

- (1) Sue and be sued, plead and be impleaded and have and use a common seal.
- (2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.
- (3) The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.
- (4) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.
- (5) To promulgate such rules as may be proper and necessary to implement the purposes and duties of this article.
- (6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.
- (7) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein.
- (8) Make available the use or services of any solid waste facility collection, transportation and processing facilities related thereto, to any person, partnership, corporation or governmental agency consistent with this article.
- (9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and duties.
- (10) Make and enter all contracts, leases and agreements and to execute all instruments necessary or incidental to the performance of its duties and powers.
- (11) Employ managers, engineers, accountants, attorneys, planners and such other professional and support personnel as are necessary in its judgment to carry out the provisions of this article.
- (12) Receive and accept from any source such grants, fees, real and personal property, contributions, funds transferred from a solid waste facility and funds of any nature as may become available to the authority, in order to carry out the purposes of this article including but not limited to the development, operation or management

of litter control programs and recycling programs: *Provided*, That nothing contained in this subsection shall be construed to extend the authority or jurisdiction of the public service commission to activities under this subsection solely because the activities are funded by moneys transferred from a solid waste facility, nor may the use of transferred funds by a solid waste authority be considered by the public service commission in carrying out its duties under section one-f, article two, chapter twenty-four of this code.

(13) Cooperate with and make such recommendations to local, state and federal government and the private sector in the technical, planning and public policy aspects of litter control and solid waste management as the authority may find appropriate and effective to carry out the purposes of this article.

(14) Charge, alter and collect rentals, fees, service charges and other charges for the use or services of any solid waste facilities or any solid waste collection, transportation and processing services provided by the authority.

(15) Prohibit the dumping of solid waste outside the hours of operation of a solid waste facility.

(16) Enforce the hours of operation of a solid waste facility and the mandatory disposal provision in section ten of this article by referring violations to the division of environmental protection or the appropriate law-enforcement authorities.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority by this article and powers conferred upon the authority by this article.

All rules promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of this code.

# ATTACHMENT 1C: OPEN GOVERNMENTAL PROCEEDINGS ACT

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## Open Meetings Checklist



### MEETINGS

Most gatherings of a quorum of members of a public body to discuss and deliberate toward a decision on matters requiring official action are subject to the requirements set forth below:

#### Notice

##### For State Agencies *Only*

- Are notices of all regular and special meetings stating the date, time, place and purpose of the meeting filed electronically with the West Virginia Secretary of State's Office for publication on the Secretary of State's website at least five business days in advance of each meeting? W.Va. Code §6-9A-3(h)

##### For **ALL** Governing Bodies of Public Agencies

- Has the governing body established rules for issuing notice of the date, time, place and agenda of all regular meetings, and the date, time, place and purpose of all special meetings? W.Va. Code § 6-9A-3. If not, the Ethics Commission's Committee on Open Governmental Meetings has concluded that a governing body may provide reasonable advance notice of the items to be acted upon as follows:

At regular meetings: by posting the meeting notice and making the meeting agenda available at least three business days in advance of each meeting. Public bodies that meet at least weekly need only two business days of advance notice. O.M.A.O. 2007-09. Once an agenda has been issued, the agenda may only be amended up to two business days in advance of the meeting.

At special meetings: by posting the meeting notice and making the meeting agenda available at least two business days in advance of each meeting.

At emergency meetings that require immediate official action: as soon as practicable. The emergency meeting notice must also state the purpose of the meeting and the facts and circumstances of the emergency. W.Va. Code § 6-9A-3(h).

- Are notices of all meetings posted in a public place, such as the agency's office, the County Courthouse and/or the local Post Office in advance of the meeting? W.Va. Code § 6-9A-3(d)
- In calculating the notice period, are the date of the meeting, legal holidays, Saturdays and Sundays excluded? Half-day holidays may be included in calculating the notice period.

### **Agendas**

- Does the meeting agenda reasonably describe all matters requiring official action by the governing body that will be dealt with at the meeting or at a later meeting?

A governing body is not required to indicate whether a matter is anticipated to be taken up in executive session.

- Has the meeting agenda either been posted in a public place at the governing body's central office, or have copies of the agenda been made available to be picked up at the same location during regular working hours. O.M.A.O. 2006-15

### **Executive Sessions**

- Before holding an executive session, has the matter been included on the agenda?
- Has the governing body:
  - 1) Determined by a majority vote to hold an executive session to consider one of the actions permitted under the Open Meetings Act, and
  - 2) Identified to the public and to the governing body the authorization in the Act which permits such executive session? W.Va. Code § 6-9A-4(a) & (b)

The Committee on Open Governmental Meetings has concluded that governing bodies may comply with the requirement in (2) above by describing the subject matter for which an exemption in the Act authorizes an executive session rather than reciting the applicable numbered section in the W. Va. Code. Further, while certain privileged matters may be discussed in executive session, most matters requiring official action, excluding, for example, rulings on student disciplinary matters and developing security procedures, must be voted upon in public.

### **Voting**

- Are all votes conducted by voice, show of hands or by rising, without use of a secret or written ballot? W.Va. Code § 6-9A-8(b)

### **Minutes**

- Are meeting minutes prepared and made available to the public and media one business day after the next regular meeting?

- Do the minutes reflect the date, time and place of the meeting? W.Va. Code § 6-9A-5(1)
- Do the minutes reflect the name of each member of the governing body who was present and absent? W.Va. Code § 6-9A-5(2)
- Are all motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing same, and their disposition, reflected in the minutes? W.Va. Code § 6-9A-5(3)
- If the meeting was an emergency meeting, are the facts and circumstances of the emergency explained in the minutes?
- Are the results of all votes reflected in the minutes? W.Va. Code § 6-9A-5(4)
- If a member requested a roll call vote on a particular matter, pursuant to applicable rules of the governing body, is the vote of each member by name reflected in the minutes? W.Va. Code § 6-9A-5(4)

### **Other**

- If a public comment period is provided at any time during the meeting, are members of the public allowed to address the governing body without being required to register more than 15 minutes before the start of the meeting? W.Va. Code § 6-9A-3

The Open Meetings Act does not require governmental bodies to provide public comment periods.

- Are members of the public and media permitted to record or broadcast the open portion of a meeting so long as their filming or recording does not unduly interfere with the conduct of the meeting? W.Va. Code § 6-9A-9(a) & (b)
- If the governing body elects to convene with one or more members participating by telephone, are the members telephonically participating audible to all those personally present, including the public and media?

#### **WEST VIRGINIA ETHICS COMMISSION**

210 BROOKS STREET, SUITE 300

CHARLESTON WV 25301-1804

(304) 558-0664 - FAX (304) 558-2169

ethics@wv.gov [www.ethics.wv.gov](http://www.ethics.wv.gov)

## **ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.**

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### **§6-9A-1. Declaration of legislative policy.**

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decisionmaking through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decisionmaking and the decision makers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order to allow government to function and the public to participate in a meaningful manner in public agency decisionmaking.

### **§6-9A-2. Definitions.**

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(2) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

(A) An imminent threat to public health or safety;

(B) An imminent threat of damage to public or private property; or

(C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

(3) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public.

(4) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(5) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(6) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(7) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term "public agency" does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

(8) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

(9) "Regular meeting" means a meeting of a governing body at which the regular business of the public is conducted.

(10) "Special meeting" means a meeting of a governing body other than a regular meeting or an emergency meeting.

### **§6-9A-3. Proceedings to be open; public notice of meetings.**

(a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

(b) Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.

(c) This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State's website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State's regular business hours, the date of filing will be considered the next business day.

(f) The Secretary of State shall retain copies of all notices filed for ten years.

(g) The Secretary of State may promulgate procedural rules governing the electronic filing of meeting notices.

(h) In the event of an emergency a governing body may call an emergency meeting.

(1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall notice an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental Meeting's opinions issued pursuant to the authority of section ten of this article, as soon as practicable prior to the meeting.

(2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

(i) Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

#### **§6-9A-4. Exceptions.**

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting;

(4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;

(5) To consider the physical or mental health of any person, unless the person requests an open meeting;

(6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;

(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

(8) To develop security personnel or devices;

(9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision: Provided, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed: Provided, however, That information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

(10) To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed

session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

#### **§6-9A-5. Minutes.**

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

#### **§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.**

The circuit court in the county where the public agency regularly meets has jurisdiction and is a proper venue to enforce this article upon civil action commenced by any citizen of this state within 120 days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least 10 days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of §59-3-1 et seq. of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this article, it is a violation of this article for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

### **§6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil actions.**

(a) Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500: Provided, That a person who is convicted of a second or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000.

(b) A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the provisions of this article may be liable to a prevailing party for fees and other expenses incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article, unless the court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses unjust.

(c) Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses.

### **§6-9A-8. Acting by reference; written ballots.**

(a) Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

(b) A public agency may not vote by secret or written ballot.

### **§6-9A-9. Broadcasting or recording meetings.**

(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: Provided, That if the public agency, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

#### **§6-9A-10. Open governmental meetings committee.**

The West Virginia Ethics Commission, pursuant to subsection (j), section one, article two, chapter six-b of this code, shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia Ethics Commission committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open government meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days.

#### **§6-9A-11. Request for advisory opinion; maintaining confidentiality.**

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia Ethics Commission or request in writing an advisory opinion from the West Virginia Ethics Commission Committee on Open Governmental Meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion is binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) A governing body or member thereof that acts in good faith reliance on a written advisory opinion sought by another person or governing body has an absolute defense to any civil suit or criminal prosecution for any action taken based upon a written opinion of the West Virginia Ethics Commission committee, as long as underlying facts and circumstances surrounding the action were the same or substantially the same as those being addressed by the written opinion.

(d) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided in section four of this article.

#### **§6-9A-12. Duty of Attorney General, Secretary of State, clerks of the county commissions and city clerks or recorders.**

It is the duty of the Attorney General to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the Secretary of State, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the Attorney General to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term.

## QUESTIONS AND ANSWERS ON ENFORCEMENT AND PENALTIES

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<https://ethics.wv.gov/openmeetings/Pages/default.aspx>

### **How is the Act enforced?**

The Ethics Commission has no role in enforcing the Act and does not investigate complaints of alleged violations.

The circuit court in the county where the public agency regularly meets has jurisdiction to enforce the Act upon civil action commenced by any citizen of this state within 120 days after the action complained of was taken or the decision complained of was made. The circuit court is empowered to compel compliance or enjoin noncompliance with the Act and to annul a decision made in violation of the Act. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the Act.

It is a violation of the Act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Citizens filing such civil actions should be advised that other requirements of the West Virginia Code, including at least 30 days' notice of the suit to the state executive branch agency and the Attorney General, may be required. This summary is of the Open Meetings Act's provisions only.

### **Penalties for violating the Act**

The Open Meetings Act provides that "[a]ny person who is a member of a public or governmental body required to conduct open meetings ... and who willfully and knowingly violates the ... [Act] is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars ... [A] person who is convicted of a second or subsequent offense ... is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars.

A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the ... [Act] may be liable to a prevailing party for fees and other expenses incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article, unless the court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses unjust.

Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses."

**ATTACHMENT 1D:  
EXAMPLE OF POSSIBLE LANGUAGE FOR BYLAWS**

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**Remember - these recommendations are merely suggestions and should not be adopted until they are reviewed by your Authority's legal counsel.**

**Bylaws**

**of the**

\_\_\_\_\_ **Solid Waste Authority**

**Article I**

The official name of this organization shall be the \_\_\_\_\_ Solid Waste Authority. It was created by the West Virginia Legislature on January 1, 1989, as a public agency in accordance with W. Va. Code §22C-4-3 (or **W. Va. Code §22C-4-4 for a regional solid waste authority**). See Appendix A, W. Va. Code §22C-4.

The Authority will be located in \_\_\_\_\_ County(ies), West Virginia. The present mailing address is \_\_\_\_\_ phone number \_\_\_\_\_.

**Article II**

**Purpose**

The purpose of the \_\_\_\_\_ Solid Waste Authority is to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal. Further, the Authority exists to establish programs based on source reduction, recycling, reuse, material recover and lastly, landfilling.

**Article III**

**Board of Directors**

Management and control of the Solid Waste Authority is vested in and governed by its Board of Directors in accordance with W. Va. Code §22C-4.

The Board of Directors shall be comprised of five members who shall be appointed as follows: one by the Secretary of the Department of Environmental Protection, two by the \_\_\_\_\_ County Commission, one by the Chairperson of the Public Service Commission, and one by the Board of Supervisors for the Conservation District in which the county is situated. (**The Board of Directors for a regional solid waste authority are appointed differently than a county solid waste authority and in accordance with W. Va. Code §22C-4-4**)

The members of the Board shall be appointed for a term of four years.

The members of the Board shall receive no compensation for their services thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties.

No member who has any financial interest in the collection, transportation, processing, recycling, or the disposal of refuse, garbage, solid waste, or hazardous waste shall vote or act on any matter which directly affects the member's personal interest.

A Chairperson and Vice-Chairperson shall be elected annually at the regular July meeting, from among the members of the Board and shall hold the office for a one-year term or until successors are elected. The Board of Directors shall also appoint annually, at the July meeting, a Secretary-Treasurer, who need not be a member of the Board of Directors.

If any Board of Director is absent three (3) consecutive meetings, without approved reason, upon majority vote by the Board, a letter shall be sent to that member and their appointing agency informing both of them of their appointee's non-attendance.

#### **Article IV Duties of Officers**

The Chairperson shall preside at all meetings of the Board. The Chair shall appoint committees as recommended by the Board and shall, together with the Secretary, sign the minutes of all board meetings at which he or she shall preside. The Chair shall execute, and if necessary, acknowledge for recording any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Authority, as directed by the members in regular or special meetings.

If the Chairperson is absent or is unable to discharge the duties thereof, the same shall be discharged by the Vice-Chairperson.

The duties of the Secretary-Treasurer shall include, but are not limited to, preparing agendas under the direction of the Chairperson, notifying all members of meetings, preparing legal notices of meetings/hearings, and preparing/maintaining the minutes of all board meetings. The Secretary-Treasurer shall have general charge of funds and record management of the Authority, and be custodian of deeds and other important writings and papers of the Authority. The checks upon the Authority shall be signed by the Secretary-Treasurer after the Board's verification and approval of all documents requesting payment. The Secretary-Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him/her and shall prepare and submit reports and statements of the financial condition of the Authority at each regular meeting. He/She shall perform such other duties as may devolve upon him/her under the law or as may be conferred upon him/her by the members. The Secretary-Treasurer shall give bond in accordance with W. Va. Code §22C-4-7(d).

#### **Article V Powers and Duties**

The Authority may exercise all powers necessary or appropriate to carry out the purpose and duties as provided in W. Va. Code §22C-4-23.

#### **Article VI Public Meetings**

All meetings of the \_\_\_\_\_ Solid Waste Authority, a public agency, shall be held in accordance with W. Va. Code §6-9A, the Open Governmental Proceedings Act.

**Regular meetings** – Regular meetings of the Board shall be held on the \_\_\_\_\_ of each month, at \_\_\_\_\_ p.m., at the \_\_\_\_\_ Solid Waste Authority’s office, unless otherwise determined by the Chairperson. Notice of all regular meetings shall be posted seven days in advance at the \_\_\_\_\_ County Courthouse, as well as published in the local newspaper, and shall include the date, time, place and agenda.

**Special meetings** – Special meetings of the Board may be called at any time by the Chairperson or upon written request to the Chairperson by a majority of the members. The Chairperson shall call a special meeting to be held not less than five days after receipt of the request. Notice of the special meeting shall be delivered to each board member not less than three days prior to the meeting. Notice of the special meeting shall be posted at the \_\_\_\_\_ County Courthouse and include the date, time, place and purpose; the local news media shall also receive advance notice.

**Emergency meetings** – In the event of an emergency requiring immediate official action, an emergency meeting may be held with notice given at any time prior to the meeting and delivered to each member of the Board. Notice shall state the date, time, place and purpose of the meeting and facts and circumstances of the emergency.

**Executive sessions** – The Board may hold an executive session during a regular, special or emergency meeting in accordance with W. Va. Code § 6-9A-4. During the open portion of the meeting, prior to convening an executive session, the Chairperson shall identify the authorization under statute for holding the executive session. The executive session may be held only upon a majority vote of the members present and no decisions shall be made. The Chairperson, upon coming out of the executive session, shall announce that no decisions were made.

**Standing Committees** – The Board shall establish committees at its discretion to further the mission of the Authority. Selection of the committee members shall be the duty of the Chairperson.

**Quorum** - The presence of a majority of the Board shall constitute a quorum.

**Manner of Voting** - The voting on all motions at board meetings shall be by a vocal response of yea and nay and the results shall be announced by the Chairperson and recorded in the minutes. In the event that a quorum is not present, members shall either be allowed to participate and vote via telephone or other telecommunication systems or those present may adjourn the meeting to a later date.

**Meeting Procedures** – Robert’s Rules of Order shall control the transactions of all business conducted at all regular board meetings. The following shall be the order of business:

- a) Roll call
- b) Approval of minutes of previous meeting
- c) Report of Chairperson
- d) Special orders
- e) Committee reports
- f) Director’s report
- g) Unfinished business
- h) New business
- i) Public comment
- j) Adjournment

The order of business can be modified by a motion and majority vote of the quorum.

**Public Comment** - The Authority may make and enforce reasonable rules for public attendance and presentations at its meetings. The Authority may not require a person desiring to address the Board to register more than fifteen minutes prior to the time of the scheduled meeting. Comment time is limited to \_\_\_\_\_ minutes. This does not prohibit the removal from the meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

**Minutes** - The minutes of all regular, special and emergency meetings of the Board shall be recorded by mechanical means and transcribed no more than seven days following the meeting. Minutes shall be made available upon request to the members or the public and shall include, at a minimum:

- 1) The date, time and place of the meeting;
- 2) The name of each member present and absent;
- 3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- 4) The results of all votes and if requested by a board member, the vote of each member by name.

Minutes of executive sessions, if taken, are not required to be available to the public, in accordance with W. Va. Code §6-9A-5.

## **Article VII Purchasing**

The \_\_\_\_\_ Solid Waste Authority shall adopt the State of West Virginia’s Purchasing Policy and Procedures, as applicable, utilizing the following purchasing limits: (Remember, this is an example of possible purchasing limits – your SWA should structure the dollar amounts to its needs – your County Commission Purchasing Policy and Procedures may be a good reference.)

- \$ 00.00 - \$ 500.00... No Competitive Bids Required
- \$ 500.01 - \$ 1,000.00... Three Verbal Bids Required
- \$ 1,000.01 - \$ 5,000.00... Three Written Bids Required
- \$ 5,000.01 - upward... Advertise for Public Bid

The executive director of the Authority is empowered to authorize and approve on behalf of the Board any expenditures and disbursements for routine operations up to \$5,000.00. Any payments to a single vendor in excess of \$5,000.01. per month, must be approved by the Board. Further, issuing a series of requisitions or purchase orders to circumvent this Article is prohibited.

All contracts and obligations of the Board shall require Board approval before being signed by the Chair or Vice-Chair and attested to by the Secretary/Treasurer. However, the Board may authorize another officer of the Board or the executive director to sign any specific contract.

## **Article VIII Miscellaneous Procedures**

**Fiscal Year** - The fiscal year of the Board shall commence on the first day of July and end on the thirtieth day of the following June.

**Financial Examination** - The Board shall cause an annual examination of their financial records be conducted through coordination with the Chief Inspector Division of the State Auditor’s Office, in accordance with W. Va. Code §22C-4-9A (j).

**Legal Representation** shall be provided by the WV Attorney General’s office, or with written approval of the attorney general, other approved counsel may be employed, in accordance with W. Va. Code §22C-4-9.

**Dual Signatures** – Any check over one-hundred dollars (\$100.00) shall require the signature of the Chairperson in addition to that of the Secretary-Treasurer.

**Notice** - Whenever notice is required to be given to any board member, such notice shall be either delivered personally, given in writing by mail, postage prepaid, addressed to such member at the address of record, or with member permission, via fax or e-mail. Notice shall be deemed given at the time it is postmarked.

**Annual Budget** – A proposed budget for the next fiscal year shall be presented to the Board at least two months prior to July 1. The proposed budget shall be approved at the June meeting for the upcoming fiscal year, which begins in July. Revisions to the budget may be made at any time by a majority vote of the board members present at any regular meeting of the Board, provided that written notice of such be provided to all board members at least seven days prior to the meeting.

**Freedom of Information Act** – Records of the Authority are public information, in accordance with W. Va. Code §29B.

**Article IX  
Administrative Rules**

The Board may adopt Administrative Rules to define office or operational procedures. Such activities may include, but are not limited to, purchasing practices, record duplication costs, hiring procedures, personnel policies, facility review, financial transactions and other activities deemed necessary. Any significant forms that have been developed by the Authority shall also be included. Administrative Rules must be adopted, amended or repealed by a majority vote of the board members present at any regular meeting of the Board, provided that written notice of such be provided to all board members at least seven days prior to the meeting.

**Article X  
Amending Bylaws**

The Board shall have the power to adopt, amend or repeal these bylaws by a majority vote of the board members present at any regular meeting of the Board, provided that written notice of such proposed changes to the by-laws be provided to all Board members at least seven (7) days prior to the meeting.

These bylaws were adopted on: \_\_\_\_\_

Last amended on: \_\_\_\_\_

Chairperson: \_\_\_\_\_

**ATTACHMENT 1E:  
SOLID WASTE AUTHORITY SUGGESTED RECORD RETENTION**

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The list below contains some various types of records and a general guideline for their retention. This schedule is only a guide and after discussion with your CPA, may be modified to meet your specific needs. When two options are given, observe the longer of the two.

<b>TYPE OF RECORD</b>	<b>SUGGESTED RETENTION</b>
Annual Report (if any) .....	Permanent
Annual Financial Statement .....	Permanent
Audits .....	Permanent
Application for Employment (applicant not employed).....	Three years, then destroy
Attendance Records for Employees: Time sheets/cards, leave slips Comp time, Overtime records .....	Three years or one year after audit
<b>Banking Records:</b>	
Cancelled Checks (general) .....	Seven years after audit
Cancelled Checks (important) .....	Permanent
Reconciliations .....	Three years after audit
Bylaws .....	Permanent
Commercial Solid Waste Facility Siting Plan & five-year updates .....	Permanent
Comprehensive Litter and Solid Waste Control Plan & five-year updates .....	Permanent
<b>Correspondence:</b>	
General.....	Two years
Legal .....	Permanent
Deeds, mortgages and bills of sale .....	Permanent if in effect, or seven years after expiration
Depreciation Schedules .....	Permanent
Equipment and Inventory .....	Seven years after audits
Financial Reports, Ledgers and Supporting Documents	
Accounts Payable/Accounts Receivable .....	Seven years after audits
General Ledger .....	Permanent
Grant Awards Records .....	Three years

**Insurance Policies:**

Active ..... Permanent  
Expired ..... Five years  
Records (accident reports, claims)..... Permanent

Leases, contracts ..... Seven years after expiration, then destroy

Litigation ..... Permanent

Minutes from SWA meetings ..... Permanent

Payroll Records ..... Five years for federal, state Income tax reports  
and social security reports

Personnel Folders ..... Five years from cessation of employment, then destroy

Petty Cash File ..... Three years after audit

**Procurement Records:**

Requisitions, Purchase Orders  
Contracts, Requests for Proposals ..... Seven years after audit

Public Hearings..... Three years after recording  
in minutes, then destroy

Recycling Ordinance..... Permanent

Special Reports, Surveys, and Studies ..... Ten years

State and Federal Tax Returns ..... Five years after audit, then destroy

Travel Expense Report ..... Seven years after audits

**Workers' Compensation:**

Information ..... Five years after audit  
Claims ..... Two years after settlement

# **ATTACHMENT 1F: THE ETHICS ACT**

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## **W. Va. CODE §6B-2-5**

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### **CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE. ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

#### **§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

(a) Persons subject to section. — The provisions of this section apply to all public officials and public employees, whether full or part-time and whether compensated or not, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: Provided, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: Provided, That as used in this subdivision, "employment or working conditions" shall only apply to government employment: Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural, or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter 29A of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby, or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within 30 days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other State Legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence, and integrity of Legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among State Legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of State Legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between State Legislatures in the United States and Legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in §29A-2-1 et seq. of this code, copies of letters, brochures, and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

"This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, and with the Secretary of State and are available for public review."

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and

Finance, with the Secretary of State for publication in the State Register as provided in §29A-2-1 et seq. of this code and with the commission, copies of letters, brochures, and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the board of Public Works shall contain the following disclaimer: "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review." Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in §5A-4-2 et seq. of this code.

(d) Interests in public contracts. — (1) In addition to the provisions of §61-10-15 of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder, or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board, or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation. — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) Limitation on practice before a board, agency, commission or department. — Except as otherwise provided in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal, or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council, or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution, or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall, by legislative rule, establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons and vendors. — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall, by legislative rule, establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

- (C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.
- (4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.
- (5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection, or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.
- (6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.
- (i) Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.
- (j) Limitations on voting. — (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:
- (A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.
- (B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months: Provided, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.
- (C) The employment or working conditions of the public official's relative or person with whom the public official resides.
- (D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit: Provided, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit: Provided, however, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.
- (2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in §6B-1-3 of this code, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his or her immediate family owns or controls more than 10 percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined §6B-1-3 of this code, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than 10 percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to §30-3-1 et seq., §30-8-1 et seq., §30-14-1 et seq., §30-14A-1 et seq., §30-15-1 et seq., §30-16-1 et seq., §30-20-1 et seq., §30-21-1 et seq., or §30-31-1 et seq. of this code.

(l) Certain compensation prohibited. — (1) A public employee may not receive additional compensation from another publicly-funded state, county, or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did,

in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting, or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter 29A of this code, define further exemptions from this section as necessary or appropriate.

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.  
ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST  
BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR  
ADMINISTRATIVE LAW JUDGES.**

**§6B-2-5b. Ethics training requirements.**

An individual who, on or after the effective date of this subsection, is elected or appointed to serve in the Legislature, as a member of the board of Public Works, and those positions in the executive branch of state government which the Governor designates by executive order, shall, within six months of filling such position, attend a training course conducted by the Ethics Commission on the requirements of the Ethics Act. The Commission shall offer the training contemplated by this section once every four years and shall prescribe by legislative rule the nature, duration and content of the training and the manner in which the training will be conducted.

## OVERVIEW OF THE ETHICS ACT FOR COUNTY PUBLIC SERVANTS ONLY

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### **W.Va. Code §61-10-15.**

Certain county personnel are also subject to W. Va. Code § 61-10-15, a criminal statute which contains a more comprehensive public contract prohibition. The Ethics Commission is responsible for advising public servants about § 61-10-15 but has no role in its enforcement.

W. Va. Code § 61-10-15 applies to:

- (1) elected county officials (such as sheriff, county commissioners and school board members),
- (2) appointed county officials (those who serve on county boards, commissions, authorities and agencies),  
and
- (3) public school superintendents, principals, and teachers. It does not apply to other county workers.

W. Va. Code § 61-10-15 prohibits these designated county personnel from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them "voice, influence or control." The prohibition extends to their spouses, their dependents, and businesses in which they have an ownership interest or by which they are employed.

The Ethics Commission has authority to grant an exemption from the prohibition to a County Agency based upon a documented hardship.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

**§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.**

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: Provided, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: Provided, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500 and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

- (1) Is not a party to the contract;
- (2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;
- (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;
- (4) Does not participate in the deliberations or awarding of the contract; and

- (5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.
- (f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or Board of Education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.
- (g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.
- (h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.
- (i) The provisions of this section do not apply to publications in newspapers required by law to be made.
- (j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or (h) of this section.
- (k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: Provided, That the member of a county commission whose spouse is employed or to be employed may not:
- (1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;
  - (2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or
  - (3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.
- (l) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: Provided, That the elected county official may not:
- (1) Directly supervise the spouse employee; or
  - (2) Set the salary of the spouse employee: Provided, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

# **ATTACHMENT 1G: FREEDOM OF INFORMATION ACT**

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## **WEST VIRGINIA CODE**

### **ARTICLE 1. PUBLIC RECORDS.**

#### **§29B-1-1. Declaration of policy.**

Pursuant to the fundamental philosophy of the American Constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

#### **§29B-1-2. Definitions.**

As used in this article:

- (1) "Custodian" means the elected or appointed official charged with administering a public body.
- (2) "Law-enforcement officer" shall have the same definition as this term is defined in W.Va. Code §30-29-1: Provided, That for purposes of this article, "law-enforcement officer" shall additionally include those individuals defined as "chief executive" in W.Va. Code §30-29-1.
- (3) "Person" includes any natural person, corporation, partnership, firm or association.
- (4) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.
- (5) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.
- (6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

#### **§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry.**

- (a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(1) Furnish copies of the requested information;

(2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

### **§29B-1-3a. Reports to Secretary of State by public bodies.**

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: Provided, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

#### **§29B-1-4. Exemptions.**

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file;

(3) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4) (A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents, or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Military Affairs and Public Safety;

- (12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;
- (13) Computing, telecommunications, and network security records, passwords, security codes, or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;
- (14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;
- (15) Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications, or network infrastructure used to plan against or respond to terrorism are located or planned to be located;
- (16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;
- (17) Specific engineering plans and descriptions of existing public utility plants and equipment;
- (18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;
- (19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;
- (20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: Provided, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: Provided, however, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;
- (21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means a law-enforcement officer's social security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the names of the law-enforcement officer's spouse, parents, and children; and
- (22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to §29-22-15a of this code.
- (b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:
- (1) Intimidate or coerce the civilian population;
  - (2) Influence the policy of a branch or level of government by intimidation or coercion;
  - (3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

#### **§29B-1-5. Enforcement.**

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

#### **§29B-1-6. Violation of article; penalties.**

Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$1,000, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

#### **§29B-1-7. Attorney fees and costs.**

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.

**ATTACHMENT 1H:  
SAMPLE FOIA FORM**

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**WV Solid Waste Management Board**  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
(304)926-0448

**FREEDOM OF INFORMATION ACT REQUEST**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

Type of Information Requested \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date of Request \_\_\_\_\_

Signature \_\_\_\_\_

Search Fee - \$25 Per Hour = \_\_\_\_\_

Copying Fee - \$.25 Per Page = \_\_\_\_\_

**ATTACHMENT 1I:  
SAMPLE SOLID WASTE AUTHORITY AGENDA**

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**WEST VIRGINIA  
SOLID WASTE MANAGEMENT BOARD**

601 57<sup>th</sup> St. SE  
Charleston, WV 25304  
Phone: (304)926-0448

Mark D. Holstine, PE, Executive Director  
[www.state.wv.us/swmb](http://www.state.wv.us/swmb)

**AGENDA  
March 20, 2019  
11:00 a.m.**

- 1. Roll Call.**
- 2. Approval of Minutes of the February 20, 2019 Board meeting.**
- 3. Financial Reports.**
  - A. Financial statements for January 2019.
  - B. Purchasing Card Report for January 2019.
  - C. Assessment Fee and Tonnage Data for January 2019.
  - D. Grant Status Report.
  - E. Other.
- 4. Standing Committee Reports.**
  - A. None.
- 5. Executive Director Report.**
- 6. Unfinished Business.**
  - A. Other.
- 7. New Business.**
  - A. Ohio County Solid Waste Authority Comprehensive Litter and Solid Waste Control Plan and Commercial Solid Waste Facility Siting Plan Updates.
  - B. Kanawha County Solid Waste Authority FY 2019 Emergency Grant Request.
  - C. Mason County Solid Waste Authority FY 2019 Emergency Grant Request.
  - D. Other.

**8. Miscellaneous Business.**

A. Other.

**9. Public Comment - Limited to three minutes.**

**10. Next Meeting.**

**11. Adjournment.**

**ATTACHMENT 1J:  
SAMPLE OF MEETING MINUTES**

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**WEST VIRGINIA  
SOLID WASTE MANAGEMENT BOARD**

601 57<sup>th</sup> St. SE  
Charleston, WV 25304  
Phone: (304)926-0448

Mark D. Holstine, PE, Executive Director  
[www.state.wv.us/swmb](http://www.state.wv.us/swmb)

**MINUTES**

**West Virginia Solid Waste Management Board  
March 20, 2019  
11:00 a.m.**

**1. Roll Call.**

Present - Board:	Mallie Combs, Tim Blankenship, Roger Bryant, Howard Coffield, Walt Ivey, Sudhir Patel, and Steve Pilato.
Absent:	None.
Board Counsel:	Kristin Boggs, Esq.
Staff:	Mark Holstine, Marsha Payton, Scott Norman, Jayne Ann Arthur, Paul Hayes, Carol Throckmorton, Nicole Hunter, Ray Keller and Cathleen Salmons.
Visitors Listed:	None.

The regular meeting was properly advertised in accordance with W.Va. Code, Chapter 6, Article 9A. The meeting was called to order by Chair Mallie Combs, at 11:00 a.m., in Conference Room 1041, located at the DEP Headquarters, 601 57<sup>th</sup> Street, SE, Charleston, WV 25304. Marsha Payton called the roll. The Chair announced a quorum was present.

**2. Approval of minutes of the February 20, 2019 Board meeting.**

Chair Combs requested a motion for approval of the minutes from the last meeting. Mr. Pilato moved to approve the minutes of the February 20, 2019 meeting. Mr. Bryant seconded the motion and it passed unanimously.

**3. Financial Reports.**

**A. Financial Statements for January 2019.**

Mr. Norman gave an overview of the balance sheet and income statement for January 2019. He informed the Board that the Office Expense line item in the amount of \$2,195.91 was for SWMB display, digital photo frame and code books. The Contractual & Professional expense was for the Single Audit.

**B. Purchasing Card Report for January 2019.**

Mr. Norman went over the expenses on the P-card for January 2019 and informed the Board that there were no out of the ordinary expenses on the P-card.

**C. Assessment Fee and Tonnage Data for January 2019.**

The assessment fee and tonnage data for January 2019 was explained to the Board by Scott Norman. January assessment fee checks in the amount of \$2,036.00 were mailed out on January 18, 2019. Average check for the year is \$2,283.00.

Assessment fee revenue for the month of January 2019 was \$223,991.00. Average revenue for the year is \$251,176.00. The year-to-date tonnage comparison is 106.13%.

**D. Grant Status Report.**

Mr. Norman informed the Board that all final reports are in on the FY 2018 grant program and it has been closed. Mingo County has been added to the FY 2019 grant program.

Semi-annual period for the FY 2019 grants program ended on February 1, 2019. Reports were due Friday, February 22, 2019. Seventeen semi-annual reports have been received and completed; seven final reports have been received and completed; fourteen have been received and are still under review.

E. None.

4. **Standing Committee Reports.**

A. None.

5. **Executive Director Report.**

**1<sup>st</sup> Session of the 84<sup>th</sup> Legislature** – The session ended on Saturday, March 9, 2019 at midnight.

Some of the solid waste bills we followed include **SB 147** which we spoke about last month regarding the Landfill Closure Assistance Fund. SB 147 passed both houses. It is back to its original form of taking \$1.00 from the LCAP fund and allowing the counties that contain a commercial landfill to charge an extra dollar on the county assessment fee, bringing that fee to a maximum of \$1.50 per ton, up from \$0.50 per ton.

Most of the bills we discussed in February did not make it to the end including HB 2555 which would ban retail establishments from the use of plastic bags, HB 2676 to permit common carriers to operate in any county, HB 2974 exempting businesses relating to transporting waste tires from PSC regulation, and HB 3075 to terminate the PSC.

**HCR 87** was adopted by the House in a voice vote requesting the Joint Committee on Government and Finance to study the Public Service Commission to compare the interstate and intrastate regulation of haulers subjected to single, dual and multiple regulatory jurisdictions.

**SB 675** originated late in the session out of Senate Natural Resources Committee and authorized the creation of an Adopt-A-Stream Program to be administered by the West Virginia Stream Partners Program. The West Virginia Stream Partners Program is a cooperative effort of the West Virginia Conservation Agency, West Virginia's Department of Environmental Protection, Division of Forestry, and the Division of Natural Resources. The program staff is housed within the DEP's Division of Water and Waste Management. The program offers grants and technical assistance to help watershed associations form partnerships to complete sustainable watershed improvement projects that have long-term effects on the community and watershed. More information about this program can be found at <http://www.wvca.us/stream.cfm>.

**HB 3139** regarding funding of Public Employees Insurance Agency passed both houses. The bill requires the PEIA reserve fund to be maintained at and actuarially recommended amount and removes the requirement that any amount in excess of 15 percent of the recommended reserve be transferred out of the fund and into the Retiree Health Benefit Trust Funds. The bill establishes the Rainy Day Fee as a

dedicated source of funding for PEIA. This fee will be paid by each mandatory agency and will be a per employee fee (this portion of the bill does not show up in the Enrolled version). Mr. Holstine did not know where the funds were going to come from, if the mandatory agency fee was deleted from the bill. The Board's legal counsel, Kristin Boggs, will research this and report back to the Board. The Governor has not signed or vetoed the bill.

**Greenbrier County SWA** – On January 10, 2019, the Greenbrier County Solid Waste Authority filed a request for the release of \$29,266 from their limited access equipment escrow account to cover the purchase of a Bobcat S595 T4 Steer Loader. The cost of the Steer Loader is \$39,266, less \$10,000 from a SWMB grant, for a net cost of \$29,266. The PSC staff reviewed the filing and recommended to the PSC that the request be permitted.

**Golden Apple LLC** – On March 1, 2019 Golden Apple, LLC, which is now Reclaim, Inc., filed an Application for Certificate of Need to accept 9,999 tons of solid waste monthly to serve Clay and surrounding areas. Protests to intervene have already been filed by S & S Landfill, Inc., Meadowfill Landfill, Inc., Landfill Services of Charleston, Inc., Disposal Service Incorporated and Waste Management of West Virginia, Inc. It is anticipated that Nicholas County SWA will also file a protest.

**Ravenseye Recycling** – In February, Mr. Holstine reported that Ravenseye Recycling applied for a Certificate of Convenience and Necessity to pick-up recyclables curbside within Fayetteville and Oak Hill and within five miles of the town's limits. A ruling is expected by November 26, 2019.

**Other** – Ray Keller, Cathleen Salmons and Mr. Holstine will be travelling to Tucker County on March 25 to begin their next performance review.

Carol Throckmorton attended the quarterly community recycling meeting with the Monongalia County SWA, the County Commission and DEP REAP program on February 27, 2019. Ms. Throckmorton and Nicole Hunter attended a meeting with the Boone County Commission on February 25, 2019. Carol is planning to go to a Randolph County SWA meeting in Elkins on March 18, 2019. Also, Nicole Hunter attended the meeting of the Kanawha County Solid Waste Authority on March 19, 2019.

Scott Norman and Jayne Ann Arthur attended Employee Benefits training on March 12.

**6. Unfinished Business.**

**A. None.**

**7. New Business.**

**A. Ohio County Solid Waste Authority Comprehensive Litter and Solid Waste Control Plan and Commercial Solid Waste Facility Siting Plan Updates.**

The abstract for the Comprehensive Litter and Solid Waste Control Plan and Commercial Solid Waste Facility Siting Plan updates were mailed out in the Board packet.

There being no questions, Mr. Pilato moved that the Board approve the Comprehensive Litter and Solid Waste Control Plan update for the Ohio County Solid Waste Authority in accordance with W.Va. Code § 22C-4-8(d) and WV Code Rules § 54-3-3.4.

Mr. Pilato further moved that the Board approve the Commercial Solid Waste Facility Siting Plan update for the Ohio County Solid Waste Authority in accordance with W.Va. Code § 22C-4-24(d) and WV Code Rules 54-4-3.3.b. Seconded by Mr. Blankenship, the motion passed unanimously.

**B. Kanawha County Solid Waste Authority FY 2019 Emergency Grant Request.**

Grants Administrator, Scott Norman, explained the circumstances of the Kanawha County SWAs request for emergency grant funding in the amount of \$14,000.00 to partially fund a horizontal baler.

In accordance with 54 CSR 5, Subsection 3.3, Mr. Bryant moved that the Board approve the Kanawha County Solid Waste Authority's request for a FY 2019 SWMB emergency grant in the amount of \$14,000.00, provided that the Authority submits all grant expenditure documentation as required by the Board. Mr. Blankenship seconded the motion and it passed unanimously.

**C. Mason County Solid Waste Authority FY 2019 Emergency Grant Request.**

Mr. Norman explained to the Board that the Mason County Solid Waste Authority is requesting emergency funding in the amount of \$14,536.00 to allow the Authority to stabilize their operation for the remainder of the year, while they work toward making the program self-supporting moving forward. Board staff is recommending emergency funding in the amount of \$10,286.25 to cover employee wages, worker's compensation insurance, monthly accounting fees, telephone costs, and operating supplies.

Mr. Coffield moved that in accordance with 54 CSR 5, Subsection 3.3, the Board approve the Mason County Solid Waste Authority's request for a FY 2019 SWMB emergency grant in the amount of \$10,286.25, provided that the Authority submits all grant expenditure documentation as required by the Board. Seconded by Mr. Patel, the motion passed unanimously.

**8. Miscellaneous Business.**

**A. Other.**

Mr. Pilato stated that the Board was happy to have Ray Keller back on staff.

**9. Public Comment – Limited to three minutes.**

**A. None.**

**10. Next Meeting.**

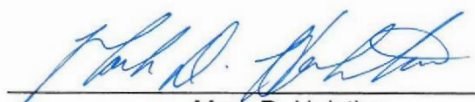
Chair Combs set the next meeting of the Solid Waste Management Board, for **Wednesday, April 17, 2019 at 11:00 a.m.** This meeting will be held in conference room 1041 at DEP Headquarters.

**11. Adjournment.**

There being no further business to discuss, Chair Combs adjourned the meeting at 11:40 a.m.

Respectfully submitted,

  
Mallie Combs  
Chair

  
Mark D. Holstine  
Secretary/Treasurer

**ATTACHMENT 1K:  
SAMPLE SOLID WASTE AUTHORITY FINANCIAL REPORTS**

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**COMMON SIMPLIFIED VERSION**

**COUNTY SOLID WASTE AUTHORITY  
P.O. Box 999, West Virginia  
FINANCIAL REPORT**

**GENERAL ACCOUNT**

<b>BEGINNING BANK BALANCE:</b> .....		<b>\$7,654.23</b>
<b>REVENUE:</b>		
Solid Waste Assessment Fee	\$1,863.11	
Recyclable Materials	\$3,752.64	
<b>TOTAL REVENUE:</b>	<b>\$5,615.75</b>	
<b>EXPENDITURES:</b>		
Wages & Payroll Expenses	\$2,936.00	
Utilities	\$ 868.42	
Office Supplies	\$ 15.36	
Operational Supplies	\$ 419.23	
Vehicle/Equipment Expense	\$1,023.72	
Travel Costs	\$ 32.00	
<b>TOTAL EXPENDITURES:</b>	<b>\$5,294.73</b>	
<b>ENDING CHECKBOOK BALANCE:</b> .....		<b>\$7,975.25</b>

**SWMB GRANT ACCOUNT**

<b>BEGINNING BANK BALANCE:</b> .....		<b>\$4,200.00</b>
Revenue: Interest	\$ .28	
Expenditures: None		
<b>ENDING CHECKBOOK BALANCE:</b> .....		<b>\$4,200.28</b>

**DEP-REAP CED GRANT ACCOUNT**

<b>BEGINNING BANK BALANCE:</b> .....		<b>\$9,872.68</b>
Revenue: None		
Expenditures:		
Contractor Fees	\$6,900.00	
Hourly Labor	\$2,400.00	
Equipment Rental	\$ 563.98	
Returned to DEP	\$ 8.70	
<b>ENDING CHECKBOOK BALANCE:</b> .....		<b>\$0.00</b>

# FINANCIAL REPORT WITH UNIFORM CHART OF ACCOUNTS INCLUDED

## COUNTY SOLID WASTE AUTHORITY

P. O. Box 999

West Virginia

### TREASURER'S REPORT\*

UCA Number	UCA Account Name	Checking Account	Passbook Savings	CD
	<b>Beginning Balance as of 07/31/12</b>	<b>\$7,654.23</b>	<b>\$22,007.95</b>	<b>\$12,507.38</b>
	<b>Revenues</b>			
301	001 SWMB Allocation of SW Assessment Fee	\$1,863.11		
301	002 Surry County Solid Waste Authority Fee	880.09		
306	Magistrate Court (litter fund)	50.00		
309	Interest Revenue		2.53	1.23
	<b>Total Revenues</b>	<b>\$10,447.43</b>	<b>\$22,010.48</b>	<b>\$12,508.61</b>
	<b>Expenditures - Administration</b>			
401	102 Net Salaries & Wages	\$2,676.00		
401	104 FICA Tax Expense-Social Security/Medicare	260.00		
401	107 Workers Compensation Expense	140.00		
401	108 Unemployment Compensation Expense	124.00		
401	211-01 Telephone-Land Line	86.77		
401	214 Travel	107.99		
401	219 Building Rent	600.00		
401	220 Advertising/Legal Publications	30.70		
401	213 Utilities	781.65		
401	222 Dues and Subscriptions	230.00		
401	224 Audit Costs	2,150.00		
401	341 Materials and Supplies - Office Supplies	15.36		
401	357 Road Clean Up Expense	598.52		
	<b>Total Administration Expense</b>	<b>\$7,800.99</b>		
	<b>Expenditures - Recycling</b>			
403	211-02 Telephone-Cell Phone	52.88		
403	216 Maintenance & Repair - Equipment	168.00		
403	343 Vehicle Expense – Fuel	355.32		
403	354 Buy Back Expenses	210.00		
	<b>Total Recycling</b>	<b>\$786.20</b>		
	<b>Total Expenditures</b>	<b>\$8,587.19</b>		
	<b>BALANCES as of August 31, 2012</b>	<b>\$1,860.24</b>	<b>\$22,010.48</b>	<b>\$12,508.61</b>

\* Remember that it is not mandatory that Authority's use the account numbers, as they are only for your convenience. However, using the common naming of revenue and expense accounts is required in WV Code § 22C-4-9a(i)

## **Chapter 2: Basic Business Employment Procedures**

## CHAPTER 2: BASIC BUSINESS EMPLOYMENT PROCEDURES

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When a SWA hires an employee there are specific guidelines to follow in order to be in compliance with federal and state labor regulations. This chapter provides a general overview of policies, rules, laws and/or benefits related to hiring practices. It's important to know that these regulations are subject to change, revision or elimination with or without notice. As with other information in this Administrative Guide, this is not meant to be a complete source for procedures and rules. When you have questions, you're encouraged to consult your attorney or accountant. The SWMB is not responsible for content or accuracy of information contained in websites referenced or linked to in this chapter. When there is a conflict between the information provided on the websites and any applicable laws or rules, the laws and rules will apply.

Every employer is required to report taxes on employees to the Internal Revenue Service (IRS). The SWA's existing FEIN number should be used for this purpose.

EFTPS® (Electronic Federal Tax Payment System), is a free system provided by the US Department of Treasury which can be used to pay Federal taxes. They can be paid on-line or by phone 24/7. For more information visit [www.eftps.gov/eftps/](http://www.eftps.gov/eftps/). You may wish to consult with your accountant on the best option for your agency.

SWAs can hire the individual as an employee or enter into a contract for services rendered. To determine the best option for your SWA, refer to your bylaws or seek recommendations from your attorney. Independent contractor recommendations are outlined separately in this chapter. SWAs should have an application completed by each candidate interviewed (Attachment 2A).

A check list of hiring procedures is located in Attachment 2B. SWAs should provide the employee with an *Employee Handbook* and a job description for the position. W.Va. Code §21-5-9 should be reviewed prior to an offer of employment. Once hired, the employee must be notified in writing of the rate of pay and the day, hour, and place of payment. In addition, they should receive an itemized statement of deductions that will be made each pay period.

Employees should also receive information on vacation pay and sick leave and other pertinent policies.

You may also want to include a copy of the Federal Labor Standards Act Wage and/or Exemption status (FLSA) in the employment offer. Copies are available at: [www.dol.gov/whd/reg/compliance/Digital\\_Reference\\_Guide\\_FLSA.pdf](http://www.dol.gov/whd/reg/compliance/Digital_Reference_Guide_FLSA.pdf).

### FEDERAL GOVERNMENT RESPONSIBILITIES

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After presenting the employee with the signed written offer the SWAs should review the Department of Labor website for hiring programs and guidance materials at [www.dol.gov/general/topic/hiring](http://www.dol.gov/general/topic/hiring). The site includes compliance

NOTES

assistant materials, affirmative action information, and information on hiring veterans, hiring foreign workers, and employing workers under the age of 18.

Federal law requires EVERY employer who hires an employee in the U.S. MUST complete the I-9 Form, Employment Eligibility Verification. The I-9 process is managed by the U.S. Citizenship and Immigration Services and is used as verification of your employee's identity and employment authorization. The I-9 form is available on the U.S. Citizenship and Immigration Services website [www.uscis.gov/i-g-central/i-9-central](http://www.uscis.gov/i-g-central/i-9-central).

The employee is also required to complete the IRS W-4 form. It is available at [www.irs.gov](http://www.irs.gov). The SWA must secure the completed Form W-4, which contains personal identifiable information (PII). Currently, SWAs shall provide to each employee, copies of the Form W-2, Annual Wage and Tax Statement no later than January 31 of each year. The multi-part form provides a summary of all wages, taxes and withholdings during that tax year. Currently, by February 28, the original Form W-2 and Form W-3 (the control sheet that tells the IRS how many employees you have and whether your W-2s are accurate) should be filed with the Social Security Administration. (IRS publication 'Instructions for W-2 and W-3 Forms' provides information on preparing these forms.) These current processes and dates should be discussed and confirmed with your accountant.

The most current version of Circular E, Employers Tax Guide, explains federal tax withholding and provides up-to-date withholding tables and Social Security and Medicare tax requirements for employers. The Tax Guide contains tables for calculating the amounts of federal tax and Social Security withheld from each employee's paycheck. [www.irs.gov](http://www.irs.gov).

SWAs are required to withhold Social Security and Medicare taxes from employees' wages and pay the employer's share of these taxes. These percentages should be verified annually and discussed with your accountant.

The SWA is responsible for submitting employee federal income tax withholdings, Medicare tax, and Social Security tax, and the SWA's share of the Social Security and Medicare tax. These payments are combined into what is referred to as Series 941 taxes. This return must be filed by all employers who pay wages subject to income tax withholding. Information on 941 taxes can be found at [www.irs.gov](http://www.irs.gov).

SWAs will also be required to pay federal unemployment taxes (FUTA). These taxes are paid solely by the SWA. This is explained in the IRS Publication 15. [www.irs.gov](http://www.irs.gov).

OSHA, a division of the U.S. Dept of labor, sets national standards for safety and health required in the workplace. SWAs hiring employees must determine what steps, if any, need to be taken to comply with federal and state safety standards. Additional information is available on the OSHA website [www.osha.gov](http://www.osha.gov).

In addition to hiring verification and tax documents it is recommended SWAs also keep health insurance documentation. It is the employer's responsibility to be able to prove benefits were offered to employees, when applicable, not the

insurance agency. Therefore, SWAs should obtain written confirmation that an employee has accepted or denied those benefits.

Federal reporting and withholding requirements are subject to change. Visit the IRS website and/or consult your accountant, and attorney for more information.

SWAs should have a designated area where required federal and state notices are posted. The WV Department of Personnel website provides a list of posting requirements and links to the notices.

<https://personnel.wv.gov/rules/Pages/Posting-Requirements.aspx>

## **WEST VIRGINIA EMPLOYMENT REQUIREMENTS**

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Guides for West Virginia employment requirements and recommendations are outlined in this section. The State's IT-104 form is similar to the federal W-4 form. In order to withhold West Virginia personal income tax from employees you must use the IT-104 form. <https://tax.wv.gov/Documents/TaxForms/it104.pdf>

Compensation subject to West Virginia income tax and additional withholding information may be found at:

<https://tax.wv.gov/Business/Withholding/HelpAndGeneralInformation/Pages/WithholdingHelpAndGeneralInformation.aspx>

Employers must provide the state with the date of a new or rehired employee. This information should be included in all new hire reports submitted to the state. Reporting can be done at [www.wv-newhire.com](http://www.wv-newhire.com).

The following sections on tax withholdings, unemployment compensation, workers' compensation and labor requirements is explained on the Business for West Virginia's website at [www.business4WV.com](http://www.business4WV.com).

As an employer, each SWA is required to file Form IT-101, Employer's Return of West Virginia Income Tax Withheld. This form is used in filing a monthly, quarterly, or annual return with the West Virginia Department of Tax and Revenue. Each year, form WV/IT-103, Year End Reconciliation, must be filed along with the 'state' copy of the W-2. West Virginia Tax forms and instructions can be downloaded at:

<https://tax.wv.gov/Business/Withholding/HelpAndGeneralInformation/Pages/WithholdingHelpAndGeneralInformation.aspx>.

**Unemployment Compensation:** WorkForce West Virginia is the state administrator for Unemployment Compensation. SWAs that employ one or more persons is liable for state unemployment compensation tax. This tax is designed to provide benefits to persons who become unemployed through involuntary causes. To learn more visit the WorkForce West Virginia website at [www.workforcewv.org/online-employer-services.html](http://www.workforcewv.org/online-employer-services.html).

**Workers' Compensation:** All West Virginia employers are legally required to maintain workers' compensation insurance coverage. The West Virginia Offices of the Insurance Commissioner, Employer Coverage Unit (ECU) is responsible for

West Virginia employer coverage compliance. Learn more about filing workers' compensation by visiting the website at [www.wvinsurance.gov/Workers-Compensation](http://www.wvinsurance.gov/Workers-Compensation) Workers' compensation insurance questions should be directed to the WV Offices of the Insurance Commissioner at 304-558-3386 or 1-888-TRY-WVIC.

**Drug-Free Workplace:** In order to obtain many types of state and federal assistance, SWAs are required to certify that their workplace meets certain drug-free workplace requirements. These include, but are not limited to, publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of controlled substances is prohibited. SWAs could also establish a drug-free awareness program to inform employees about the dangers of drug abuse ([Attachment 2C](#)).

**Smoking Restrictions in the Workplace:** The SWA should implement a policy to ensure your employees' right to a smoke-free environment ([Attachment 2D](#)).

**The Americans with Disabilities Act:** This Act, passed in 1990, is designed to make the workplace and most public facilities more accessible to disabled persons. As an employer, a SWA cannot discriminate against any "qualified individual with a disability" in any aspect of employment, including hiring and discharging of workers, compensation and benefits. In addition, SWAs should make their workplaces, offices and meeting areas accessible to the disabled.

**Anti-discrimination Laws:** SWAs have an obligation under both federal and state law to prohibit employment discrimination based on sex, age, race, color, national origin, religion and mental or physical disabilities. Anti-discrimination laws are not just limited to hiring practices, but include compensation, promotions, type of work assignments and working conditions.

As an employer you may be required to post additional notices such as Job Safety and Health Protection, Equal Employment Opportunity, Federal Minimum Wage and Rights under the Family and Medical Leave Act. For details, see US Division of Labor's 'Workplace Poster Requirements for Small Businesses and Other Employers'. State law requires that Notice to Employees, Unemployment Compensation Benefits, Form WVUC-B-29 and WV Minimum Wage/Maximum Hours posters be placed in a prominent location.

## **LABOR LAWS THAT APPLY TO ALL SOLID WASTE AUTHORITIES**

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**Minimum Wage:** West Virginia's Minimum Wage and Maximum Hours Act, W. Va. Code §21-5C-2, sets the current rates for wages. Minimum wage laws are subject to change on both the state and federal level. SWAs are considered political subdivisions of the State, therefore, they are subject to WV minimum wage laws. For information on the current minimum wage and other labor related issues, contact the WV Division of Labor at 304-558-7890.

**Wage Payment and Collection:** As stated previously, in accordance with W. Va. Code §21-5-9, when an employee is hired, they must be notified in writing of the rate of pay and the day, hour and place of payment. Employees should receive an

itemized statement of deductions made for each pay period. Also, make available to each employee in writing or through a posted notice in a place accessible to all employees, employment practices and policies with regard to vacation pay, sick leave, and other pertinent matters. This is best accomplished through your Board of Director's adoption of an Employee handbook.

**Overtime Payment:** W. Va. Code §21-5C-3 also requires that hourly employees physically working more than 40 hours in a given week be paid time and a half for the extra hours.

**Child Labor Law:** In accordance with W. Va. Code §21-6, SWAs may not employ children under fourteen. Teenagers fourteen to fifteen may be permitted to work when the SWA obtains and keeps a work permit on file issued by the child's county superintendent of schools. They can only be employed as specified in W. Va. Code §21-6. Review this code if hiring teenagers to verify any restrictions. It is also recommended to consult with the SWA Attorney.

**Equal Pay Law:** Equal compensation will be paid for equal work regardless of sex, race, religion, age, color, ancestry, disability, blindness or national origin in accordance with W. Va. Code §5-11-9.

## **EMPLOYEES AND INDEPENDENT CONTRACTORS**

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SWAs may feel that taking on the responsibility of having employees is too much to handle. In some cases, work can be performed by self-employed independent contractors. Evidence of the extent of control and independence must be considered in establishing whether the person is an employee or contractor. If an employee is misclassified as a contractor, you may be held liable for employment taxes. Review the IRS website's Independent Contractor (Self-Employed) or Employee? section to assist in determining and providing the evidence needed. <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>. Generally, contractors are responsible for maintaining their own federal and state taxes. However, additional forms may be required. Consultation with your attorney and accountant may also be crucial.

WV Department of Personnel policies can be found at:  
[www.personnel.wv.gov/rules/Pages/default.aspx](http://www.personnel.wv.gov/rules/Pages/default.aspx)

## Chapter 2: Attachments

# ATTACHMENT 2A: SAMPLE EMPLOYMENT APPLICATION

## SWA NAME

Employment Application

APPLICANT INFORMATION									
Last Name			First			M.I.		Date	
Street Address						Apartment/Unit #			
City				State		ZIP			
Phone				E-mail Address					
Date Available			Social Security No.			Desired Salary			
Position Applied for									
Are you a citizen of the United States?			YES <input type="checkbox"/>	NO <input type="checkbox"/>	If no, are you authorized to work in the U.S.?			YES <input type="checkbox"/>	NO <input type="checkbox"/>
Have you ever worked for the SWMB?			YES <input type="checkbox"/>	NO <input type="checkbox"/>	If so, when?				
Have you ever been convicted of a felony?*			YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, explain				
<ul style="list-style-type: none"> <li>• An affirmative answer will not automatically disqualify you from being considered as a candidate for employment.</li> </ul>									
EDUCATION									
High School			Address						
From	To	Did you graduate?		YES <input type="checkbox"/>	NO <input type="checkbox"/>	Degree			
College			Address						
From	To	Did you graduate?		YES <input type="checkbox"/>	NO <input type="checkbox"/>	Degree			
Other			Address						
From	To	Did you graduate?		YES <input type="checkbox"/>	NO <input type="checkbox"/>	Degree			
REFERENCES									
<i>Please list three professional references.</i>									
Full Name				Relationship					
Company				Phone					
Address									
Full Name				Relationship					
Company				Phone					
Address									
Full Name				Relationship					
Company				Phone					
Address									

<b>PREVIOUS EMPLOYMENT</b>			
Company		Phone	
Address		Supervisor	
Job Title	Starting Salary	\$	Ending Salary \$
Responsibilities			
From	To	Reason for Leaving	
May we contact your previous supervisor for a reference? YES <input type="checkbox"/> NO <input type="checkbox"/>			
Company		Phone	
Address		Supervisor	
Job Title	Starting Salary	\$	Ending Salary \$
Responsibilities			
From	To	Reason for Leaving	
May we contact your previous supervisor for a reference? YES <input type="checkbox"/> NO <input type="checkbox"/>			
Company		Phone	
Address		Supervisor	
Job Title	Starting Salary	\$	Ending Salary \$
Responsibilities			
From	To	Reason for Leaving	
May we contact your previous supervisor for a reference? YES <input type="checkbox"/> NO <input type="checkbox"/>			

<b>MILITARY SERVICE</b>	
Branch	From To
Rank at Discharge	Type of Discharge
If other than honorable, explain	

<b>DISCLAIMER AND SIGNATURE</b>	
<p>I certify under penalty of law and disqualification that all statements are true and complete. I authorize the SWA to conduct an inquiry into any job-related information contained in this application. I release the SWA from any and all liability by reason of the request for such information. I further authorize and request each employer, education institution, or organization (including law enforcement agencies) to provide all information that may be sought in connection with this application.</p> <p>If this application leads to employment, I understand that false or misleading information in my application or interview may result in my release.</p>	
Signature	Date

**ATTACHMENT 2B:  
SAMPLE NEW HIRE LIST**

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**NAME OF SWA**

INSTRUCTIONS:

1. Complete this checklist.
2. Complete forms in **BLUE INK**.
3. Submit checklist with completed forms to ????????  
**NO LATER THAN 5 DAYS AFTER YOUR START DATE.**


**FAILURE TO COMPLETE CHECKLIST AND SUBMIT PAPERWORK WITHIN 5 DAYS (I-9 WITHIN 3 DAYS) MAY RESULT IN LOSING YOUR BENEFITS ENROLLMENT OPTIONS.**

**INSURANCE BECOMES EFFECTIVE ????????**

You may contact ?????? with questions.

<b>PRINT EMPLOYEE NAME:</b>	<b>HIRE DATE:</b>
<b>FORM DESCRIPTION (includes web page links)</b>	<div style="text-align: center;">√</div> <b>COMPLETED</b>
<p><u>I-9 FORM</u>- Employee Eligibility Verification</p> <p><b>I-9 FORM MUST BE COMPLETED BY YOU WITHIN 1 DAY OF HIRE AND SOLID WASTE REPRESENTATIVE WITHIN 2 DAYS OF HIRE.</b></p> <ul style="list-style-type: none"> <li>• Form attached</li> <li>• Provide and attach a COPY of ID(s) (as per instructions on the form)</li> <li>• Section 1 (employee) must be completed on the <b>FIRST</b> day of employment and Section 2 (employer)- <b>MUST BE COMPLETED SIGNED, AND PLACED IN PERSONNEL FILE WITHIN 2 DAYS-THIS IS A FEDERAL REQUIREMENT</b></li> <li>• Attach the original form to this checklist and return it with the other forms</li> </ul>	<div style="text-align: center;"> <input type="checkbox"/> </div>
<p><u>PERSONNEL QUESTIONNAIRE</u>-</p> <ul style="list-style-type: none"> <li>• Complete form</li> <li>• This form allows us to assure that we have a correct and current address and other information needed to finalize your hiring process.</li> </ul>	<div style="text-align: center;"> <input type="checkbox"/> </div>

<p><u>W-4 FORM</u>-Federal Withholding Allowance</p> <ul style="list-style-type: none"> <li>• Complete attached form</li> <li>• Attach completed form to the checklist and return with the other forms</li> </ul>	<input type="checkbox"/>
<p><u>IT-104 FORM</u>-State Withholding Allowance</p> <ul style="list-style-type: none"> <li>• Print and complete attached form</li> <li>• Attach completed form to the checklist and return with the other forms</li> </ul>	<input type="checkbox"/>
<p><u>DIRECT DEPOSIT FORM</u>-To deposit your paycheck directly to your bank account(s)</p>	<input type="checkbox"/>
<p><u>HEALTH INSURANCE NOTICE</u>-New Health Insurance Marketplace Coverage Options and Your Health Coverage Notice</p> <ul style="list-style-type: none"> <li>• Check box to acknowledge receipt of notice</li> </ul>	<input type="checkbox"/>
<p><b>RETIREMENT: Public Employees Retirement System</b></p>	<input type="checkbox"/>
<p><b>HEALTH INSURANCE:</b></p>	<input type="checkbox"/>
<p><b>ADDITIONAL BENEFITS Flexible Benefits (dental, optical, medical flexible spending accounts, and dependent flexible spending accounts)</b></p>	<input type="checkbox"/>

<p><b>POLICIES</b></p> <ul style="list-style-type: none"> <li>• Review Policies and agreements</li> <li>• Sign acknowledgement forms and agreements</li> </ul>	
Drug and Alcohol-Free Workplace Policy	<input type="checkbox"/>
Workplace Security Policy	<input type="checkbox"/>
Privacy Notices provided if applicable	<input type="checkbox"/>
Given Employee Handbook	<input type="checkbox"/>
Prohibited Workplace Harassment	<input type="checkbox"/>
Fair Labor Standards Act Worksheet	<input type="checkbox"/>
<p><b>EMPLOYEE SIGNATURE:</b></p>	<p><b>DATE:</b></p>

**ATTACHMENT 2C:  
DRUG AND ALCOHOL-FREE WORKPLACE POLICY**

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**I. PURPOSE**

- A. The purpose of this policy is to establish clear and uniform guidelines in accordance with federal and State regulations regarding alcohol, drugs, or controlled substances, including the provisions of the Drug-Free Workplace Act of 1988.
  - 1. Further, the purpose of this policy is to make every effort to institute and maintain a drug- and alcohol-free workplace.
  - 2. This policy shall cover all independent contractors, volunteers, and employees of the State of West Virginia, including executive, administrative, classified, non-classified, exempt, and temporary employees, and employees of county health departments affiliated with the West Virginia Division of Personnel.
- B. The policy's goal is to comply with the Drug-Free Workplace statute and to eliminate the presence and/or use of alcohol and illegal drugs in the workplace.
  - 1. Further, the intent of this policy is to ensure that State government workplaces are safe, productive, and secure for independent contractors, volunteers, employees and citizens.
  - 2. This policy prohibits the use of alcohol and/or illegal drugs in the workplace as such use may affect an independent contractor's, volunteer's, or employee's job performance; bring discredit upon the reputation of the State of West Virginia, as the employer, and/or threaten the safety of independent contractors, volunteers, employees, individuals entrusted to the care of the State, and the general public.

**II. DEFINITIONS**

- A. Alcoholic Liquors: These include alcohol, beer, wine and spirits, and any liquid or solid containing alcohol and capable of being used as a beverage.
- B. Independent Contractor: Any department, division, unit, or any person responsible for the performance of work under a contract.
- C. Controlled Substance: A federally-regulated substance listed in Exhibit A and/or Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) and West Virginia Code § 60A-2-201, et seq., that when taken into the body, may impair one's mental faculties and/or physical performance.
- D. Conviction: A finding of guilt, (including a plea of nolo contendere) or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or State criminal drug statutes.
- E. Criminal Drug Statute: A criminal statute involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.



## DRUG- AND ALCOHOL-FREE WORKPLACE

### POLICY

- F. Employee: Any person who works full-time or part-time, including management, or temporary staff who are directly engaged in the performance of work for a State employer.
- G. Federal Agency: Any agency as that term is defined in Section 552(f) of the Title IV, United States Code.
- H. Grantee: Any department, division, unit, or any person responsible for the performance of work under the provisions of a federal grant.
- I. Legal Drug: Legal drugs include medications prescribed by a physician, and over-the-counter medications which have been legally obtained and are being used solely for the purpose for which they were prescribed by a physician or manufactured.
- J. Illegal Drug: Any drug which is not legally obtainable and is being used in a manner or for a purpose other than as prescribed. Illegal drugs include those controlled substances under federal or State law which are not authorized for sale, possession, or use, and legal drugs which are obtained or distributed illegally.
- K. Workplace: A work site where service or work is performed in connection with an independent contractor's, volunteer's, or employee's public employment or service. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas provided by the State, even if not owned, leased, or operated by the State.
- L. Volunteer: Any authorized individual not receiving compensation while directly engaged in the performance of services for a State employer.

### III. POLICY

- A. It is the policy of West Virginia State government to ensure that its workplaces are free of alcohol, illegal drugs and controlled substances by prohibiting the use, possession, purchase, distribution, sale, or having such substances in the body system. Although the sale and use of alcohol by an adult may be legal, the possession, use, distribution, or dispensation of alcohol in the workplace is strictly prohibited.
- B. This policy is applicable while independent contractors, volunteers, and employees are engaged in any work/service-related activity which includes performance of agency business. Work/service-related activity includes, but is not limited to, conducting work/service, representing the State or the agency, receiving awards, speaking as a State or agency representative, and participation in receptions when invited as a result of State employment/service.
- C. The possession, use, distribution, or dispensation of alcohol; the reporting to work under the influence of alcohol, or having alcohol in the body system at work, whether the alcohol was consumed at work or away from work, are all prohibited in the workplace. When reasonable suspicion exists that an independent contractor, volunteer, or employee has reported to work under the influence of alcohol, illegal drugs, or is impaired due to abuse or misuse of controlled substances or prescribed medications, the individual may be subject to assessment and disciplinary action or termination of service agreement.

 *West Virginia Division of Personnel*

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**DRUG- AND ALCOHOL-FREE WORKPLACE**

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**POLICY**

- D. The unlawful possession, use, manufacture, distribution, or dispensation of a controlled substance or illegal drug; the reporting to work under the influence of a controlled substance or illegal drug; having an illegal drug in the body system; or possession of drug paraphernalia are all prohibited in the workplace.
- E. As a condition of employment/service with the State of West Virginia, independent contractors, volunteers, and employees shall:
  - 1. Abide by the terms of this policy;
  - 2. Notify their supervisor or department head of any criminal drug statute conviction for a violation occurring in the workplace, no later than 5 days after such conviction, and
  - 3. Sign the “Employee Drug Awareness Certification Form” or “Independent Contractor/Volunteer Drug Awareness Certification Form.”
- F. It shall be the responsibility of the Division of Personnel to establish a drug awareness program for independent contractors, volunteers, and State employees to provide training on the following:
  - 1. The Employee Referral Program;
  - 2. The dangers of alcohol use or drug abuse in the workplace;
  - 3. The establishment and maintenance of a drug- and alcohol-free workplace;
  - 4. The penalties for the use or possession of illegal drugs or alcohol in the workplace, and
  - 5. The availability of literature concerning the abuse of alcohol and/or drugs as well as treatment alternatives.
- G. It shall be the responsibility of each agency to:
  - 1. Maintain a copy of the Drug- and Alcohol-Free Workplace Policy in an accessible location and display its Poster in a central location.
  - 2. Include a copy of the policy in every orientation packet for new independent contractors, volunteers, and employees.
  - 3. Maintain the signed “Employee Drug Awareness Certification Form” in each employee’s agency personnel file or the signed “Independent Contractor/Volunteer Drug Awareness Certification Form” on file.
  - 4. Enforce the policy and take appropriate action against individuals who are convicted or violate the policy within 30 days from the date of the conviction or violation.
  - 5. Promptly deal with any possession, consumption, and/or distribution of alcohol, an illegal drug or controlled substance in the workplace, in accordance with legal and administrative disciplin-



## DRUG- AND ALCOHOL-FREE WORKPLACE

POLICY

ary procedures. Supervisors should contact their respective agency personnel office or individual designated by the appointing authority for guidance. However, in emergency situations supervisors should first ensure the safety of others and then immediately contact 911, appropriate law enforcement officials, or agency security. Agencies in Kanawha county may also contact the Division of Protective Services at 558-9911 for assistance.

- a. Employees who are in violation of the provisions of the Drug-Free Workplace Act, or this policy, shall be subject to disciplinary action, up to and including dismissal, and may be required to participate in a drug rehabilitation program. Independent contractors and volunteers shall be subject to the termination of the service agreement.
  - b. State agencies who are independent contractors or grantees of federal contracts or grants amounting to at least \$25,000 are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace if they make a false initial certification, or if the number of drug-related convictions of employees indicates that the employer has not made a good faith effort to maintain a drug-free workplace.
6. Provide training to every employee, including supervisors and managers, concerning the Drug and Alcohol-Free Workplace Policy.

#### IV. REFERENCES

- A. Drug-Free Workplace Act, 41 U.S.C. Sections 701-707.
- B. West Virginia Code § 60A-2-201 et seq. and applicable federal statutes.


V. **EFFECTIVE DATE:** October 1, 1991.

#### VI. REVISIONS

- A. Previous Revisions: January 16, 2003.
- B. Latest Revision: October 1, 2004.

VII. **POLICY NUMBER:** DOP-P2.

Approved and Issued By:

  
Willard M. Farley, Acting Director of Personnel

Date Signed: October 1, 2004.

**EMPLOYEE DRUG AWARENESS  
CERTIFICATION FORM**

I, \_\_\_\_\_, certify that I have received a copy of the West Virginia State Drug- and Alcohol-Free Workplace Policy.

I agree to abide by the terms of the policy and I am aware that with any violation of this policy, I will be subject to disciplinary action, up to and including dismissal. I may also be required to participate in a drug-abuse assistance or drug-rehabilitation program.

In addition, I understand that under federal law and as a condition of employment, if I am convicted of any violation of a criminal drug offense in the workplace, I must report this conviction to my supervisor and the appointing authority within five days of the conviction.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**RETURN THIS FORM TO YOUR IMMEDIATE SUPERVISOR**

**ATTACHMENT 2D:  
SMOKING RESTRICTIONS IN THE WORKPLACE POLICY**

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**DISCLAIMER:** This policy shall not be interpreted or construed to permit smoking where it is otherwise restricted by applicable federal, State, or local law or ordinance, or appointing authority policy.

**I. PURPOSE:** The purpose of this policy is to establish procedures to ensure the right to a smoke-free environment for each State employee and the public as they transact business with or receive service from the State. Studies regarding the effects of passive smoke inhalation by non-smokers conclude that exposure to secondhand smoke is harmful to one's health. The working environment should present no unnecessary risk of physical harm or discomfort from secondhand smoke. Residents of State facilities, applicants, clients, and visitors should not be exposed or expose others to environmental tobacco smoke. Therefore, it is necessary to implement a policy setting forth smoking restrictions in all places of employment operated by the State.

**II. DEFINITIONS**

- A. **Adjacent Non-Smoking Space:** Outdoor area within 15 feet, or a greater distance established as a non-smoking space by the local board of health or the appointing authority, adjacent to any entrance, exit, operable window, or ventilation intake for any State-owned or State-leased office building and other facility that is commonly used by State employees and the general public.
- B. **Appointing Authority:** The executive or administrative head of an agency, or his or her designee, who is authorized by statute to appoint employees in the classified or classified-exempt service.
- C. **Electronic Cigarette (also known as e-cigarettes and personal vaporizers):** Battery powered device that allows consumption of nicotine by way of a vaporized solution.
- D. **Entrances and Exits:** The established arrival and/or departure areas and routes leading thereto, including sidewalks, within the non-smoking space as well as the entire length of accessible ramps or stairs; not limited to the actual doors for all places of employment.
- E. **Place of Employment:** Any area under the control of an appointing authority where employees normally frequent during the course of employment, including, but not limited to: indoor and outdoor work areas; employee lounges and break, lunch, and restrooms; public waiting rooms; receiving areas to include loading docks and delivery areas; conference and classrooms; employee cafeterias; hallways; and any other work area, including any office, facility, building, structure, elevator, stairwell, automobile, truck, trailer, other vehicle, and parking garage, whether owned, leased, or operated by the State or its agent(s).
- F. **Secondhand Smoke:** Environmental tobacco smoke, also known as passive or sidestream smoke, which could be voluntarily or involuntarily inhaled by individuals who did not generate that smoke.
- G. **Smoking:** Burning or vaporizing tobacco products or other substances in a cigarette, cigar, pipe, electronic cigarette, or by other means or equipment to inhale and exhale the smoke or vapor.



## SMOKING RESTRICTIONS IN THE WORKPLACE

### III. POLICY

- A. It is the responsibility of the appointing authority to ensure that all State places of employment maintain a smoke-free environment and to make both State employees and the public aware of their responsibility to ensure this smoke-free environment. Appointing authorities shall implement progressive discipline for employee violation of this policy. Such disciplinary action shall be based on violation of this policy and not imposed in a discriminatory manner as a result of the employee's status as a tobacco user.
1. Appointing authorities shall establish a smoke-free environment in their places of employment in accordance with this policy and any properly promulgated regulations of local boards of health.
  2. Appointing authorities shall prohibit smoking at work sites by employees and the public to limit the exposure of individuals to the harmful effects of secondhand smoke.
  3. Smoking by employees of the State is prohibited at their places of employment and at adjacent non-smoking spaces.
  4. Appointing authorities may restrict smoking for employees while engaged in outdoor work activities.
  5. Appointing authorities are not required to make accommodations for outdoor smoking areas.
  6. Certain State government jobs may require work in an environment where an employee may be subjected to secondhand smoke. The appointing authority shall notify all applicants of this potential work environment and make every reasonable effort to provide a smoke free environment. Employees do not have the unfettered discretion to refuse to perform duties which may expose them to secondhand smoke.
  7. In the application of this policy, anytime there is a conflict between the rights of smokers and non-smokers, the appointing authority shall protect the health of the general public and employees by minimizing exposure to secondhand smoke.
- B. Public waiting rooms and receiving areas to include loading docks and delivery areas shall be smoke-free, and smoking restrictions shall be actively enforced by the individuals responsible for those areas.
1. The appointing authority shall clearly and conspicuously post "No Smoking" signs in accordance with the regulations of local boards of health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar diagonally across it) at every entrance to and exit from buildings and facilities or other areas where smoking is prohibited.
  2. At the expense of the appointing authority, receptacles should be placed outside all buildings to encourage persons to extinguish and to properly dispose of smoking products before entering. Receptacles shall be placed beyond the adjacent non-smoking spaces. All ashtrays and other smoking paraphernalia (including e-cigarettes/other smoking devices) shall be removed from any area where smoking is prohibited. The Smoking Restrictions in the Workplace Policy shall be available for review, if requested, in all waiting rooms and reception areas.

 *West Virginia Division of Personnel*

## **SMOKING RESTRICTIONS IN THE WORKPLACE**

**POLICY**

- C. Smoking restrictions shall be enforced at all conferences, meetings, and training sessions conducted by the State and shall be consistent with all other provisions of this policy.
1. All non-State entities using facilities owned, leased, or operated by the State must conform to this policy.
  2. No employees shall be required to subject themselves to the exposure of secondhand smoke in conferences or other gatherings that are conducted by organizations outside of State government.
    - a. Employees may ask the person in charge of such meetings to require a smoke-free environment.
    - b. If the person in charge fails to enforce smoking restrictions, the employees may return to their regular places of employment and report the incident to his or her supervisor and to the facility manager or designated individual(s) who scheduled the event.
- D. Appointing authorities are encouraged to provide support and assistance to employees in the implementation and enforcement of this policy.
1. Appointing authorities are encouraged to provide and/or refer employees to smoking cessation programs.
  2. As the establishment of restrictions concerning smoking on the appointing authority's premises and the sale of cigarettes appear to be in conflict, appointing authorities may wish to consider the removal of cigarette vending machines or prohibiting the sale of cigarettes and e-cigarettes/other smoking devices on the premises.
  3. For technical assistance, appointing authorities may contact the Division of Personnel or the Bureau for Public Health to ensure that workers' concerns are addressed.
  4. Employees who desire to smoke or use e-cigarettes/other smoking devices may do so during their scheduled or any other authorized break period provided they use an outdoor designated smoking space beyond an adjacent non-smoking space and do not exceed their allotted break time to do so.
- E. All related policies shall be enforced by the appointing authorities.
1. This policy does not supersede any State agency policy, local ordinances or federal and State statutes that are more restrictive and applicable to State places of employment.
  2. West Virginia Code § 21-3-19 prohibits employers from discriminating in employment against persons who use tobacco products off the premises of the employer during nonworking hours.
  3. Enforcement of this policy in or at State-owned, -leased or -operated office buildings, facilities, and vehicles is the responsibility of the appointing authority. Violations of this policy by employees shall be reported to the employee's immediate supervisor or manager.
  4. An appointing authority may impose additional or stricter guidelines which employees shall follow within the agency's workplace. Provided such guidelines are implemented with the express mutual approval of the affected appointing authority and the Director of the Division of Personnel.

 **West Virginia Division of Personnel**

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**SMOKING RESTRICTIONS IN THE WORKPLACE**

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**POLICY**

- 5. Managers and supervisors are to enforce for their employees this policy as well as office attendance standards.
- 6. Employees who fail to adhere to this policy, and administrative and supervisory staff who fail to enforce it, may be subject to appropriate disciplinary action.
- F. State residential facilities, including but not limited to, hospitals, group homes, prisons and guest facilities shall comply with this policy to the maximum extent possible. The only exceptions will be by the express mutual approval of the affected appointing authority and the Director of the Division of Personnel. All exceptions will be made with public health and safety being the primary consideration.

**IV. REFERENCES**

- A. West Virginia Code § 29-6-7, Director of Personnel; appointment; qualifications; powers and duties.
- B. West Virginia Code § 21-3-19, Discrimination for use of tobacco products prohibited.
- C. Foundation for Independent Living, Inc., et al. v. Cabell-Huntington Bd. of Health and SER Kanawha-Charleston Bd. of Health v. King, et al., 591 S.E.2d 744 (2003).
- D. West Virginia Division of Personnel's Administrative Rule (143CSR1).
- E. Hartman v. The West Virginia Department of Human Services, Grievance Docket No. DHS-88-033, (February 22, 1989).
- F. Kanawha-Charleston Board of Health Clean Indoor Air Regulation (2007).

**V. EFFECTIVE DATE:** December 1, 1990.

**VI. REVISIONS**

- A. Previous Revisions: April 15, 2004 and August 1, 2006.
- B. Latest Revision: May 1, 2011.

**VII. POLICY NUMBER:** DOP-P1.

Approved and Issued By:



Sara P. Walker, Director of Personnel

Date Signed: May 1, 2011

# Chapter 3: Solid Waste Authority Plans

## CHAPTER 3: SOLID WASTE AUTHORITY PLANS

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In accordance with Legislative Rule, 54CSR3 - Comprehensive Litter and Solid Waste Control Plans, and 54CSR4 - Commercial Solid Waste Facility Siting Plans, each county or regional solid waste authority is responsible for completing a Comprehensive Litter and Solid Waste Control Plan and a Commercial Solid Waste Facility Siting Plan. The full text of each rule is included in [Attachments 3A](#) and [3B](#).

NOTES

### COMPREHENSIVE LITTER AND SOLID WASTE CONTROL PLAN

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In general, the comprehensive plan must address 14 points.

1. An assessment of litter and solid waste problems in the county.
2. The establishment of solid waste collection and disposal service for all county residents.
3. An evaluation of the feasibility of requiring or encouraging source separation to facilitate recycling and evaluation of the feasibility of requiring or encouraging waste reduction measures.
4. The establishment of an appropriate mandatory garbage disposal program.
5. A recommendation for the siting of one or more properly permitted solid waste facilities to serve the solid waste needs of the county or region.
6. A timetable for the implementation of the Commercial Solid Waste Facility Siting Plan and the Comprehensive Litter and Solid Waste Control Plan.
7. A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps.
8. Coordination of the plan with related solid waste collection and disposal services of municipalities and, if applicable, other counties.
9. A program to enlist the assistance of private industry and civic groups in volunteer cleanup efforts.
10. Innovative incentives to promote recycling.
11. A program to identify the disposal of out-of-county or out-of-region solid waste.
12. Coordination with the Division of Highways, the Department of Environmental Protection and other agencies in the control and removal of litter, tires and open dumps.
13. Establishment of a program to encourage and utilize individuals incarcerated in the regional jail and those individuals on probation for purpose of litter pickup.
14. Provision for the proper disposal of commercial or industrial solid waste produced within the county or region.

**Recycling Plan:** A major component of the Comprehensive Litter and Solid Waste Control Plan is the Comprehensive Recycling Plan. The plan shall include but not be limited to:

1. Designation of the recyclable materials that can be most effectively source separated in the region or county, which will include at least three recyclable materials.

2. Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

**Mandated Municipalities:** In accordance with W. Va. Code §22-15A-18(b), municipalities with a population of 10,000 or more, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, will establish and commence implementation of a source separation and curbside collection program.

At a minimum, the program must include the following six elements:

1. An ordinance adopted by the governing body of the municipality requiring that each person, partnership, corporation or other entity in the municipality shall separate at least three recyclable materials, as deemed appropriate by the municipality, from other solid waste. The list of recyclables can be different based on whether the generator is residential, commercial or some other type of establishment.
2. A scheduled day, at least one per month, during which separated materials are to be placed at the curbside, or similar location, for collection.
3. A system that collects recyclable materials from the curbside, or similar location at least once per month.
4. Provisions to ensure compliance with the ordinance, including incentives and penalties.
5. A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality and penalties.
6. Consultation with the county or regional SWA in which the municipality is located to avoid duplication, ensure coordination of solid waste programs and maximize the market for recyclables.

**County Recycling Program:** A comprehensive recycling program for solid waste may be established in accordance with W. Va. Code §22-15A-18(e) in any county of West Virginia by action of the county commission or by a two-step process which includes:

1. A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than 5% of the number of votes cast within the county for governor at the preceding gubernatorial election.
2. Approval by a majority of the voters in a subsequent referendum on the issue.

A copy of a sample recycling ordinance can be found in [Attachment 3C](#).

## COMMERCIAL SOLID WASTE FACILITY SITING PLAN

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Each county or regional SWA shall prepare a siting plan which identifies sites for the facilities listed in Attachment 3B, 54CSR4, Commercial Solid Waste Facility Siting Plans.

The county or regional SWA shall develop the siting plan based upon the consideration of one or more of the following 10 criteria:

1. The efficient disposal of solid waste including all solid waste generated within the county or region.
2. Economic development.
3. Transportation facilities.
4. Property values.
5. Groundwater and surface waters.
6. Geological and hydrological conditions.
7. Aesthetic and environmental quality.
8. The present or potential land uses for residential, commercial, recreational, environmental, conservation or industrial purposes.
9. Historic and cultural resources.
10. The public health, welfare and convenience.

The SWA will classify zones as either authorized, prohibited or tentatively prohibited. Unless readily available information clearly establishes an area is suitable or not suitable for the establishment of a commercial solid waste facility, the area shall be designated as an area in which the location of a commercial solid waste facility is “tentatively prohibited.”

The siting plan shall incorporate provisions of the Comprehensive Litter and Solid Waste Control Plan as they relate to solid waste collection and disposal and, if necessary, for additional commercial solid waste landfill and transfer station capacity in accordance with W. Va. Code §22C-4-24.

## UPDATING AND AMENDING PLANS

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SWAs must update their plans every five years. Plans can be amended at any time, however, a public hearing must be held to discuss any proposed changes to the plan. Both updated and amended plans must be approved by the SWMB.

NOTES

## QUESTIONS AND ANSWERS ON SOLID WASTE AUTHORITY PLANS

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**Q. Can a solid waste facility be built in an area classified as “tentatively prohibited?”**

A. No. In order to site a solid waste facility the area must be redesignated as “approved”. Upon receiving an application from a person who has filed a pre-siting notice, the county or regional solid waste authority or county commission **may** amend the siting plan by redesignating a zone where commercial solid waste facilities are tentatively prohibited to one which is authorized. A public hearing must be held to amend the siting plan.

**Q. If an area is classified as “authorized,” does the SWA still have to hold a public hearing and make a determination to issue a certificate of site approval for a facility built in that area?**

A. Yes, while the siting plan may classify areas as authorized, the SWA must still evaluate each commercial solid waste facility proposal and follow the general guidelines for issuing a certificate of site approval. The classification of an area as authorized does not guarantee the applicant site approval.

**Q. Where can individuals obtain copies of their counties’ current plans?**

A. Copies of both plans should be available at the offices of the local SWA, the regional plan and development council, the county clerk, the SWMB.

**Q. What is the penalty for not having an approved current siting plan or comprehensive plans?**

A. SWAs not having current, approved plans on file with the SWMB may be disqualified from receiving grant funds. Receipt of grants administered by the SWMB and the WV DEP Rehabilitation Environmental Action Plan (REAP) require that SWAs be in compliance with all state and federal laws and regulations. (REAP grants are for recycling only.)

**Q. What if a county or regional SWA does not develop its own siting plan in accordance with the law?**

A. In such case, the SWMB is required by statute to develop the plan for the Authority in accordance with W. Va. Code §22C-4-24.

**Q. How are solid waste authority plans reviewed?**

A. Draft plans are submitted to the SWMB for review. The SWMB staff reviews the plans for administrative completeness. Once determined to be complete, each plan is subjected to a technical review to determine if it meets the specific criteria prescribed by law. If plans are found to be deficient, the SWMB will report the deficiencies to the SWA. Once all deficiencies are corrected staff will recommend to the Board that the plan be approved.

**Q. Are there any other means of changing a plan other than amending it?**

A. Yes, any person adversely affected by the decisions and determinations of a SWA in drawing up its planning documents may appeal that decision in the circuit court of the county in which the plaintiff or petitioner resides or in which a claim arose or, alternatively, in the circuit court Kanawha County.

## Chapter 3: Attachments

# COMPREHENSIVE LITTER & SOLID WASTE CONTROL PLAN UPDATE PROCESS

## **Plan Updates and Information**

Every county or regional solid waste authority is required to update and amend their Comprehensive Litter and Solid Waste Control Plan every five years, although they may update or amend at any time. The period covered by the plan is to be extended for twenty (20) years.

The process for updating or amending a comprehensive plan is outlined in WV Code Rules 54CSR3. Sections 3, 4 and 5 state exactly what is required to be included and what format is to be used for the plan.

The following information is a summary, or a quick step reference to updating the required plan. A printed copy of WV Code Rules 54CSR3 has been included at the end of this information for a more detailed explanation of each step.

Should your authority have any question regarding the process or procedures at any point, please contact the Solid Waste Management Board staff at 304-926-0448.

## The Process (summarized)

For the updates to the Comprehensive Litter and Solid Waste Control Plan, there are basically four parts to the process:

- First Public Hearing
- Second Public Hearing
- Submission for Approval by the Solid Waste Management Board
- Final Submission of Approved Plan

The following information summarizes how the Solid Waste Management Board staff would explain the process to each authority.

- 1) It is always a good practice to ensure that the entire authority board is aware that the process of updating is starting. A board motion is not required, but as a point of public record, it is recommended that the meeting minutes reflect the start of this process.
- 2) Class I Legal Ad must be advertised stating the purpose, time, date, and location of the public hearing and the final date of the written comment period and where comments may be sent.
  - a. Public hearing MUST be a minimum of thirty (30) days from the date of publication of the Class I legal ad.
  - b. Written comment period MUST be a minimum of ten (10) days from the date of the public hearing.
  - c. Timeframes are based on calendar days, not working days.
  - d. A copy of the affidavit and ad will become part of the final plan.
- 3) Copies of the plan must be placed at the required locations by the day the legal ad is published.
  - a. County Clerk's Office;
  - b. All public libraries and branch libraries in the county or counties;
  - c. Office of each appropriate regional planning and development council; and
  - d. By posting the public notice at the appropriate county courthouse(s).
- 4) Start updating the "draft" version. Information tends to change over a five-year period. Your board needs to review the information for any changes in goals, objectives, programs, statistical data, etc. This Plan is a complete overview of your county's program and goals for the next twenty (20) years.
- 5) 1<sup>st</sup> public hearing is held and 1<sup>st</sup> written comment period.
  - a. No quorum is needed for the public hearing. May be conducted by a board member or an employee. Entire board is not required to be in attendance.
  - b. Purpose of the public hearing is to solicit ideas, opinions and comments from the public concerning the plan being updated. The public hearing is not the time to respond to any comments received. No action is required.
  - c. Public shall be given a reasonable time limit for oral statements.
  - d. Hearing should last at least an hour, unless public participation would constitute it to last longer.
  - e. Hearing must be recorded by "mechanical means" (any type of electronic recorder). Copies of all written comments and hearing minutes shall be retained for a period of three (3) years from the date of the public hearing.
  - f. Public hearing minutes will become part of the final plan.

- 6) At the following board meeting, board members should acknowledge any verbal or written comments received.
  - a. A brief letter acknowledging the receipt of any written comments should be sent to person submitting comments.
  - b. The authority shall prepare a written summary of the public comments received and how it was responded to. This will be included in the final plan.
- 7) 2<sup>nd</sup> Class I Legal Ad is advertised stating the dates of the public hearing and ending of the written comment period. (same information included in step 2)
- 8) Copies of the “draft” version is placed at the required locations by the day the legal as is published. (same locations as listed under step 3)
- 9) 2<sup>nd</sup> public hearing is held and 2<sup>nd</sup> written comment period ends. (see step 5)
- 10) At the following board meeting, the board addresses any comments received. (step 6) If agreed, a motion must be made to submit the plan to the Solid Waste Management Board for final approval. Approved minutes must be included in the final plan.
- 11) SWMB staff reviews the plan for completeness.
  - a. If found complete, plan is placed on the next monthly agenda.
  - b. If found incomplete, the insufficiencies will be noted and the plan will be returned to your board for corrections. Within ninety (90) days, the authority shall revise the plan and submit the corrected version to the SWMB for approval.
- 12) Upon approval the by SWMB, an approval letter and the original plan will be sent back to your board. Your authority will be given sixty (60) days after approval to mail four (4) copies of its final plan back to the SWMB. One (1) copy must be mailed to the appropriate regional planning and development council, county planning commission and the office of the appropriate county clerk, who shall file the plan in an appropriate manner and make it available for public inspection.
- 13) **THIS PROCESS IS NOT FINALIZED UNTIL THE FINAL VERSIONS ARE RECEIVED BY THE SWMB.**

## Public Hearing Worksheet

The Comprehensive Litter and Solid Waste Control Plan must have two (2) public hearings and written comment periods.

- The existing plan may be used for the first (1<sup>st</sup>) public review period.
- An updated “draft” copy must be placed out for the second (2<sup>nd</sup>) public review period.

Any changes that are being made to the “draft” version should be made as follows:

- Language being REMOVED needs to be done so with strikethroughs.
- Language being ADDED needs to be done so using underlines.
- This allows the general public to quickly note what information is being changed.

Plan **must** be placed in the following locations by the date of publication of Class I Legal Ad:

- County clerk’s office;
- Every county public library and its’ branches;
- Regional Planning and Development office; and
- The SWA office (should you choose).

Public hearing date **must be** a minimum of thirty (30) days from the **published** date of the Class I legal ad. Written comment period **must be** extended a minimum of ten (10) days from the hearing date. **Note: Timeframes are calendar days, not working days.**

### First Hearing

#### ACTUAL DATES

#### SAMPLE DATES

Date legal ad appears in publication

\_\_\_\_\_

Jan. 3, 2019

Date of public hearing

\_\_\_\_\_

Feb. 3, 2019 (33 days)

Date of written comment period

\_\_\_\_\_

Feb. 13, 2019 (10 days)

### Second Hearing

#### ACTUAL DATES

#### SAMPLE DATES

Date legal ad appears in publication

\_\_\_\_\_

March 7, 2019

Date of public hearing

\_\_\_\_\_

April 7, 2019 (32 days)

Date of written comment period

\_\_\_\_\_

April 17, 2019 (10 days)

## Sample Class I Legal Ad

*This is only to serve as a suggested template for the Class I legal ad based on the required information from 54CSR3. Wording may vary as to each board's preference of wording. However, this information is, at a minimum, required to be included.*

The  (Name of County)  County Solid Waste Authority will hold a public hearing concerning the five-year update of the Comprehensive Litter and Solid Waste Control Plan. The hearing will take place at  (location) , on  (date) ,  (month) ,  (year) , at  (time) , during which time public comments will be heard. The plan may be reviewed at the  (county library – location) ,  (county)  County Clerk's Office, and the  (regional planning & development office) . Written comments will be accepted until  (date – 10 days from hearing)  and may be sent to  (Authority or Chairman/Director) , at  (mailing address and email address, if you so choose) .

In accordance with 54CSR3-5.2.1, "Public hearings for the comprehensive plan update may be held at the same time as the siting plan update hearings, as long as both plans are advertised and addressed equally."

If your authority is needing to provide updates for both, the comprehensive and siting plans at the same time, you may combine the Class I legal ad to reflect so. This may be done by adding "and Commercial Solid Waste Facility Siting Plan" to the first sentence to reflect the public hearing for both. Not only does this ensure both are being done properly, at the same time, but saves the authority from paying for two Class I legal ads.

Just make sure that the recording and minutes for the public hearings indicate that comments are/were being accepted for both plans.

## Required Format of Plan

WV Code Rules §54-3-4, plainly states the format of each plan. The Comprehensive Plan shall include:

- **Cover sheet**
  - Includes the name of the authority,
  - Title of the plan, and
  - Signature of the authority chair.
- **Introduction**
  - Explaining the plan's background,
  - Scope, and
  - Purpose.
- **Table of Contents**
  - Indicating the major subdivisions of the plan – information outlined in section 5.
- **Executive Summary**
  - Describes the methodology,
  - Goals and Objectives.
  - Conclusions, and
  - Recommendations.
- **Copy of Class I legal advertisements** – as outlined in section 7.
  - Brief summary of public comments and a statement explaining how the authority responded to each.
- **Maps of appropriate size and scale.**

Section 5 of this Rule goes on to explain the Content of Plan. This section explains in detail what each of the sections listed above and those major subdivisions are to include. The Table of Contents on the next page shows each item “required” from the Rule to be included in the plan and the code citing for each.

For a detailed description of each, refer to the copy of 54CSR3 included at the end of this overview.

## Table of Content Format According To 54CSR3 With WV Rule Citing

Introduction .....	(4.1.b.)
Background	
Scope	
Purpose	
Executive Summary.....	(4.1.d.)
Goals & Objectives .....	(5.1.a.)
Status of Existing Solid Waste Activities .....	(5.1.b.)
Funding Strategy .....	(5.1.c.)
Hierarchy of Solid Waste Disposal .....	(5.1.d.)
Assessment of Litter and Solid Waste Problems .....	(5.2.a.)
Evaluation and Assessment of Solid Waste Collection and Disposal Services.....	(5.2.b.)
Waste Hauler Information .....	(5.2.b.1.)
Demographic and Population Projection Information .....	(5.2.b.2. & 5.2.b.3.)
Geological Information .....	(5.2.b.3.A & 5.2.b.3.B)
Transportation Information .....	(5.2.b.3.C.)
Recommendation for Siting of a Landfill.....	(5.2.c. to 5.2.c.3.)
Timetable for Implementation of Plan .....	(5.2.d.)
Cleanup and Open Dump Programs .....	(5.2.e.)
Voluntary Assistance Programs .....	(5.2.f.)
Coordination with Other Entities.....	(5.2.g. & 5.2.i.)
Use of Inmates for Litter Pickup .....	(5.2.h.)
Identification of Out-of-County Waste .....	(5.2.j.)
Mandatory Disposal .....	(5.2.k. to 5.2.k.1.)
Facilities Generating More Than Five Tons of Solid Waste.....	(5.2.k.2.)
Conclusions .....	(5.2.k.4.)
Class I Legal Ads .....	(4.1.e.)
Public Comments .....	(4.1.f. and 5.2.l.)
Hauler Map .....	(4.1.g.)
Comprehensive Recycling Plan .....	(5.3.)
Mandatory Garbage Disposal Program.....	(5.4.)

### Recycling Plan Content

Recycling Goals (5.3.a.)	
Collection and Processing .....	(5.3.b.)
Characterization of Waste Stream.....	(5.3.b.1.)
Existing and Anticipated Markets .....	(5.3.b.2.)
Potential Strategies for Collection of Materials.....	(5.3.c. to 5.3.c.2.)
Recycling Program Ordinance (if applicable) .....	(5.3.d.)
Public Education Program.....	(5.3.e. to 5.3.e.5.)

### Mandatory Garbage Program Content

Methods of Proof of Proper Disposal .....	(5.4.a.)
Provisions to Assist Law Enforcement .....	(5.4.b.)

## Submission for Approval by the Solid Waste Management Board

When the authority has completed both public hearings, and the entire board agrees with the contents of the plan, it is now time to submit the document for review and approval by the Solid Waste Management Board (SWMB).

The following items are to be included in the packet when sending the plan to the SWMB for approval:

- Clean copy of the updated plan (underlines & strikethroughs removed).
- All appendices attached.
  - o Maps (waste hauler areas and any other maps cited throughout plan)
  - o Public Participation Process
    - Copies of affidavit and legal ads for both hearings
    - Copies of minutes from both public hearings
    - Copies of any public comments received and the written responses
- Copy of the last board meeting showing approval for submission (may be the draft copy – approved, signed version must be sent prior to SWMB approval)

Once received, the SWMB staff will review the document for administrative and technical completeness.

- If the SWMB finds the plan “incomplete,” the plan and a letter explaining the insufficiencies will be returned to the authority. The authority will then be given ninety (90) days to revise the plan and submit the correction version to the Board.
- If found “complete,” the plan will be submitted to the SWMB for approval.

The Board will send a letter of approval and the original plan back to the authority upon approval.

As required by the Rule, the Authority will have sixty (60) days after approval to return four (4) full copies, to include the approval letter, of its final plan back to the SWMB. Each authority shall transmit one copy of the final plan to the appropriate regional planning and development council, county planning commission, and the office of the appropriate county clerk who shall keep the plan on file for public review.

The update process for the Comprehensive Litter and Solid Waste Control Plan is finally complete.

**TITLE 54  
LEGISLATIVE RULE  
SOLID WASTE MANAGEMENT BOARD**

**SERIES 3  
COMPREHENSIVE LITTER AND  
SOLID WASTE CONTROL PLANS**

**§54-3-1. General.**

1.1. Scope. -- The scope and purpose of this rule is to establish minimum standards and planning requirements for all county and regional solid waste authorities to follow in developing, updating, and amending comprehensive litter and solid waste control plans as required by W. Va. Code §22C-4-1 et seq. Such minimum standards and requirements are designed to protect the public health, safety, and environment throughout the state of West Virginia; provide for an integrated waste management hierarchy; provide for the most effective and efficient use of available resources; and ensure the establishment of the most proper and effective solid waste collection, transportation, processing, recycling and disposal services for all residents of the state.

1.2. Authority. -- W. Va. Code §§22C-3-6, 22C-4-8, 22C-4-23, and 20-11-1 et seq.

1.3. Filing Date. -- May 21, 2001.

1.4. Effective Date. -- May 21, 2001.

**§54-3-2. Definitions.**

The following words and terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Authority" means any solid waste authority of any county or region in West Virginia, established by W. Va. Code §§22C-4-3 and 22C-4-4; or the county commission of any county which elected not to establish an authority, as allowed by W. Va. Code §22C-4-6.

2.2. "Board" means the West Virginia Solid Waste Management Board, as established by W. Va. Code §22C-3-4, or its authorized representatives.

2.3. "Commercial 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 composting facility owned and operated by a person for the sole purpose of composting waste created by that person or such person and other persons on a cost-sharing or non-profit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

2.4. "Landfill" means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for the purpose of this rule article, in the county where the majority of the spatial area of such facility is located.

2.5. "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.

2.6. "Open dump" means any solid waste disposal which does not have a permit under W. Va. Code §22-15-1 et seq., or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

2.7. "Plan" or "Comprehensive Plan" means the comprehensive litter and solid waste control plan or update of such plan required under W. Va. Code §22C-4-8 and sections 5 and 6 of this rule.

2.8. "Recycle" or "Recycling" means the process by which recovered products are transformed into new products, and includes the collection, separation, recovery, and sale or reuse of metals, glass, paper, tires, lead-acid batteries, and other materials.

2.9. "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 §§20-11-1 et seq., 22-15-1 et seq., or 22C-4-1 et seq.

2.10. "Resource recovery facility" means any solid waste facility at which solid wastes are mechanically, biologically, chemically, or thermally transformed for the purpose of separating, removing, or creating any material or energy for reuse or sale, and at which land disposal of solid waste does not occur. Resource recovery facility includes composting facilities, environmentally acceptable incinerators, materials recovery facilities, energy recovery facilities and other such solid waste facilities not herein specified.

2.11. "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; other discarded material, 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 material in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code §§22-11-1 et seq., or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under W. Va. Code §§22-18-1 et seq., or refuse, slurry, overburden, or other waste 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 §§22-2-1 et seq., 22-3-1 et seq., 22-4-1 et seq., 22-6-1 et seq., 22-7-1 et seq., 22-8-1 et seq., 22-9-1 et seq., 22-10-1 et seq., or 22A-1-1 et seq., so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters.

2.12. "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.

2.13. "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, commercial composing facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with W. Va. Code §22-15-20 (b). Such facilities shall be deemed to be situated, for the 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.

2.14. "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.

2.15. "Transfer station" means a combination of structures, machinery, or devices at a place, or facility where solid waste is taken from collection vehicles and placed in other transportation units (such as a "walking floor," or other method of transfer as determined by the director) for movement to another solid waste management facility. Provided, when the initial generator of solid waste disposes of said waste into a container such as a roll-off, greenbox or bin which is temporarily positioned (not more than five days) at a specific location for transport by a transportation unit, such container shall not be considered a transfer station. Under any circumstances, leachate, litter and windblown materials must be properly managed.

### **§54-3-3. Requirement and Procedure for Plan Development, Update, and Approval.**

3.1. Requirement of Plan. -- All authorities are required to have a plan and to update it.

3.2. Submission to the Board.

3.2.a. A comprehensive litter and solid waste control plan shall be submitted to the Board. The plan shall be updated and submitted every five years after any new or updated plan is approved by the Board or within ninety (90) days of the formation of a new authority.

3.2.b. A grant may be obtained from the Board for the purpose of updating the comprehensive plan in accordance with subsection 4.4 of 54CSR5 – "Disbursement of Grants to Solid Waste Authorities." Grant amounts will be subject to the availability of funds.

3.3. Plan Review.

3.3.a. The Board shall review each plan for administrative and technical completeness. If the Board finds the draft plan to be incomplete, i.e., to not contain all of the information required by this rule, it shall return the plan to the authority along with a written statement explaining how the plan is incomplete.

3.3.b. Within ninety (90) days of receipt of a letter disapproving the plan, the authority shall revise the plan to eliminate the insufficiencies and submit the corrected plan to the Board.

3.4. Final Submission to the Board.

3.4.a. The Board shall approve the final plan in writing if the Board determines that the plan complies with the purposes and requirements of applicable state and applicable federal law, if any, and the rules promulgated in this series.

3.4.b. No later than sixty (60) days after approval, each county authority shall submit to the Board four (4) copies of its final plan. Each regional authority must submit one additional copy of the plan for each county within that region. Each authority shall transmit one copy of its plan to each appropriate regional planning and development council, county planning commission and to the office of each appropriate county clerk, who shall file the plan in the appropriate manner and make it available for public inspection.

3.5. Plans Developed by the Board.

3.5.a. The Board shall develop a plan for any authority which fails to submit an update and for any new authority that fails to submit a plan within ninety (90) days of the due date under subsection 3.2.a, provided that

in preparing such plans, the Board may determine whether to prepare a regional or county-based plan for those authorities which fail to complete such an update or for those new authorities that fail to complete a plan.

3.5.b. Once a plan or an update has been developed for an authority, the authority shall be responsible for the five-year plan update.

#### **§54-3-4. Required Format of Plan.**

4.1. Required Format. -- In addition to the information required in section 5 of this rule, each plan submitted shall include:

4.1.a. A cover sheet which includes the name of the authority, the title of the plan, and the signature of the authority chair;

4.1.b. An introduction explaining the plan's background, scope, and purpose;

4.1.c. A table of contents indicating the major subdivisions of the plan;

4.1.d. An executive summary of the plan which briefly describes its methodology, goals and objectives, conclusions, and recommendations;

4.1.e. A copy of the Class I legal advertisement as specified in subsection 7.1 of this rule regarding the required public hearings;

4.1.f. A brief summary of public comments and a statement describing how the authority responded to the public comments; and

4.1.g. Maps of an appropriate size and scale that will allow the reader to identify the location of features, services, facilities, and population listed in paragraphs 5.2.b.1. and 5.2.b.3 of this rule.

#### **§54-3-5. Content of Plan.**

5.1. General Information. -- The plan shall include the following general information:

5.1.a. Description of plan goals and objectives for solid waste management for the next twenty (20) years.

5.1.b. Status of existing solid waste management activities in the county or region, and a description of how the plan has been implemented. If portions of the plan have not been implemented, discuss the reasons and need for plan modification.

5.1.c. Describe how funds, including grant funding, have been used and will be used to implement the plan.

5.1.d. Describe the actions taken by the authority to implement the hierarchy established in W. Va. Code §22C-4-1, in the following order of priority: (1) source reduction, (2) recycling, reuse, and materials recovery, and (3) landfilling.

5.2. Specific Information and Data. -- In addition, the plan shall include the following specific information:

5.2.a. An assessment of litter and solid waste problems in the county or the region, including, but not limited to, a listing of any open and unpermitted dumps, including waste tire piles, and any other problem areas for litter control.

5.2.b. An evaluation and assessment of existing solid waste collection and disposal services for all county or regional residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the state Public Service Commission.

5.2.b.1. Locate on a county or regional highway map or maps, existing and planned solid waste collection, storage, treatment, transportation, disposal, recycling, and other management facilities, and their projected capacities. Include a listing of haulers and the areas they serve. Information shall be included for all solid waste generated within the area covered by the authority from collection to final disposal, whether or not the above-listed facilities are located within the geographic area of the authority.

5.2.b.2. Include demographic information and projections over twenty (20) years. Information may be obtained from the Regional Research Institute at West Virginia University.

5.2.b.3. Include data on urban concentrations, geographic conditions, markets, transportation conditions, and related factors.

5.2.b.3.A. Indicate the regions which are predominantly urban in nature, their population density, and projected changes in the area or population of these regions. Also indicate any additional regions which are expected to urbanize or where growth is anticipated.

5.2.b.3.B. Include a general description of geographic features in the region, e.g., rolling hills, steep valleys, narrow river plains, or eroded plateau. A short description of soil conditions and underlying bedrock is also requested.

5.2.b.3.C. Identify major highways, rail or river routes currently used in the transportation of solid waste, and which are anticipated to be used in the future. Describe any existing or anticipated problem areas and conditions along such routes.

5.2.c. A recommendation, and the reasons for such recommendation, for the siting of one or more properly permitted public or private solid waste facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be, consistent with the comprehensive county plan prepared by the county planning commission, and the anticipated volumes of solid waste originating within or outside the county or region which are likely to be disposed of within the county or region.

5.2.c.1. To ensure that the present and future solid waste needs of the county or regional authority are attained, the authority may recommend that its solid waste be processed, recycled, or disposed of at an existing or proposed solid waste facility located either within or outside the authority's geographic area.

5.2.c.2. If an authority recommends that its solid waste be processed, recycled, or disposed of at a proposed solid waste facility, such facility may not be located within a prohibited or tentatively prohibited zone established pursuant to 54CSR4 – "The Development of Commercial Solid Waste Facility Siting Plans".

5.2.c.3. Whether an authority proposes using a solid waste facility within its area or outside its area, it shall provide documentation that the facility will meet the authority's future solid waste needs.

5.2.d. A timetable for the implementation of the plan over the twenty (20)-year projection, including stages of progress toward the accomplishment of each item in subsection 5.2 of this rule and the parties responsible for each step in the timetable.

5.2.e. A program for the cleanup, reclamation, and stabilization of any open and unpermitted dumps. The authority should consider using the Pollution Prevention Open Dumps (PPOD) cleanup funds available through the DEP.

5.2.f. A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent.

5.2.g. Coordination with the state Division of Highways and other local, state, and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps.

5.2.h. Establishment of a program to encourage and utilize for the purposes of litter pickup those individuals incarcerated in the county or regional jail and those adults and juveniles sentenced to probation.

5.2.i. Provisions for the coordination of the plan with the related solid waste collection and disposal services of municipalities and, if applicable, other counties. Copies of any intergovernmental agreements shall be included in the plan.

5.2.j. A program to identify the anticipated quantities of solid wastes which are disposed of, but are not generated by, sources situated within the boundaries of the county or the region established pursuant to W. Va. Code §22C-4-8. Information on the source of wastes may be available from the DEP and landfills within the county or region for which the plan is being developed.

5.2.k. Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal government.

5.2.k.1. The purpose of this requirement is to ensure that the comprehensive plan addresses not only solid waste from county residents, but also solid waste generated by commercial and industrial sources within the county or region, and further to ensure that all such solid waste is disposed of in a manner which protects the public health and welfare.

5.2.k.2. In order to carry out these purposes, the authority shall inventory all major industrial and commercial sources of solid waste within its boundaries and determine the nature and quantity, and ultimate disposal location of solid wastes which are disposed of at a location outside the property boundary of the particular source. Such information and data shall be included in the plan. For the purposes of this paragraph, the word "major" shall mean any industrial or commercial facility which generates more than five (5) tons of solid waste per month.

5.2.k.3. The authority shall evaluate the information and data it collects pursuant to paragraph 5.2.k.2 of this rule for the following purposes:

5.2.k.3.A. To determine what impact such solid wastes have and are expected to have on the overall solid waste collection, transportation, processing, recycling, and disposal system of the county or region.

5.2.k.3.B. To ensure that such wastes are disposed of in an approved solid waste facility or in an otherwise lawful manner.

5.2.k.4. The authority shall include its evaluation of this information and conclusions reached in the comprehensive plan.

5.2.l. The authority shall provide a summary of all written and oral public comments received at the public hearings required under section 7 of this rule, including a statement of how the authority responded to the comments. Public hearings for the comprehensive plan update may be held at the same time as siting plan update hearings, as long as both plans are advertised and addressed equally.

5.3. Comprehensive Recycling Plan. -- The comprehensive recycling plan shall include, but not be limited to:

5.3.a. The evaluation, including specific reasons, of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means.

5.3.b. Designation of the recyclable materials that can be most effectively source-separated in the region or county, which shall include at least three (3) recyclable materials. Before designation of the materials, the following should be examined:

5.3.b.1. Characterization of the waste stream to determine the quantity of materials potentially available for recycling. Geographic location and seasonal fluctuations should be taken into account in identifying sources of waste.

5.3.b.2. Description of the existing and anticipated markets for resource recovery, materials recovery, recycling, and composting facilities within the area. Intermediate and final markets should be identified. Markets will dictate the types, quantity, and quality of materials collected. Market conditions will dictate the type of processing necessary.

5.3.c. Designation of potential strategies for the collection, marketing, and disposition of designated source-separated recyclable materials in each region or county, including consideration of utilizing existing private and public recycling facilities.

5.3.c.1. Estimate the likely program recovery rate through an analysis of residential, commercial, and industrial recycling potential. All current recycling activities, including collection and processing, should be identified. Existing capacity of all municipal solid waste management facilities, public and private, should be examined.

5.3.c.2. Estimate the likely program requirements for the collection, storage and retrieval, processing, and marketing of yard waste and tires.

5.3.d. A copy of any ordinance adopting a county recycling program pursuant to W. Va. Code §20-11-5, if applicable. Minutes from the authority board meeting at which the ordinance is adopted should also be included.

5.3.e. A public education program, to include:

5.3.e.1. Definition of the goals and objectives of the recycling educational efforts.

5.3.e.2. Identification of target audiences and the development of appropriate messages and formats. This should include the selection of an appropriate medium for conveying recycling messages and development of educational materials. Use of materials that are readily available is encouraged.

5.3.e.3. Identification of methods to disseminate information and the development of an effective media relations strategy. Community organizations that can assist in the implementation of a public information program should be utilized.

5.3.e.4. Innovative incentives to promote recycling efforts, e.g., a competition between schools for tonnage recycled, a poster or essay contest in schools, or developing a new recycling market such as using car tires in playground construction.

5.3.e.5. Plans for evaluation of recycling education effectiveness on recycling rate, program expansions, and other changes that measure progress.

5.4. Establishment of an appropriate mandatory garbage disposal program. The program shall include:

5.4.a. Methods whereby residents must prove either (1) payment of garbage collection fee, or (2) proper disposal at an approved solid waste facility or in an otherwise lawful manner. The authority shall include a copy of its rules implementing this provision as required under W. Va. Code §22C-4-23(3). In establishing the methods for providing proper proof, the authority shall comply with the DEP, 33CSR7 rules – “Proof of Proper Solid Waste Disposal.”

5.4.b. Provisions for how the authority will assist local law enforcement officials in the enforcement of the mandatory garbage disposal program.

#### **§54-3-6. Development, Update, and Amendment Process.**

6.1. Each authority shall update the plan for its county or region every five (5) years. Public notice and hearing on any proposed updates or amendments shall be given and held in the same manner as outlined in section 7 of this rule. Any updates or amendments proposed by the authority shall be submitted to the Board for approval in the same manner as provided in subsection 3.4.

6.2. At the time of the five-year update, the authority shall, in addition to any other amendments considered necessary, extend the period of time covered by the plan to include the next twenty (20) years following the five-year update.

6.3. The plan may be amended at any time by the county or regional authority which originated the plan. Amendments must meet all requirements of the original plan, including that of giving notice and holding a public hearing as detailed in section 7 of this rule. No amendments may become effective until approved by the Board in the same manner as the original plan.

6.4. Minutes from the authority meeting in which the new, updated, or amended plan is approved shall be included in the new, updated or amended plan before final submission for approval by the Board. Minutes should be signed by the chair. It is the authority’s responsibility to ensure that it is legally constituted to conduct business in accord with W. Va. Code §22C-4-1 et seq.

#### **§54-3-7. Public Participation Process.**

7.1. Public Notice and Hearing.

7.1.a. Prior to the submission of a draft plan to the Board, and to assist the authority in the development of a draft plan, the authority shall publish notice and hold at least one public hearing to solicit ideas, opinions, and comments from the general public on the development of the draft plan.

7.1.a.1. The authority shall publish notice of the hearing at least thirty (30) days in advance of the hearing as a Class I legal advertisement published in a qualified newspaper, as defined in W. Va. Code §§59-3-1 and 2, serving the county or counties, whichever is appropriate.

7.1.a.2. The authority shall consider the public comments received at the public hearing, and shall record the proceedings of the hearing by mechanical means, and such recording and a copy of all written comments received and a written summary of the proceedings shall be retained by the authority for a period of three (3) years from the date of the public hearing.

7.1.b. After submission of the draft plan to the Board, the authority shall publish notice and conduct at least one public hearing to solicit ideas, opinions, and comments from the general public concerning the plan.

7.1.b.1. The authority shall publish notice of the hearing at least thirty (30) days in advance of the hearing as a Class I legal advertisement published in a qualified newspaper, as defined in W. Va. Code §§59-3-1 and 2, serving the county or counties, whichever is appropriate, and by posting the public notice at the appropriate county courthouse or courthouses.

7.1.b.2. A copy of the public notice of the hearing shall be mailed to those persons requesting to be placed on a mailing list to be maintained by the authority.

7.1.b.3. The public notice shall include the date, time, and place scheduled for the public hearing, an invitation for written and oral comments, an address to which comments may be mailed, and the locations in the area where a copy of the draft plan is available for public review.

7.1.b.4. At the public hearing, reasonable limits may be set upon the time allowed for oral statements. The submission of written comments shall be extended to ten (10) days after the public hearing date.

7.2. Public Review of the Plan. -- At least thirty (30) days prior to any public hearing under subsection 7.1.b, the authority shall place for public review a copy of the draft plan at the county clerk's office or clerks' offices, at all public libraries and branch libraries in the county or counties, and at the office of each appropriate regional planning and development council.

7.3. Consideration of Public Comments.

7.3.a. The authority shall consider all public comments received, written and oral, in the development of the final plan.

7.3.b. The authority shall prepare a written summary of the public comments received and a statement explaining how it responded to the public comments in the development of the final plan. Such written summary and statement shall be submitted to the Board with the final plan.

7.3.c. If requested by the Board, the authority shall submit all or any part of the public comment record to the Board for its review.

# COMMERCIAL SOLID WASTE FACILITY SITING PLAN UPDATE PROCESS

## **Plan Updates and Information**

Every county or regional solid waste authority is required to update and amend their Commercial Solid Waste Facility Siting Plan every five years, although they may update or amend at any time. The period covered by the plan is to be extended for twenty (20) years.

The process for updating or amending a comprehensive plan is outlined in WV Code Rules 54CSR4. Sections 3, 4 and 5 state exactly what is required to be included and what format is to be used for the plan.

The following information is a summary, or a quick step reference to updating the required plan. A printed copy of WV Code Rules 54CSR4 has been included at the end of this information for a more detailed explanation of each step.

Should your authority have any question regarding the process or procedures at any point, please contact the Solid Waste Management Board staff at 304-926-0448.

## The Process (summarized)

For the updates to the Commercial Solid Waste Facility Siting Plan, there are basically four parts to the process:

- Update Plan
- Public Hearing
- Submission for Approval by the Solid Waste Management Board
- Final Submission of Approved Plan

The following information summarizes, how the Solid Waste Management Board staff would explain the process to each authority.

- 1)** It is always a good practice to ensure that the entire authority board is aware that the process of updating is starting. A board motion is not required, but as a point of public record, it is recommended that the meeting minutes reflect the start of this process.
- 2)** The Siting Plan is only required to have one (1) public hearing. If your board is updating the siting plan and the comprehensive plan at the same time, the SWMB just recommends going ahead and holding two (2) public hearings on the siting plan with the comprehensive plan. If not, the you need to start updating the “draft” version. Information tends to change over a five-year period. Your board needs to review the information for any changes in goals, objectives, programs, statistical data, etc. This Plan is a complete overview of your county’s program and goals for the next twenty (20) years.
- 3)** Class I Legal Ad must be advertised stating the purpose, time, date, and location of the public hearing and the final date of the written comment period and where comments may be sent.
  - a. Public hearing **MUST** be a minimum of thirty (30) days from the date of publication of the Class I legal ad.
  - b. Written comment period **MUST** be a minimum of ten (10) days from the date of the public hearing.
  - c. Timeframes are based on calendar days, not working days.
  - d. A copy of the affidavit and ad will become part of the final plan.
- 4)** Copies of the plan must be placed at the required locations by the day the legal ad is published.
  - a. County Clerk’s Office;
  - b. All public libraries and branch libraries in the county or counties; and
  - c. By posting the public notice at the appropriate county courthouse(s).
- 5)** Public hearing is held and written comment period.
  - a. No quorum is needed for the public hearing. May be conducted by a board member or an employee. Entire board is not required to be in attendance.
  - b. Purpose of the public hearing is to solicit ideas, opinions and comments from the public concerning the plan being updated. The public hearing is not the time to respond to any comments received. No action is required.
  - c. Public shall be given a reasonable time limit for oral statements.

- d. Hearing should last at least an hour, unless public participation would constitute it to last longer.
  - e. Hearing must be recorded by “mechanical means” (any type of electronic recorder). Copies of all written comments and hearing minutes shall be retained for a period of three (3) years from the date of the public hearing.
  - f. Public hearing minutes will become part of the final plan.
- 6) At the following board meeting, board members should acknowledge any verbal or written comments received.
- a. A brief letter acknowledging the receipt of any written comments should be sent to person submitting comments.
  - b. The authority shall prepare a written summary of the public comments received and how it was responded to. This will be included in the final plan.
- 7) If agreed, a motion must be made to submit the plan to the Solid Waste Management Board for final approval. Approved minutes must be included in the final plan.
- 8) SWMB staff reviews the plan for completeness.
- a. If found complete, plan is placed on the next monthly agenda.
  - b. If found incomplete, the insufficiencies will be noted and the plan will be returned to your board for corrections. Within ninety (90) days, the authority shall revise the plan and submit the corrected version to the SWMB for approval.
- 9) Upon approval the by SWMB, an approval letter and the original plan will be sent back to your board. Your authority will be given sixty (60) days after approval to mail four (4) copies of its final plan back to the SWMB. One (1) copy must be mailed to the appropriate regional planning and development council, county planning commission and the office of the appropriate county clerk, who shall file the plan in an appropriate manner and make it available for public inspection.
- 10) THIS PROCESS IS NOT FINALIZED UNTIL THE FINAL VERSIONS ARE RECEIVED BY THE SWMB.**

## Public Hearing Worksheet

The Commercial Solid Waste Facility Siting Plan is only required to have one (1) public hearing and written comment period.

- An updated “draft” copy must be placed out for this public review period.
- If your board is updating the comprehensive plan at the same time, it is recommended that you go ahead and have two public hearings for the siting plan – follow same steps in the comprehensive plan update guidelines.

Any changes that are being made to the “draft” version should be made as follows:

- Language being REMOVED needs to be done so with ~~striketroughs~~.
- Language being ADDED needs to be done so using underlines.
- This allows the general public to quickly note what information is being changed.

Plan **must** be placed in the following locations by the date of publication of Class I Legal Ad:

- County clerk’s office;
- Every county public library and its’ branches; and
- The SWA office (should you choose).

Public hearing date **must be** a minimum of thirty (30) days from the **published** date of the Class I legal ad. Written comment period **must be** extended a minimum of ten (10) days from the hearing date.

**Note: Timeframes are calendar days, not working days.**

<u>Hearing</u>	<u>ACTUAL DATES</u>	<u>SAMPLE DATES</u>
Date legal ad appears in publication	_____	Jan. 3, 2019
Date of public hearing	_____	Feb. 5, 2019 (35 days)
Date of written comment period	_____	Feb. 15, 2019 (10 days)

## Sample Class I Legal Ad

*This is only to serve as a suggested template for the Class I legal ad based on the required information from 54CSR4. Wording may vary as to each board's preference of wording. However, this information is, at a minimum, required to be included.*

The  (Name of County)  County Solid Waste Authority will hold a public hearing concerning the five-year update of the Commercial Solid Waste Facility Siting Plan. The hearing will take place at  (location) , on  (date) ,  (month) ,  (year) , at  (time) , during which time public comments will be heard. The plan may be reviewed at the  (county library – location) , and the  (county)  County Clerk's Office. Written comments will be accepted until  (date – 10 days from hearing)  and may be sent to  (Authority or Chairman/Director) , at  (mailing address and email address, if you so choose) .

In accordance with 54CSR3-5.2.1, "Public hearings for the comprehensive plan update may be held at the same time as the siting plan update hearings, as long as both plans are advertised and addressed equally."

If your authority is needing to provide updates for both, the comprehensive and siting plans at the same time, you may combine the Class I legal ad to reflect so. This may be done by adding "...Comprehensive Litter and Solid Waste Control Plan" to the first sentence to reflect the public hearing for both and including the regional planning and development council to a review location (required for the Comprehensive Plan). Not only does this ensure both are being done properly, at the same time, but saves the authority from paying for two Class I legal ads.

Just make sure that the recording and minutes for the public hearings indicate that comments are/were being accepted for both plans.

## Required Format of Plan

WV Code Rules §54-4-4, plainly states the format of each plan. The Commercial Siting Plan shall include:

- **Cover sheet**
  - Includes the name of the authority,
  - Title of the plan, and
  - Signature of the authority chair.
- **Forward or Preface**
  - Includes the purpose of the plan.
- **Table of Contents**
  - Indicating the major subdivisions of the plan.
- **Executive Summary**
  - Procedures,
  - Methodology, and
  - Conclusions
- **Solid Waste Facility Zones**
- **Rational for Establishing the Zones**
- **Public Participation Process**
  - Class I Legal Ad,
  - Affidavit,
  - Minutes of Public Hearing, and
  - Summary of any comments received.
- **Appropriate Maps**

Section 5 of this Rule goes on to explain the Content of Plan. This section explains in detail what each of the sections listed above and those major subdivisions are to include. The Table of Contents on the next page shows each item “required” from the Rule to be included in the plan and the code citing for each.

For a detailed description of each, refer to the copy of 54CSR4 included at the end of this overview.

## Table of Content Format According To 54CSR4 With WV Rule Citing

Summary .....	(4.1.d.)
Purpose and Objectives .....	(5.1.a.)
Provisions of Comprehensive Litter and Solid Waste Control Plan .....	(5.1.b.)
Solid Waste Facility Zones and Rational .....	(5.2. through 5.6)
Class A Facilities .....	(5.2.a.1.)
Class B Facilities .....	(5.2.a.2.)
Class C Facilities .....	(5.2.a.2.)
Class D Facilities .....	(5.2.a.3.)
Solid Waste Transfer Stations .....	(5.2.a.4.)
Recycling Facilities .....	(5.2.a.5.)
Energy Recovery Facilities & Incinerators.....	(5.2.a.6.)
Material Recovery Facilities .....	(5.2.a.7.)
Composting Facilities .....	(5.2.a.8.)
Review & Amendment Process.....	(6.1 to 6.3)
Class I Legal Ad .....	(4.1.g.)
Public Comments .....	(4.1.h.)
Maps .....	(4.1.i.)
Class A-B-C-D Zone Map	
Solid Waste Transfer Station Map	
Materials Recovery Facility Map	
Recycling Zone Map	
Composting Zone Map	

## **Submission for Approval by the Solid Waste Management Board**

When the authority has completed the public hearing, and the entire board agrees with the contents of the plan, it is now time to submit the document for review and approval by the Solid Waste Management Board (SWMB).

The following items are to be included in the packet when sending the plan to the SWMB for approval:

- Clean copy of the updated plan (underlines & strikethroughs removed).
- All appendices attached.
  - o Maps (solid waste facility maps and any other maps cited throughout plan)
  - o Public Participation Process
    - Copies of affidavit and legal ad for the hearing(s)
    - Copies of minutes from the public hearing(s)
    - Copies of any public comments received and the written responses
- Copy of the last board meeting showing approval for submission (may be the draft copy – approved, signed version must be sent prior to SWMB approval)
- Chairman’s signature on the Cover Page.

Once received, the SWMB staff will review the document for administrative and technical completeness.

- If the SWMB finds the plan “incomplete,” the plan and a letter explaining the insufficiencies will be returned to the authority. The authority will then be given ninety (90) days to revise the plan and submit the correction version to the Board.
- If found “complete,” the plan will be submitted to the SWMB for approval.

The Board will send a letter of approval and the original plan back to the authority upon approval.

As required by the Rule, the Authority will have sixty (60) days after approval to return four (4) full copies, to include the approval letter, of its final plan back to the SWMB. Each authority shall transmit one copy of the final plan to the appropriate regional planning and development council, county planning commission, and the office of the appropriate county clerk who shall keep the plan on file for public review.

The update process for the Commercial Solid Waste Facility Siting Plan is finally complete.

**TITLE 54  
LEGISLATIVE RULE  
SOLID WASTE MANAGEMENT BOARD**

**SERIES 4  
COMMERCIAL SOLID WASTE FACILITY SITING PLANS**

**§54-4-1. General.**

1.1. Scope. -- The purpose of this rule is to establish minimum standards and requirements for the content, format, amendment, review, approval, and public participation process involved in county and regional solid waste facility siting plans, as required by W. Va. Code §22C-4-24. Such minimum standards and requirements are designed to protect the public health, safety, and environment throughout the state of West Virginia, and to ensure the fair and equitable evaluation of all sites proposed for use as solid waste facilities.

1.2. Authority. -- W. Va. Code §22C-3-6 and 22C-4-24.

1.3. Filing Date. -- May 21, 2001.

1.4. Effective Date. -- May 21, 2001.

**§54-4-2. Definitions.**

The following words and terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under W. Va. Code §22-15-1 et seq.

2.2. "Authority" means any solid waste authority of any county or region in West Virginia, established by W. Va. Code §22C-4-3 and 22C-4-4; or the county commission of any county which elected not to establish an authority, as allowed by W. Va. Code §22C-4-6.

2.3. "Board" means the West Virginia Solid Waste Management Board, as established by W. Va. Code §22C-3-4, or its authorized representatives.

2.4. "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand (10,000-30,000) tons of solid waste per month. "Class A facility" includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine (9,999) tons of solid waste per month.

2.5. "Class B facility" means a commercial solid waste facility which receives, or is expected to receive, an average daily quantity of mixed solid waste equal to or exceeding one hundred (100) tons each working day; or serves, or is expected to serve, a population equal to or exceeding forty thousand (40,000) persons, but which does not receive solid waste exceeding an aggregate of ten thousand (10,000) tons per month. "Class B facility" does not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of W. Va. Code §29A-1-1 et seq.

2.6. "Class C facility" means a commercial solid waste facility which receives, or is expected to receive, an average daily quantity of mixed solid waste of less than one hundred (100) tons each working day; and serves, or is expected to serve, a population of less than forty thousand (40,000) persons. "Class C facility" does not include construction/demolition facilities.

2.7. "Class D facility" means any commercial solid waste facility for the disposal of only construction/demolition waste, and does not include the legitimate beneficial reuse of clean waste concrete/masonry substances for the purpose of structural fill or road base material.

2.8. "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.

2.9. "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 does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposal processing, or compositing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis, and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation, and similar applications.

2.10. "Compliance order" means an administrative order issued pursuant to W. Va. Code §22-15-10, authorizing a solid waste facility to operate without a solid waste permit.

2.11. "Commercial 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 composting facility owned and operated by a person for the sole purpose of compositing waste created by that person or such person and other persons on a cost-sharing or non-profit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

2.12. "Construction/demolition waste" means waste building materials, packaging, and grubbing waste resulting from construction, remodeling, repair, and demolition operations on houses, commercial and industrial buildings, and other structures and pavements, including, but not limited to: wood, plaster, metals, asphaltic substances, bricks, blocks and concrete, other masonry materials, trees, brush, stumps, and other vegetative materials, but shall not include asbestos waste.

2.13. "Endangered or threatened species" means any endangered or threatened species, as defined in 50CFR17, of animal or plant, and includes those species listed as endangered or threatened in 50CFR17.

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

2.15. "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.

2.16. "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.

2.17. "Karst region" means a type of topography which is formed over limestone or dolomite by dissolution of the formation, and is characterized by sinkholes, caves, and similar features.

2.18. "Landfill" means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for the purpose of this rule, in the county where the majority of the spatial area of such facility is located.

2.19. "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.

2.20. "Open dump" means any solid waste disposal which does not have a permit under W. Va. Code §22-15-1 et seq., or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

2.21. "Person" or "persons" means 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; the 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.

2.22. "Plan" or "Siting plan" means the commercial solid waste facility siting plan required under W. Va. Code §22C-4-24.

2.23. "Recycle" or "Recycling" means the process by which recovered products are transformed into new products, and includes the collection, separation, recovery and sale or reuse of metals, glass, paper, tires, lead-acid batteries and other materials.

2.24. "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 to be reusing or recycling solid waste within the meaning of W. Va. Code §20-11-1 et seq., 22-15-1 et seq and 22C-4-1 et seq.

2.25. "Resource recovery facility" means any solid waste facility at which solid wastes are mechanically, biologically, chemically, or thermally transformed for the purpose of separating, removing, or creating any material or energy for reuse or sale, and at which land disposal of solid waste does not occur. "Resource recovery facility" includes composting facilities, environmentally acceptable incinerators, materials recovery facilities, energy recovery facilities and other such solid waste facilities not herein specified.

2.26. "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.

2.27. "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; other discarded material, 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 material in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code §22-11-1 et seq., or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any

nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under W. Va. Code §22-18-1 et seq., or refuse, slurry, overburden, or other waste 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 §22-2-1 et seq., 22-3-1 et seq., 22-4-1 et seq., 22-6-1 et seq., 22-7-1 et seq., 22-8-1 et seq., 22-9-1 et seq., 22-10-1 et seq., or 22A-1-1 et seq., so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters.

2.28. "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.

2.29. "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 §22C-3-9.

2.30. "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, commercial 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 §22-15-20 (b). Such facilities shall be deemed to be situated, for the 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.

2.31. "Transfer station" means a combination of structures, machinery, or devices at a place, or facility where solid waste is taken from collection vehicles and placed in other transportation units (such as a "walking floor," or other method of transfer as determined by the director) for movement to another solid waste management facility. Provided, when the initial generator of solid waste disposes of said waste into a container such as a roll-off, greenbox or bin which is temporarily positioned (not more than five days) at a specific location for transport by a transportation unit, such container shall not be considered a transfer station. Under any circumstances, leachate, litter and windblown materials must be properly managed.

2.32. "Wetlands" means those naturally occurring areas, as defined under 40CFR232.2(r), that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. "Wetlands" generally include swamps, marshes, bogs, and similar areas.

2.33. "100-year flood" means a flood that has a one percent or greater chance of recurring in any given year, or a flood of a magnitude equaled or exceeded once in one hundred (100) years on the average, over a significantly long period of time.

### **§54-4-3. Procedure for Plan Development and Approval.**

3.1. Submission to the Board. -- A commercial solid waste facility siting plan is to be submitted to the Board. The plan shall be updated and submitted every five years after any new or updated plan is approved by the Board or within ninety (90) days of the formation of a new authority.

3.2. Administrative Completeness Review.

3.2.a. If the Board finds the draft plan to be incomplete, ie., to not contain all of the information required by this rule, it shall return the plan to the Authority along with a written statement explaining how the plan is incomplete.

3.2.b. The authority shall have thirty (30) days to amend the plan by providing the remaining required information, and to submit the amended plan to the Board. No plan will be reviewed for technical merit until it is administratively complete.

### 3.3. Technical Review.

3.3.a. When a plan is determined to be administratively complete it will be subjected to a technical review of its contents, procedures, and processes.

3.3.b. The Board shall approve the final plan in writing if the Board determines that the plan complies with the purposes and requirements of applicable state and applicable federal law, if any, and the rules promulgated in this series.

3.3.c. If the Board determines that the plan should be rejected, it shall return the plan to the authority with a written statement of the insufficiencies in the plan.

3.3.d. Within ninety (90) days of receipt of a letter disapproving the plan, the authority shall revise the plan to eliminate the insufficiencies and submit the amended plan to the Board.

3.4. Final Submission to the Board. -- No later than sixty (60) days after approval, each county authority shall submit to the Board four (4) copies of its final plan. Each regional authority must submit one additional copy of the plan for each county within that region. Each authority shall transmit one copy of its plan to each appropriate regional planning and development council, county planning commission and to the office of each appropriate county clerk, who shall file the plan in the appropriate manner and make it available for public inspection.

3.5. Plans Developed by the Board. -- The Board shall develop a plan for any authority which fails to submit an update and for any new authority that fails to submit a plan within ninety (90) days of the due date under subdivision 3.2.a, provided that in preparing such plans, the Board may determine whether to prepare a regional- or county-based plan for those authorities which fail to complete such an update or for those new authorities that fail to complete a plan.

### **§54-4-4. Required Format of Commercial Siting Plan.**

4.1. Required Format. -- In addition to the information required in section 5 of this rule, each plan submitted shall include:

4.1.a. A cover sheet which includes the name of the authority, the title of the plan, and the signature of the chairman of the authority;

4.1.b. A forward or preface which includes the purpose of the plan;

4.1.c. A table of contents indicating the major subdivisions of the plan;

4.1.d. A brief summary of the plan and its procedures, its methodology, and its conclusions;

4.1.e. The solid waste facility zones;

4.1.f. The rationale for establishing these zones;

4.1.g. The published announcement of all public hearings;

4.1.h. A brief summary of public comments and a statement describing how the authority responded to the public comments; and

4.1.i. Appropriate highway and topographical maps.

**§54-4-5. Required Content of Commercial Siting Plan.**

5.1. General Information. -- The plan shall include the following general information:

5.1.a. A description of the purposes and objectives to be met by the plan within a period of twenty (20) years.

5.1.b. The provisions of the comprehensive litter and solid waste control plan, as submitted to the Board pursuant to W. Va. Code §22C-4-8, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

5.2. Solid Waste Facility Zones.

5.2.a. Each plan shall contain a narrative description and appropriate topographical maps which delineate the zones in which:

5.2.a.1. Class A facilities (over 10,000 tons per month);

5.2.a.2. Class B and C facilities (under 10,000 tons per month);

5.2.a.3. Class D facilities (construction/demolition only);

5.2.a.4. Solid waste transfer stations;

5.2.a.5. Recycling facilities;

5.2.a.6. Energy recovery facilities, and environmentally acceptable incinerators,

5.2.a.7. Materials recovery facilities, and

5.2.a.8. Composting facilities are "authorized," "tentatively prohibited," or "prohibited." Unless the readily available information clearly establishes that an area is suitable for the location of a commercial solid waste facility, or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited.

5.2.b. Each type of facility listed in subdivision 5.2.a shall be addressed separately in the narrative, along with the rationale for establishing the zone in accordance with subsection 5.3 of this rule. The separate zones may be displayed on a single topographical map or a series of topographical maps, as desired by the authority. All existing facilities listed in subsection 5.2.a will be listed in the plan and depicted on the map regardless of location in or out of an authorized zone. When a facility is located in more than one county, each affected county shall depict the facility on the map.

5.3. Rationale for Establishing Siting Zones. -- The rationale for establishing these zones shall be included in the narrative. This rationale shall consider the following criteria:

5.3.a. The efficient disposal of solid waste, including, but not limited to, all solid waste generated within the county or region, regardless of its origin. - Describe how the zones established by the plan will ensure the efficient collection, transfer, and disposal of solid waste.

5.3.b. Economic development. -- Describe how the zones established by the plan will have a positive or negative impact on the county or regional economy. Detail the specific impact and give reasoning behind the impact.

5.3.c. Transportation infrastructure. -- Describe how the transportation network will allow or prohibit the efficient transportation of solid waste into or through the established zones. Address all transportation routes, i.e., roads, river, and rail.

5.3.d. Property values. -- Describe how the zones established will have a positive or negative impact on property values.

5.3.e. Groundwater and surface waters -- Describe how the established zones will protect groundwater and surface waters in the area.

5.3.e.1. An authority shall establish a zone in which solid waste facilities are prohibited where the readily available information clearly establishes that the facilities will cause:

5.3.e.1.A. A significant adverse impact upon wetlands;

5.3.e.1.B. A significant adverse impact upon any surface water;

5.3.e.1.C. A significant adverse impact upon groundwater quality; or

5.3.e.1.D. A violation of surface water quality standards found in 47CSR3.

5.3.e.2. An authority shall establish a zone in which landfills are prohibited in the following areas, unless the readily available information clearly establishes that landfills may be located within the zone and not cause a significant adverse impact upon ground or surface water quality:

5.3.e.2.A. Within three hundred (300) feet of any surface water (facility drainage or sedimentation control structures are exempt from this distance calculation);

5.3.e.2.B. Within three hundred (300) feet of any wetlands (facility drainage or sedimentation control structures are exempt from this distance calculation);

5.3.e.2.C. Within a perennial stream;

5.3.e.2.D. Within a 100-year flood plain; and

5.3.e.2.E. Within twelve hundred (1,200) feet of any public or private water supply well in existence at the time the zone is established.

5.3.f. Geological and Hydrological Conditions. -- Describe what geological and hydrological conditions prohibit or enable a zone to be suitable for siting a solid waste facility. Some of the factors which the authority shall consider are the existence of any known faults within two hundred (200) feet of the area, or other extreme hydrological or geological conditions, e.g., karst regions, solution cavities, extensive sandstone aquifers, shales, consolidated formations, aquitards, and the existence of any mining in the area. If the readily available

information clearly establishes that any such conditions will cause a significant adverse impact on ground or surface water quality, the authority shall designate the area as prohibited for landfills.

5.3.f.1. For the purposes of this subsection, the term “mining” means the extraction of non-replenishable materials from the earth’s crust, e.g., oil, gas, coal, minerals, sand, gravel, limestone, and other substances of a similar nature.

5.3.f.2. For the purposes of this subsection, the term “known fault” means a fault that has had displacement in Holocene time (i.e., during the last eleven thousand (11,000) years).

5.3.g. Aesthetic and Environmental Quality. -- Describe the positive or negative impacts the established zones will have on existing aesthetic and environmental conditions. For example, siting a recycling center at a former open dump might enable the reclamation of an unsanitary dump. Factors to be considered are the presence of public parks and recreation areas, state and national forests, and endangered or threatened species. An authority shall establish a zone in which landfills are prohibited in the following areas:

5.3.g.1. Within one thousand (1,000) feet of the nearest edge of the right-of-way of any state trunk highway, interstate, or federal aid primary highway, or the boundary of any public park, unless the facility is screened by natural objects, plantings, fences, or other appropriate means so that it is not readily visible from the highway or park; and

5.3.g.2. Within ten thousand (10,000) feet of any airport runway used or planned for use by turbojet aircraft, or within five thousand (5,000) feet of any airport runway used only by piston type aircraft, or within other areas where a substantial bird hazard to aircraft would be created.

5.3.h. Historic and Cultural Resources. -- Describe any effect the zones will have on specific historic and cultural sites. A description of each historic or cultural site, including its size and location, should be listed in the plan.

5.3.i. The present or potential land uses for residential, commercial, recreational, environmental conservation, or industrial purposes. -- Provide the present land uses for the different zones, and realistic potential land uses for the zones. Describe how siting a facility in a particular zone will affect the existing and potential land uses. Zones in which landfills are authorized shall not be established within five hundred (500) feet of a dwelling occupied at the time a zone is established unless written permission is obtained from the owner of the dwelling.

5.3.j. The Public Health, Welfare, and Convenience. -- Describe how the established zones will protect the public health, welfare, and convenience, and still allow for the proper collection, transportation, and disposal of solid waste.

5.4. An authority may base its decision to prohibit solid waste facilities in a particular zone upon one or more of the criteria listed in subsection 5.3 of this rule. However, a decision to authorize solid waste facilities in a particular zone shall be made only after consideration of all of the criteria listed in subsection 5.3 of this rule.

5.5. The zones shall be established based upon readily available information.

5.5.a. “Readily available information” means relevant information which currently exists and can be obtained by the authority upon request of the appropriate agency or other entity.

5.5.b. Examples of potential readily available information or sources of such information include, but are not limited to:

- 5.5.b.1. County highway maps;
- 5.5.b.2. United States Geological Survey maps;
- 5.5.b.3. West Virginia Geological and Economical Survey;
- 5.5.b.4. West Virginia Bureau of Environment;
- 5.5.b.5. County and regional planning commissions;
- 5.5.b.6. West Virginia Development Office;
- 5.5.b.7. Local libraries;
- 5.5.b.8. West Virginia Department of Culture and History;
- 5.5.b.9. Local chambers of commerce;
- 5.5.b.10. County tax assessor=s office;
- 5.5.b.11. Existing solid waste facilities, to the extent such information is relevant; and
- 5.5.b.12. Local solid waste haulers in the area.

5.6. An authority shall “authorize” or “prohibit” solid waste facilities in a given zone only when the readily available information clearly establishes that the facility should be authorized or prohibited in that zone. Otherwise, the authority shall “tentatively prohibit” facilities in the zone.

5.7. The establishment of zones pursuant to this rule shall be consistent with the comprehensive plan prepared by the county planning commission, if such plan exists.

#### **§54-4-6. Review and Amendment Process.**

6.1. Each authority shall review the plan for its county or region every five (5) years. A public hearing on any amendments must be held in the same manner as outlined in section 7 of this rule. Any changes or amendments necessary shall be submitted to the Board for approval.

6.2. At the time of the five-year review, the authority shall, in addition to any other amendments considered necessary, extend the period of time covered by the plan to include the next twenty (20) years following the five-year review date.

6.3. The plan may be amended at any time by the county or regional authority which originated the plan. Amendments must meet all requirements of the original plan, including that of holding a public hearing as detailed in section 7 of this rule. No amendments may become effective until approved by the Board in the same manner as the original plan.

6.4. Upon application from any person or group, the authority may amend the siting plan by redesignating a zone or any portion of a zone.

6.4.a. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on all of the criteria set forth in subsection 5.3 of this rule, that the requested redesignation

is appropriate and proper, and that any solid waste facility sited at such location could be appropriately operated in the public interest.

6.4.b. In order to make such demonstration, the person seeking the change shall make whatever examination is necessary and submit specific detailed information to the authority relating to the criteria in subsection 5.3 of this rule.

#### **§54-4-7. Public Participation Process.**

##### 7.1. Public Notice and Hearing.

7.1.a. After submission of the draft plan to the Board, the authority shall publish notice and conduct at least one public hearing in each county affected to solicit ideas, opinions, and comments concerning the plan from the general public.

7.1.b. The authority shall publish notice of the hearing at least thirty (30) days in advance of the hearing as a Class I legal advertisement published in a qualified newspaper, as defined in W. Va. Code §59-3-1, serving the county or counties, as appropriate, and by posting the public notice at the appropriate county courthouse or courthouses.

7.1.c. A copy of the public notice of the hearing shall be mailed to those persons requesting to be placed on a mailing list to be maintained by the authority.

7.1.d. The public notice shall include the date, time, and place scheduled for the public hearing; an invitation for written and oral comments; an address to which comments may be mailed; and, the locations in the area where a copy of the draft plan is available for public review.

7.1.e. The authority shall consider the public comments received at the public hearing, and shall record the proceedings of the hearing by mechanical means, and such recording and a copy of all written comments received and a written summary of the proceedings shall be retained by the authority for a period of three (3) years from the date of the public hearing.

7.1.f. At the public hearing, reasonable limits may be set upon the time allowed for oral statements. The submission of written comments shall be extended to ten (10) days after the public hearing date.

7.2. Public Review of the Plan. -- At least thirty (30) days prior to any public hearing on the plan, the authority shall place a copy of the draft plan for public review at the county clerk=s office or offices, and at all public libraries and branch libraries in the county or counties.

##### 7.3. Consideration of Public Comments.

7.3.a. The authority shall consider all public comments received, written and oral, in the development of the final plan.

7.3.b. The authority shall prepare a written summary of the public comments received, and a statement explaining how it responded to the public comments in the development of the final plan. Such written summary and statement shall be submitted to the Board with the final plan.

7.3.c. If requested by the Board, the authority shall submit all or any part of the public comment record to the Board for its review.

# ATTACHMENT 3C: SAMPLE RECYCLING ORDINANCE

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## 1.0 Definitions

“Recyclable Material” means a material which would otherwise become municipal, industrial, or commercial solid waste, which can be source separated, collected, processed, and returned to the economic mainstream in the form of raw materials or products.

“Recycling” means the process by which recovered products are transformed into new products, and includes the collection, separation, recovery, and sale or reuse of metals, glass, paper, tires, lead-acid batteries, and other materials.

“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.

“Commingle” means those source separated, recyclable materials that are aggregated into a container to facilitate collection and transportation to a facility for further processing.

“Designated Recyclable Materials” means those recyclable materials specified in the County Recycling Plan for separate collection in accordance with this ordinance. Such materials may include, but not be limited to aluminum, ferrous and bi-metal cans; plastic containers, newspapers and others.

“Hauler” means any person, partnership, corporation, or other public or private entity that provides for the collection of solid waste or recyclables from \_\_\_\_\_ County residents, commercial establishments, and community activities and the transportation thereof to approved disposal facilities accepting recyclables. A hauler must have a Certificate of Convenience and Necessity as required by the West Virginia Public Service Commission (PSC.)

“Commercial Establishment” means any commercial, industrial, institutional or governmental establishments.

“Community Activity” means any event that is sponsored by public or private entities or individuals that includes but is not limited to festivals, fairs, bazaars, socials, picnics, performances and organized sporting events attended by 500 or more individuals per day.

## 2.0 Recycling Program

The \_\_\_\_\_ County recycling program shall consist of the following minimum requirements:

1. By June 1, 2007, each resident of \_\_\_\_\_ County shall separate from other solid waste Polyethylene Terephthalate (PET) (#1) and High Density Polyethylene (HDPE) (# 2) plastic containers, aluminum, bi-metal and steel beverage and food cans, and newspapers.
2. Any owner, landlord or agent of an owner or landlord of a multi-family rental dwelling with four or more units shall be deemed to have complied with its separation responsibilities if it establishes a collection

system at each such property. The collection system shall include separate suitable receptacles specifically for collecting and storing the separate recyclables which tenants have deposited, and instructions to the occupants concerning the use and availability of the collection system. The receptacles shall be clearly marked as designated only for recyclable materials and shall be placed in a location easily accessible to the tenants. Separate receptacles shall be provided and marked to enable the tenant to separate recyclables. Owners, landlords, and agents of owners or landlords who provide a collection system under this section shall not be liable for non-compliance of occupants of their buildings.

3. By July 1, 2007, each hauler that provides solid waste collection services to \_\_\_\_\_ County resident shall submit to a recyclables collection plan of the \_\_\_\_\_ County Commission on forms prescribed by the \_\_\_\_\_ County Commission.
4. By July 1, 2007, each hauler must provide a minimum level of recycling service to all residents. The minimum level of service within the mandated municipalities, as defined in W. Va. Code §22-15A-18 will be a curbside collection program. The minimum level of service outside of mandated municipalities will be a drop-off box system that adequately serves the hauler's customers and service area.
5. By July 1, 2007, each commercial establishment of community activity shall separate from other solid waste at least three of the following recyclable materials:
  - a. High grade office paper
  - b. Computer paper
  - c. Corrugated paper
  - d. Clear glass
  - e. Brown Glass
  - f. Green Glass
  - g. Aluminum and bi-metal cans, steel cans
  - h. Polyethylene Terephthalate PET (#1)
  - i. High Density Polyethylene HDPE (#2)

Commercial establishments shall ensure that recycling efforts result in the reduction of solid waste within their establishment from the amount of waste generated on the effective date of this ordinance by 50% by January 1, 2010.

6. By January 31 of each year, each hauler shall submit the following information (numbers of tons shall be estimated) together with other information required by the \_\_\_\_\_ County Commission, on forms prescribed by the county commission, to the \_\_\_\_\_ County Solid Waste Authority concerning the previous year:
  - a. Number of residential customers as of December 31 of the previous year.
  - b. Number of tons of solid waste picked up from these residential customers collectively.
  - c. Number of tons of each type of household recyclables picked up by curbside recyclables collection program.
  - d. Number of tons of each type of household recyclables picked up at a drop-off box system.

- e. Number of commercial establishment and community activity customers served during the previous year.
  - f. Names and addresses of each commercial establishment customer that does not subscribe to recyclable collection services.
7. All recyclable materials placed by residents, commercial establishments, or community activities for collection by a public or private hauler shall become property of the hauler upon the hauler's removal of the recyclable materials from the curbside drop-off box or other designated collection location.
  8. It shall be a violation of this ordinance for any person other than the certified hauler to remove, tamper with or otherwise disturb recyclable materials or their receptacles which have been placed for collection by the certified haulers.
  9. A public or private hauler may not engage in the commercial collection, transportation, processing or disposal of solid waste within the County unless the recyclable materials required in accordance with this ordinance have been segregated.
  10. All haulers shall not dispose of any collected recyclables into a landfill but shall market the materials.
  11. Any resident violating the provisions of this ordinance or any regulation promulgated hereunder shall be fined Twenty-five Dollars (\$25) plus court cost for an initial violation and up to Five Hundred Dollars (\$500) plus court cost for each additional violation.

Any owner of a multi-family dwelling, four units or larger, violating this ordinance or any regulations promulgated hereunder shall be fined up to One Hundred Dollars (\$100) plus court cost for an initial violation and up to Five Hundred Dollars (\$500) plus court cost for each additional violation.

Any commercial establishment violating this Ordinance or any regulations promulgated hereunder shall be fined up to One Thousand Dollars (\$1,000) plus court cost for an initial violation and up to Five Thousand Dollars (\$5,000) plus court cost for each additional violation. Each day such violation continues shall constitute a separate offense.

12. Haulers providing recyclables curbside collection service must provide a scheduled collection day, at least one per month, during which customers place recyclables at curbside, or similar location, for collection. Haulers must notify customers in writing of the scheduled collection day(s) and any changes to this schedule.

### **3.0 Severability**

If any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared invalid for any reason whatsoever, such invalid section, subsection, ordinance which shall remain in force and effect, and for this purpose the provisions of the ordinance are hereby declared to be severable.

## **Chapter 4: Issuing Certificates of Site Approval**

## CHAPTER 4: ISSUING CERTIFICATES OF SITE APPROVAL

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The main regulatory responsibility of SWAs is the approval or denial of an application for a Certificate of Site Approval. Upon completion of its Comprehensive Litter and Solid Waste Control Plan and Commercial Solid Waste Facility Siting Plan, the SWA should also adopt regulations and develop an application for the siting of any potential solid waste facility. The SWMB has developed a generic Certificate of Site Approval application form that can be utilized by SWAs. The form is contained in Attachment 4A.

Upon receiving a completed application, the SWA shall make a decision to issue or deny the Certificate of Site Approval within 30 days.

When evaluating the application, the SWA will consider the effects of the proposed facility on one or more of these 10 criteria:

1. The efficient disposal of solid waste generated within the county or region.
2. Economic development.
3. Transportation facilities.
4. Property values.
5. Groundwater and surface waters.
6. Geological and hydrological conditions.
7. Aesthetic and environmental quality.
8. Historic or cultural resources.
9. Present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes.
10. The public health, welfare, and convenience.

**Distance from an airport runway:** On April 5, 2000, United States Code 49USC §44718(d) was enacted to increase the prohibited area for construction of new landfills to six miles from an airport. Previously, the distance was 10,000 feet from a turbojet runway and 5,000 feet for runways used only by piston type aircraft. The new regulation allows for an exemption if it is requested by the appropriate state aviation agency. To seek an exemption, contact the West Virginia Aeronautics Commission, 1900 Kanawha Blvd. E, State Capitol Building 5, Charleston, WV, 25305. Phone: 304-558-3436.

The SWA shall issue findings of fact and conclusions based on the above criteria. The findings are the facts on which the SWA based its decision. The decision to approve or deny a Certificate of Site Approval by a SWA can be appealed.

### **SOLID WASTE AUTHORITY RULES FOR CERTIFICATE OF SITE APPROVAL**

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SWAs should adopt rules that govern or better outline their own procedures for an application for Certificate of Site Approval. Five common rules that could be adopted include:

1. Requiring a public hearing on the proposed application.

NOTES

2. Requiring the applicant to make the site available for review by SWA members.
3. Requiring the applicant to be responsible for all costs incurred as a result of a public hearing.
4. The SWA should clearly state where the public can review said application.
5. Requiring the applicant to supply the SWA with a copy of the application for a Certificate of Need.

The Certificate of Site Approval process for SWAs is the same regardless of the type or size of facilities. However, the overall siting approval process for Class A facilities is much more complex.

**Siting a Class A facility:** After a Class A facility has received siting approval from the local SWA, the application goes before the county commission. The county commission has 30 days to act on the application after it is determined to be complete.

The county commission shall then hold at least one public hearing on the application and provide public notice of the public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is located. If the application is approved, the county commission shall order a referendum to be placed upon the ballot not less than 56 days before the next primary, general or other county wide election.

The voters will determine at public referendum whether a Class A facility is to be located in the county. Even if the application is approved by the voters, the application can be denied by the PSC or the DEP. A diagram of the pre-siting portion of the permitting process is provided in Attachments 4B and 4C.

## QUESTIONS AND ANSWERS ON ISSUING CERTIFICATES OF SITE APPROVAL

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**Q. Will the public have a chance to make comment on the processing of a Certificate of Site Approval?**

A. The SWA is not required to have a public hearing. However, in the interest of both parties, the SWA may hold a public hearing to receive comments prior to the issuance of a Certificate of Site Approval. Generally, the SWA should also accept written comments 10 days after the date of the public hearing. The county commission is required to conduct a public hearing on an application for approval of operation as a Class A facility or a conversion from a Class B facility to a Class A facility.

**Q. Does the SWA have to respond to comments at its public hearing?**

A. The SWA should not respond to any written or public comments during a public hearing. The SWA should, in writing, respond to those comments within 30 days after the public hearing and issue findings of fact and conclusions on the reasons for the approval or denial of a Certificate of Site Approval.

**Q. Can a decision on a Certificate of Site Approval by a solid waste authority be appealed?**

A. Yes.

**Q. Are there ways the SWA can ensure that the public is informed about a pending application?**

A. Yes. The SWA should ensure that copies of the application for Certificate of Site Approval are on public display.

**Q. Should the solid waste authority have legal counsel in administering the Certificate of Site Approval process?**

A. There is no legal requirement to have legal counsel present during any SWA function. However, the process of issuing or denying a Certificate of Site Approval is administratively complex. If legal counsel is not present, the SWA should be well versed in proper administrative procedures.

## Chapter 4: Attachments

**ATTACHMENT 4A:  
APPLICATION FOR CERTIFICATE OF SITE APPROVAL**

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**APPLICATION FOR CERTIFICATE OF SITE APPROVAL**

Date Submitted: \_\_\_\_\_

Submitted to (Authority name): \_\_\_\_\_

Authority Address: \_\_\_\_\_

1. Applicant Name: \_\_\_\_\_

\_\_\_\_\_ Class A Landfill

\_\_\_\_\_ Recycling Facility

\_\_\_\_\_ Class B Landfill

\_\_\_\_\_ Transfer Station

\_\_\_\_\_ Class C Landfill

\_\_\_\_\_ Commercial Composting Facility

\_\_\_\_\_ Class D Landfill

\_\_\_\_\_ Materials Recovery Facility

\_\_\_\_\_ Conversion from Class B to Class A Landfill

2. Proposed or existing facility:

Location Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

3. Address of proposed certificate holder:

\_\_\_\_\_

4. Name in which certificate will read (if different from applicant):

\_\_\_\_\_

5. Name, title, address and phone number of contact person(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. List your experience in the operation of solid waste facilities, specifying:

a.) Each facility which you, your officers and/or directors have owned, operated or been employed by:

\_\_\_\_\_

\_\_\_\_\_

b.) Address of each facility: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.) The nature of the relationship (ownership, operation, employment) if employment, specify the name of the individual co employed and title:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d.) The effective dates of stated relationship:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If proposed certificate holder:

Sole Proprietorship \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_

If holder is corporation, attach list of stockholders owning five (5%) or more of the stock along with the addresses.

8. Has the applicant or any stockholder owning five percent (5%) or more ever been convicted of a felony, misdemeanor or had a permit for a solid waste facility denied or revoked? If so, please describe. Please be advised that the DEP application process requires a background investigation.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Have groundwater and surface water studies been completed for the location? \_\_\_\_\_  
\*If completed, attach a copy of part one.

10. Identify geographic area to be served by facility (Watersheds, Counties, etc.)

\_\_\_\_\_  
\_\_\_\_\_

11. Please provide letters of confirmation, including estimated monthly tonnage, from potential customers within the geographical area this facility is intended to serve (e.g. haulers, municipalities and/or solid waste authorities).

12. If applicable, what is the estimated number of households, commercial and industrial customers served?  
Households \_\_\_\_\_ Commercial \_\_\_\_\_ Industrial \_\_\_\_\_

13. If applicable, what is the average monthly tonnage proposed to be disposed of at facility?

\_\_\_\_\_

14. Total monthly tonnage of solid waste for which the facility is seeking a permit from the DEP and specific sources of solid waste? \_\_\_\_\_
15. What is the intended lifespan, where applicable, of the facility, (number of years) based on tonnage permitted: (Attach sheets showing how you arrived at this projection.)  
\_\_\_\_\_  
\_\_\_\_\_
16. What is the projected closure date for the facility? Specify closure date for any part of facility projected to close prior to entire facility and identify such parts:  
\_\_\_\_\_  
\_\_\_\_\_
17. What is the total monthly tonnage of solid waste generated within the county to be served by the facility, (Based on WWSWMB Figures of 4.0 lbs. per person, per day?)  
\_\_\_\_\_
18. What is the estimated total of monthly tonnage of solid waste generated within the watershed to be served by the facility, (Based on SWMB figures of 4.0 lbs. per person, per day?)  
\_\_\_\_\_
19. How is the facility's location/proposed location designated in the local authorities Solid Waste Facility Siting Plan?  
Approved \_\_\_\_\_ Tentatively Prohibited \_\_\_\_\_ Prohibited \_\_\_\_\_
20. Is the site in compliance with DEP location standards, Title 33, Series 1? \_\_\_\_\_
21. Total permitted disposal acres at the site? Bonded acres? \_\_\_\_\_
22. Has the applicant, partner or stockholder listed in the partnership or corporation requested Closure assistance funds for the State of West Virginia? \_\_\_\_\_  
If yes, who? \_\_\_\_\_  
Dates applied for and amount? \_\_\_\_\_  
Facility or facilities involved? \_\_\_\_\_

**Submit completed copy of this form to:**

WV Solid Waste Management Board  
601 57th Street, SE  
Charleston, WV 25304

**VERIFICATION**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Come before me on this date, the undersigned applicant or its authorized representatives, named in the foregoing application, who being duly sworn, states that the facts and information contained therein are true, except wherein stated to be on information, are believed to be true.

Applicant: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

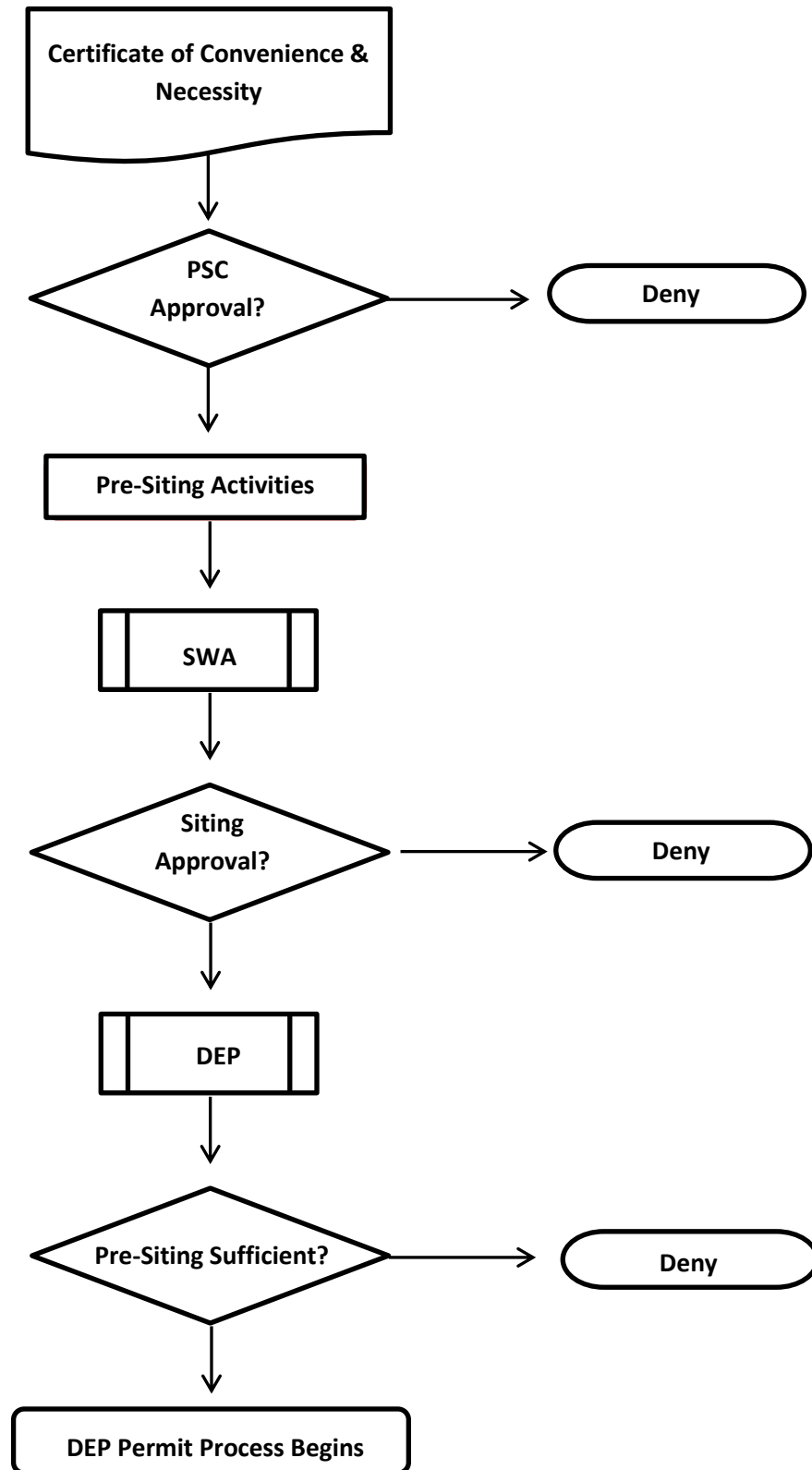
Taken, Sworn to, and Subscribed before me this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

My Commission expires the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

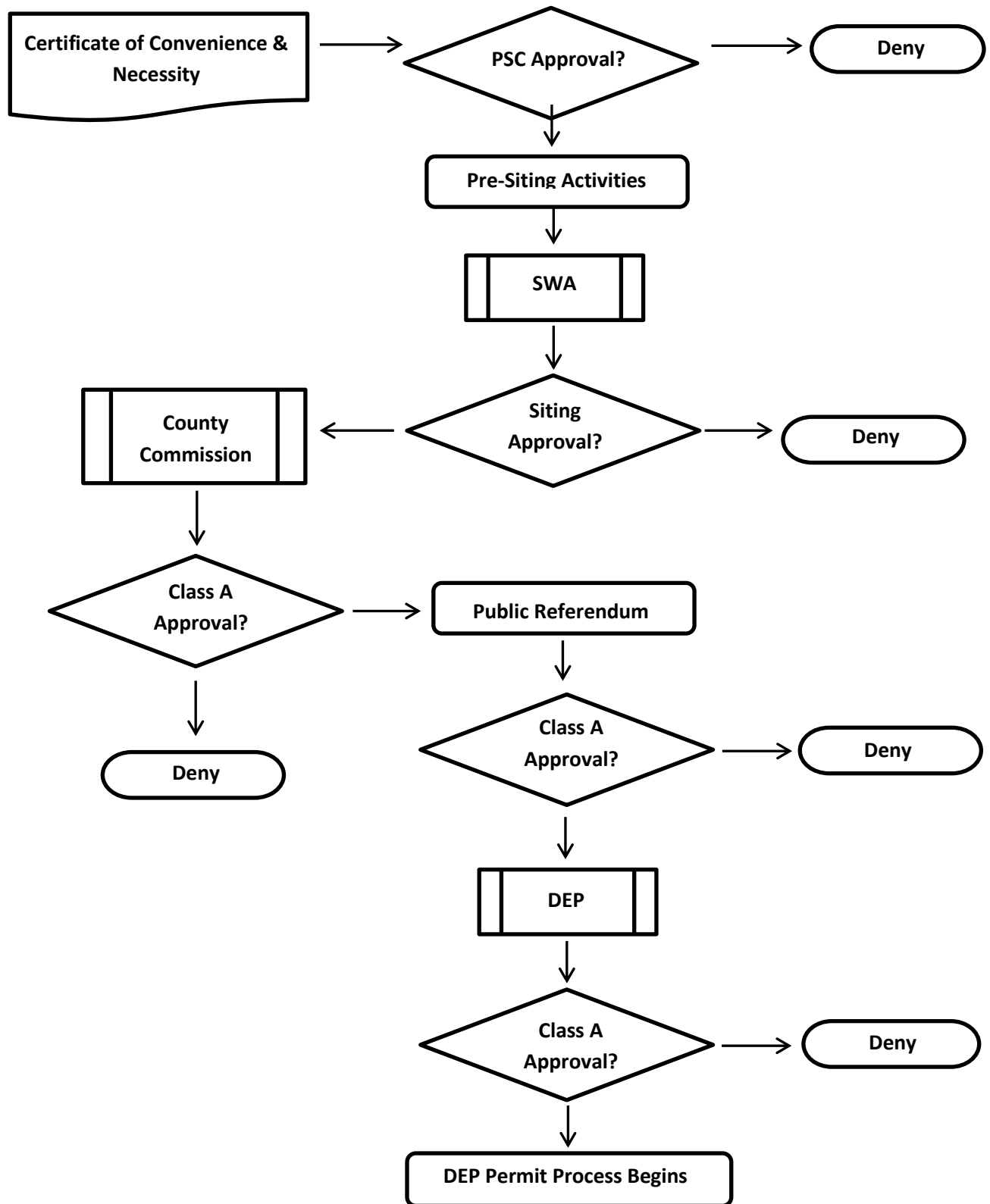
**ATTACHMENT 4B:  
PRE-SITING PORTION OF THE PERMIT PROCESS – NON-CLASS “A” FACILITIES**

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**ATTACHMENT 4C:  
PRE-SITING PORTION OF THE PERMIT PROCESS – CLASS “A” AND CONVERTING CLASS  
“B” TO “A”**

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# Chapter 5: Solid Waste Grants

## CHAPTER 5: SOLID WASTE GRANTS

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### WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD GRANTS

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Grants administered by the SWMB are governed by Legislative Rule, 54CSR5, Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities. A copy of the rules is located in [Attachment 5A](#).

NOTES

### AVAILABILITY OF GRANT FUNDS

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**Grants:** Grants allocated under these regulations are dependent on the availability of funds collected pursuant to W. Va. Code §22C-4-30. In the event these funds are diminished by decreasing waste disposed at landfills or legislative action, the SWMB may adjust the grant amount each year.

### APPLICATIONS FOR GRANTS

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**Eligibility:** The applicant must be a county or regional SWA or group of SWAs. Applicants are eligible for the maximum amount of funds, as determined by the Board.

**Application for Grants:** Any eligible SWA which wants to participate in the grant program shall make an application to the SWMB on the SWMB's forms. One set of forms may be used to apply for separate projects. The application must be submitted with a properly executed resolution by the board authorizing the application. Both the application and resolution must be signed by the Chair of the SWA or SWAs. The application must also include a detailed project narrative, a project timeline and a project budget.

The grant project must be consistent with the Authority's Comprehensive Litter and Solid Waste Control Plan and the West Virginia Solid Waste Management Plan. The SWMB will consider grant projects that are consistent with the Authorities' statutory responsibilities. These projects may include but are not limited to the following:

- Source reduction in toxicity or volume.
- Reuse of materials with little or no processing thus diverting them from the waste stream.
- Recycling, composting, processing and marketing of materials.
- Open dump cleanup and litter control.
- Transfer stations.
- Landfills and other solid waste facilities.
- Administrative costs such as salary, operational expenses, maintenance, administrative equipment or other projects. Computer hardware and software needed to achieve or enhance a program or project.

- Projects for the development, purchase or delivery of educational materials, programs or seminars. Applicants are encouraged to use educational information, programs and seminars available to them from existing sources.
- Potential to further the efficient and effective collection, processing, recycling and disposal of solid waste which protects the environment, with cost effectiveness and some degree of public involvement in the project.
- The applicant's ability to implement the project as soon as practical after receipt of the first installment of grant funds.
- No grant will be approved for operation or equipment for buy-back centers which are in direct competition with private enterprise operations existing within the same county, unless such buy-back center agrees in writing not to pay more for commodities than the price paid for such commodities by the private enterprise.
- Applications for physical resources such as equipment or facilities, may receive preference to funding of operations or salaries of employees.

**Deadline for Application:** In accordance with W. Va. Code Rules §54-5.3.3, applications must be postmarked by no later than April 30<sup>th</sup> to be considered at its July meeting. The applicant will be notified of the award or denial of the grant in writing within a reasonable time period.

**Regional Planning & Development Council Review:** Copies of all grant applications must be submitted to the appropriate regional planning and development council or councils for intergovernmental review consistent with W. Va. Code §8-25-9 in order to avoid unnecessary duplication of ideas, equipment, services or purchases, or imprudent use of grant funds. A listing of the regions and contact information can be found in [Attachment 5B](#).

## **GRANT INFORMATION**

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**Grant Period:** Grants will be awarded for a maximum period of one year. However, the SWMB may extend the period for up to 90 days. Continued financing for long-term projects is at the SWMB's discretion.

**Award Date:** An award date is defined by the Board as the date the Governor releases the funds. This date will appear on both the agreement form (WV-48) and the first invoice form sent to the Authority.

**Grant Expenditures:** Once the Board has approved the Grant Budget, the Authority may expend funds for the grant project only for items detailed in the approved budget.

**Compliance with Federal and State Law:** The awarded Authority must comply with all applicable federal and state laws.

**Separate Checking Account:** The awarded Authority must establish a separate interest-bearing checking account through which all financial transactions related

to the grant will take place. They may not use grant monies for any purpose other than those approved by the SWMB. The Authority is also responsible for establishing and maintaining adequate procedures and internal controls to monitor the management of the grant award.

**Grant Disbursements:** When appropriate, 50% percent of the grant award will be disbursed at the time of the award, and the other 50% will be disbursed when the Authority has demonstrated to the SWMB that approximately 50% of the total project funds have been expended, and an acceptable semiannual report has been submitted to the SWMB.

If the above schedule will adversely affect the continuity of the project, the SWMB may disburse funds on a schedule which facilitates the project's completion.

**Bid Solicitations:** The Authority must solicit three (3) verbal bids for purchases from \$2,500 to \$10,000 for all purchases or construction-related contracts. For purchases \$10,000.01 to \$25,000 three (3) written bids are required. Any attempts by the Authority to segregate the project into sections having an estimated value of less than \$2,500 or \$10,000, respectively, may cause termination of the agreement. Bids should be solicited by public notice as a Class II legal advertisement in the largest newspaper serving the Authority's general area. The notice should be placed in the newspaper twice within 14 days preceding the final date bids are submitted. The Authority should also comply with the requirements of W. Va. Code §5G-1-1 in obtaining architectural or engineering services when applicable.

**Equipment Title:** Title to equipment, buildings and land purchased with grant funds must remain with the Authority unless otherwise approved by the SWMB. Grant monies cannot be passed on to a third party for use. Equipment, buildings, and land purchased with grant funds may be leased to other solid waste authorities or other parties provided that such lease will directly assist in the implementation of Authority's solid waste plan goals.

## **REPORTING REQUIREMENTS**

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**Semiannual Report:** Reports must be submitted to the SWMB within 15 working days from the end of the six-month period. For reporting purposes, the semiannual report period ends six months after the grant award date (as specified on the Authority's agreement form and invoice) and the grant period ends one year after the grant award date.

The Semiannual Report includes:

**Expenditure Schedule:** This schedule details all the expenses for the period. Make sure that proper documentation is submitted for the period such as copies of time sheets, invoices, canceled checks, titles, copies of contracts, service agreements and bank statements. All canceled checks must total the Expenditure Schedule's total amount for expenses for the period.

**Semiannual Recap Sheet:** This form includes six elements:

1. Balance of grant monies remaining.
2. Percentage of grant monies spent.
3. Percentage of the total project completed.
4. Current period expenditures.
5. Brief description of the progress of the project.
6. Description of any problems encountered during the period.

**Final Report:** A Final Report must be submitted to the SWMB within 30 days of completion of the project. It must contain the same information as requested in the semiannual report. Additional final report information must include a narrative summary, goals and objectives, a description of the project accomplishments and recycling information in accordance with W. Va. Code Rules §54-5, subsection 12.5.

**Board's Review of Reports:** The SWMB will review semiannual reports and final reports in a timely manner. Once reviewed, the SWMB will send a letter to the SWA listing issues to be resolved. The SWA will have 10 business days from the date of the letter to respond to all unresolved issues. Grant invoices may be held until all outstanding issues are resolved.

**Field Audits:** The SWMB reserves the right to conduct an on-site inspection of the Authority's facilities related to the grant. The SWMB also reserves the right to conduct an audit of an Authority's program records during or after the grant period, during the normal business hours of the Authority. All records pertaining to grant funds must be made available to the SWMB.

## **GRANT WITHDRAWAL AND PENALTY**

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**Withdrawal of Grant:** The SWMB reserves the right to withdraw a grant upon determination of unsatisfactory program compliance. A grant withdrawal may include a recall of the total grant award plus any accrued interest or an amount determined to be an unallowable cost pertaining to the grant. Some examples of noncompliance are:

1. Insufficient documentation detailing expenses of the grant may result in an unallowable expense. For example, if an Authority does not submit an invoice or a canceled check for an expense, the SWMB reserves the right to deem the expense unallowable.
2. Failure to commence program activities within 90 days of receiving funding (the award date) from the SWMB may result in the cancellation of the grant.
3. Failure to expend 20 percent of the total grant award within the first semiannual period may result in the cancellation of the grant.
4. Funds may not be used for any purpose other than those approved by the SWMB. Grant funds must not be utilized for lobbying activities.
5. Failure to comply with field audit findings may result in the cancellation of the grant. The Board reserves the right to conduct an on-site inspection of the applicant's facilities related to the grant, and to conduct an audit of an applicant's program records during or after the grant period. The applicant

shall retain all financial records, statistical records, and all other documents relating to the grant for a period of three years from the end of the grant period.

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## **GRANT RELATED AUDIT REQUIREMENTS**

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**Audit Requirements:** All audits require two supplemental items pertaining to grant awards be included in each SWA's annual audit

They are:

1. A cumulative inventory schedule listing all equipment purchased with grant funds.
2. A schedule of state awards detailing the activity of the grant award.

**Equipment Schedule:** An equipment schedule regarding use of grant funds should be prepared by the SWA. If a SWA does not prepare the schedule, the Auditor must generate the schedule which could increase the cost of the original audit contract amount. The Auditor's responsibility should be to verify the accuracy of the schedule. For reporting purposes, the threshold for determining equipment is a purchase price of \$1,000 or more and a useful life greater than one year. This schedule is to include:

1. Equipment description.
2. Date of purchase.
3. Purchase price.
4. Vendor.
5. Identification number.
6. Location.

The schedule also includes the retirement of assets originally purchased with the SWMB's funds. Retirement of assets must be approved by the Board.

**Schedule of State Award:** The Authority will have its Auditor prepare a schedule to be submitted with the audit reflecting the activity of the SWMB's grant award for the audit period. Each award, regardless of the amount, is to be specifically listed. The schedule must include the award amount, amount invoiced, qualifying grant expenditures and the unexpended balance.

**Maintaining Records:** All records pertaining to a grant award must be retained for a period of three years from the time of the final disbursement of grant funds, or until audited, whichever is later in accordance with W. Va. Code Rules §54-5, subsection 8.5.

## **RETURNING GRANT FUNDS**

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**Unexpended Funds:** At the end of the grant period, the Authority must return all unexpended grant funds to the SWMB, including accrued interest, within 60 days following the end of the grant period. At the SWMB's discretion, the refund requirement may be waived for good cause.

## **WEST VIRGINIA RECYCLING ASSISTANCE GRANTS**

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The Recycling Assistance Grant Program is administered through the Department of Environmental Protection (DEP), Rehabilitation Environmental Action Plan (REAP). The grant program was established to assist with the planning and implementation of recycling programs. Mandated cities, other municipalities, counties, solid waste authorities and other interested parties are eligible for assistance. This grant differs from the SWMB grant in that it is used exclusively for recycling activities, and SWAs are not the only eligible applicants. Mandated cities and counties that have passed recycling ordinances are given priority over other applications. SWAs are eligible for REAP grants up to \$150,000 or joint county efforts can be substantially more.

## **COVERED ELECTRONIC DEVICES RECYCLING GRANTS**

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The Covered Electronic Devices (CED) Grant program is administered through the DEP – REAP Program. This grant program was established in 2009 as a way to provide assistance for conducting electronic collection events and establishing or enhancing existing programs. The program is funded by electronic manufacturers doing business in West Virginia who are required to pay an annual registration fee.

CED grant funds are only available to county governments (commissions or solid waste authorities) and municipalities in a tiered matching basis up to \$40,000. The first \$20,000 does not require the grantee to provide any matching funds; any amount over \$20,000 requires a dollar-to-dollar match.

## **LITTER CONTROL GRANTS**

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This program, administered by DEP, is a matching grant that awards funds to municipalities, county governments and SWAs to assist with community cleanups, litter enforcement projects and litter prevention programs. Litter fines imposed on state litter law violators fund this program. The maximum amount of funding for a Litter Control Grant is \$5,000 and the cycle runs from July 1 through June 30. Rules governing the program are under State Rule 33CSR41 (.doc). Applications must be postmarked by no later than May 31 to be considered for the following grant period.

## QUESTIONS AND ANSWERS ON THE SOLID WASTE GRANTS

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**Q. Does a SWMB grant have to be reviewed by a regional planning and development council?**

A. Yes, a copy of all SWA grant applications must be submitted to the appropriate regional planning and development council or councils for intergovernmental review in accordance with W. Va. Code §8-25-9. The review is conducted in order to prevent unnecessary duplication of ideas, equipment or services, or imprudent use of grant funds. A complete listing of council's contact information can be found in Attachment 5C.

**Q. How often must SWAs report on the progress and expenditures from their grant to the SWMB?**

A. SWAs must make one semiannual report plus a final report to the SWMB.

**Q. What happens to unexpended SWMB grant funds?**

A. SWAs must return unexpended funds to the SWMB within 60 days following the end of the grant period. The SWMB may waive this requirement for cause.

**Q. How long does the SWMB grant cycle last?**

A. The SWMB grant runs on a fiscal (June-July) cycle. However, due to the approval process, grants are not usually approved until August-September. Grant recipients are still given one (1) year to expend funds from the date of approval. A complete overview of the SWMB and DEP-REAP's grant program calendar is included in Attachment 5D.

## Chapter 5: Attachments

## **ATTACHMENT 5A:**

### **W. Va. CODE RULES §54-5 - Disbursement of Grants to Solid Waste Authorities**

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**TITLE 54  
LEGISLATIVE RULE  
SOLID WASTE MANAGEMENT BOARD**

**SERIES 5  
DISBURSEMENT OF GRANTS TO SOLID WASTE AUTHORITIES SERIES**

#### **§54-5-1. General.**

1.1. Scope. -- The purpose of this rule is to provide interpretation and guidance concerning the awarding of grants to county and regional solid waste authorities for use in carrying out the purposes of W. Va. Code §22C-4-1 et seq.

1.2. Authority. -- W. Va. Code §§22C-3-6 and 22C-4-30.

1.3. Filing Date. -- April 10, 2002.

1.4. Effective Date. -- April 15, 2002.

#### **§54-5-2. Definitions.**

The following words and terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Applicant" – means a solid waste authority which applies for a grant pursuant to this rule.

2.2. "Approved solid waste facility" – means a commercial solid waste facility or practice which has a valid permit or compliance order under W. Va. Code §22-15-1 et seq.

2.3. "Authority" – means any solid waste authority of any county or region in West Virginia, established by W. Va. Code §§22C-4-3 and 22C-4-4; or the county commission of any county which elected not to establish an authority, as allowed by W. Va. Code §22C-4-6.

2.4. "Board" – means the West Virginia Solid Waste Management Board, as established by W. Va. Code §22C-3-4, or its authorized representatives.

2.5. "Buy-back center" – means any recycling facility which has an attendant present while open, at which source-separated recyclables are purchased from the general public, or accepted for a nominal fee. Limited processing of materials is required or conducted.

2.6. "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 does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid waste created by that person or, that person and another person on a cost-sharing or nonprofit basis, and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation, and similar applications.

2.7. “Construction” – includes reconstruction, enlargement, improvement, and providing furnishings or equipment for a solid waste disposal project.

2.8. “Cost” – means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required by the Board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges and interest prior to and during construction and for no more than eighteen (18) months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys, and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the Board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this rule by any governmental agency, with the approval of the Board, for surveys, borings, preparation of plans and specifications, and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of W. Va. Code §22C-3-10 et seq.

2.9. “Grant” – means a grant made by the Board to an applicant pursuant to this rule.

2.10. “Government agency” – means the state government or any agency, department, division, or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation, or agency having the authority to acquire, construct, or operate solid waste facilities; the United States government or any agency, department, division, or unit thereof; and any agency, commission, or authority established pursuant to an interstate compact or agreement.

2.11. “Landfill” – means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for the purpose of this rule, in the county where the majority of the spatial area of such facility is located.

2.12. “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.

2.13. “Owner” – includes all persons, partnerships, or governmental agencies having any title or interest in any property rights, easements, and interests authorized to be acquired by this rule.

2.14. “Recycle” or “Recycling” – means the process by which recovered products are transformed into new products, and includes the collection, separation, recovery, and sale or reuse of metals, glass, paper, tires, lead-acid batteries, and other materials.

2.15. “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 §§20-11-1 et seq., 22-15-1 et seq., or 22C-4-1 et seq.

2.16. "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; other discarded material, 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 material in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code §22-11-5 et seq., or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under W. Va. Code §22-18-1 et seq., or refuse, slurry, overburden, or other waste or material resulting from coal-fired electric power generation, 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 §§22-2-1 et seq., 22-3-1 et seq., 22-4-1 et seq., 22-6-1 et seq., 22-7-1 et seq., 22-8-1 et seq., 22-9-1 et seq., 22-10-1 et seq., or 22A-1-1 et seq., so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters.

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

2.18. "Solid waste disposal project" or "Project" – means any solid waste facility, the development of Comprehensive Litter and Solid Waste Control Plans and Commercial Solid Waste Facility Siting Plans, administrative costs, open dump cleanup, and other purposes for expenditure of grant monies approved by the Board at its discretion.

2.19. "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, commercial 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 §22-15-20 (b). Such facilities shall be deemed to be situated, for the 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.

### **§54-5-3. Application for Grants.**

3.1. Any eligible solid waste authority which desires to participate in the program shall make an application to the Board on prescribed forms as published in the grant application package. One form may be used to apply for separate projects.

3.2. Applications must include a description of the proposed project, a detailed project budget, properly executed and signed resolution authorizing the application, and all other documentation as prescribed in the grant application package. All required documentation must be signed by the chairperson(s) of the authority or authorities where indicated.

3.3. Grant applications must be received by the Board no later than April 30 to be considered at its July meeting. The Board may consider grant applications or revisions for emergency or extraordinary purposes at any time at its sole discretion.

3.4. Incomplete applications will not be considered; they will be marked “incomplete” and returned to the applicant. Applications that fulfill all requirements may be resubmitted within the original filing deadline.

3.5. Grants will be awarded to solid waste authorities for the purchase of equipment, materials, services, land, and buildings used on behalf of the authority. Grant monies cannot be passed on to a third party. Equipment, buildings, and land purchased with grant funds may be leased to other solid waste authorities or other parties provided that such lease will directly assist in the implementation of Comprehensive Litter and Solid Waste Control Plan goals, objectives, and recommendations. Title to equipment, buildings, and land purchased with grant funds must remain with the solid waste authority unless otherwise approved by the Board. Grants will not be given for construction or improvements to facilities on property which is not owned by the authority.

3.6. The applicant will be notified in writing within a reasonable period of time of approval or disapproval of the grant. Approval or disapproval of the grant will be determined by the Board after consideration of the factors listed under §54-5-7 of this rule.

#### **§54-5-4. Eligibility for Participation.**

The following criteria will determine the eligibility of a proposed project to receive funding under this program:

4.1. The applicant must be a county or regional solid waste authority, or group of such authorities acting collectively for the purpose of the grant project.

4.2. Grants will be awarded for a maximum period of one year, provided that the Board may extend this period for up to ninety (90) days. Continued financing for long-term projects will be provided at the sole discretion of the Board. All projects shall be consistent with the goals, objectives, and recommendations of the Comprehensive Litter and Solid Waste Control Plan.

4.3. Each fiscal year, the Board will determine both the total amount of funds available for grants and the maximum grant amount for a single applicant. The total amount will be subject to the availability of funds and appropriation by the Legislature and may, at the sole discretion of the Board, be increased/decreased at subsequent meetings of the Board as necessary. The grant amount may be increased when the applicant consists of two (2) or more counties acting collectively for the purposes of a grant.

4.4. Solid waste authorities which have not received the Board’s approval of their Comprehensive Litter and Solid Waste Control Plan, Commercial Solid Waste Facility Siting Plan, or updates of such plans in accordance with the requirements of W. Va. Code §§22C-4-8, 22C-4-24, and the rules promulgated thereunder shall not be eligible for grants other than those awarded for purposes of completing such plans. Eligibility for projects other than completion of the Comprehensive Litter and Solid Waste Control Plan and the Commercial Solid Waste Facility Siting Plan will be reinstated upon the approval of such plans or their updates.

4.5. If the purpose of the grant is to fund costs associated with a solid waste facility, the facility must be in compliance with all applicable federal and West Virginia laws and rules, including any compliance orders issued by state agencies and/or departments.

4.6. The applicant shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this grant award. The applicant shall establish a separate checking account through which all grant project related financial transactions shall take place. The applicant shall not use grant monies for any purpose other than those approved by the Board in the grant application. The applicant shall ensure that the programmatic intent and purpose for which the grant funds are expended is implemented, utilized and maintained in an appropriate manner.

4.7. The applicant shall cause an audit of this program, including a physical inventory of all property and equipment purchased with grant funds, to be included in its annual audit performed by the Office of the State Auditor, Chief Inspector Division or its designated representative pursuant to W. Va. Code §6-9-7. A copy of the audit report and inventory shall be forwarded to the Board by the applicant.

4.8. At any time during normal business hours, and as often as the Board may deem necessary, the applicant shall make available to the Board all of its records pertaining to this grant and permit the Board to examine and make excerpts, transcripts, or copies from such records, and audit all contracts, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to all matters covered by this grant during the period beginning with the project approval and ending three years after the final disbursement of grant funds or until audited, whichever is later.

4.9. The applicant shall solicit sealed bids for all construction-related contracts or purchases in accordance with the governing purchasing procedures and guidelines. Any attempts by the applicant to circumvent this requirement by segregating the project into sections each having an estimated value of less than the amount requiring sealed bids may be cause for termination of the agreement.

4.9.1. The bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of W. Va. Code §59-3-2. This notice shall be published by the applicant in the newspaper with the largest circulation serving the general area twice within fourteen (14) days preceding the final date for submitting bids. The applicant shall also, where feasible, solicit sealed bids by mailing requests to prospective suppliers or contractors. The applicant shall have available upon request for review by the Board bid documents and other evidence of compliance with these procedures.

4.9.2. The applicant shall comply with the requirements of W. Va. Code §5G-1-1 et seq., regarding obtaining architectural or engineering services, if such services are needed.

4.10. Whenever practicable, grant funds will be disbursed according to the following schedule: fifty percent (50%) at the time of the grant award, and fifty percent (50%) after the applicant has (1) demonstrated to the Board that approximately fifty percent (50%) of the total project funds have been expended, and (2) prepared and received approval of a semi-annual report as described in §54-5-9.1.1. Provided, however, that upon a finding that disbursement by this schedule will adversely affect the continuity of the project, the Board may disburse funds on a schedule which will ensure continuity.

4.11. Applicants with a current grant may not be eligible for the next cycle of grants.

4.12. A delinquent final report may cause ineligibility for future grants.

#### **§54-5-5. Personnel Qualifications.**

5.1. The applicant must document within the application that it has, or will secure, personnel with the necessary qualifications and experience required to perform the services under this grant award. Such personnel shall not be employees of or have any contractual relationship with the Solid Waste Management Board.

5.2. The grant may not be used to replace existing personnel currently being provided by the local government.

#### **§54-5-6. Compliance with Federal and State Laws.**

The applicant agrees to ensure that the following conditions are met and shall submit a signed affirmation of compliance with all applicable Federal and State laws in the final report:

6.1. That it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

6.2. That it shall take affirmative action to ensure that all contractors employed during this project treat all their employees without regard to race, color, age, religion, sex, national origin, or physical handicap; and that such affirmative action shall include, but not be limited to, the following: employment, upgrading, demotions, transfers, recruitment, compensation, selection for training (including apprenticeship), and participation in recreational and educational activities. All solicitations or advertisements for employees placed by or on behalf of the applicant shall state that all qualified applicants for employment will be considered without regard to race, color, age, religion, sex, national origin, or physical handicap. The applicant shall cause the provisions of this nondiscrimination clause to be inserted in all subcontracts for any work covered by the grant award so that such provisions will be binding upon each subcontractor; and shall keep such records and submit such information concerning the racial and ethnic origin of employees and applicants for employment as the Board may require.

6.3. The applicant shall require any contractors and/or subcontractors it engages on this project to comply with Titles VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000 e-2(a); et seq.); Presidential Executive Order 11246, as amended by EEOC Guidelines, 29 C.F.R. 1604.11(a)(1)(2)(3); Presidential Executive Order 11375; and the Unlawful Discriminatory Practices of the West Virginia Human Rights Act, as contained in W. Va. Code §5-11-9.

6.4. The applicant shall ensure that the contractor /or subcontractors has complied with the regulations issued by the Contractors Licensing Board pursuant to W. Va. Code §21-11-1 et seq., regarding operating a contracting business in the state of West Virginia. The contractor and license number will be included in the final report.

6.5. The applicant shall require compliance of this with the standards documented within Title III of the Americans With Disabilities Act of 1991, and its applicable regulations.

6.6. Certification is required by the Drug-Free Workplace Act of 1988 and is implemented through additions to the Debarment and Suspension regulations published in the Federal Register on January 31, 1989. The certification form must be completed and accompany the grant application.

6.7. The applicant shall insure that all personnel and contractors employed during this project work in an environment which is free from harassment in any form including, but not limited to, sexual, racial, age, or disability.

#### **§54-5-7. Authorized Use of Grant Funds and Factors Considered in Evaluating Applications.**

Applicants may request grant money to be used for any of the purposes under W. Va. Code §22C-4-1 et seq. The project should be consistent with the local authority's Comprehensive Litter and Solid Waste Control Plan and the state Solid Waste Management Plan.

7.1. The Board will consider all projects which are consistent with the Authority's statutory responsibilities for the purpose of W. Va. Code §22C-4-1 et seq. Consideration will also be given to a balance in funding for programs and personnel to support the programs. The Board will give preference to grant projects and the computer hardware and software needed to achieve or enhance program or project objectives such as:

7.1.1. Source reduction in toxicity or volume.

7.1.2. Reuse of materials with little or no processing.

7.1.3. Recycling, composting, processing, and marketing of recovered materials.

7.1.4. Mandatory disposal, open dump cleanup and litter control.

7.1.5. Transfer stations.

7.1.6. Landfills and other solid waste facilities.

7.1.7. Administrative costs (i.e. salary, operations and maintenance, administrative equipment) for any of the above items or other projects.

7.1.8. Projects for the development, purchase, or delivery of educational materials, programs, or seminars. Applicants are encouraged to use existing educational information, programs, and seminars available from other sources.

7.2. Potential of project to further the efficient and effective collection, processing, recycling, and disposal of solid waste within the area and to assist in the protection of the environment.

7.3. Cost-effectiveness of the project.

7.4. Degree of public involvement in the project.

7.5. The applicant's ability to obtain a grant or loan from monies available under the provisions of W. Va. Code §22C-3-1 et seq., or any other state-funded source.

7.6. The applicant's ability to implement the project as soon as practicable after receipt of the first installment of grant funds.

7.7. No grants will be approved for operation or equipment for buy-back centers which are in direct competition with private enterprise operations existing within the same county, unless such buy-back centers agree in writing not to pay more for commodities than the price paid for such commodities by the private enterprise.

7.8. No grants will be approved for the conduct of brokering operations of recycled material or to be used to subsidize personnel who carry out such operations.

7.9. Applications for physical resources, such as equipment or facilities, may receive preference over funding of operations or salaries of employees.

7.10. No grants will be approved that violate the primacy of private solid waste collection services currently operating with a certificate of necessity from the motor carrier division of the West Virginia Public Service Commission.

#### **§54-5-8. Grant Withdrawal and Penalty.**

8.1. The Board reserves the right to withdraw a grant upon determination of unsatisfactory compliance with these rules, the specifications in the grant document, or the grant application.

8.2. Failure to commence program activities within ninety (90) days after receiving funding from the Board may result in cancellation of the grant.

8.3. Failure to expend twenty percent (20%) of the grant funds within the first semi-annual period of the grant may result in cancellation of the grant and a recall of all funds plus any accrued interest.

8.4. The applicant shall not use grant monies to fund lobbying activities. Use of grant funds for this purpose will result in cancellation of the grant and a recall of all funds plus any accrued interest.

8.5. The Board reserves the right to conduct an on-site inspection of the applicant's facilities related to the grant, and to conduct an audit of an applicant's program records during or after the grant period. The applicant shall retain all financial records, statistical records, and all other documents relating to the grant for a period of three (3) years from the end of the grant period or until audited, whichever is later.

#### **§54-5-9. Reporting Requirements.**

9.1. Semi-annual reports. – Semi-annual reports shall be submitted to the Board on a semi-annual basis within fifteen (15) working days of the end of the six-month period and shall contain the following information:

9.1.1. A detailed listing of all funds expended or received during the semi-annual period with copies of: invoices, purchase orders, cancelled checks, and bank statements; titles evidencing ownership for all equipment and materials purchased; contracts, employment and bid advertisements, all bids received and service agreements; time sheets, payrolls, tax payments and reports; and, any other information deemed pertinent to the grant by the Board.

9.1.2. The balance of the grant monies remaining.

9.1.3. The percentage of the project completed to date. Specify the progress that has been made and any problems which have been encountered.

9.2. For purposes of this section the first semi-annual period ends six months after the grant award date, and the second semi-annual period ends one year after the grant award date.

9.3. Final Report. – A final report, including the same documentation for this period as required in the semi-annual report, shall be submitted to the Board within thirty (30) days of completion of the project. The report must include a narrative summary of the project's accomplishments as compared with its original goals, and an explanation of any unachieved objectives. The report should also address any questions posed by the Board.

9.3.1. If an extension regarding the project is authorized pursuant to Section 4.2, the filing deadline will be extended accordingly.

9.3.2. An applicant must submit a final report at the time all grant funds have been expended.

9.4. All reports required under this section shall be filed with the Board on prescribed forms as published in the grant award package.

#### **§54-5-10. Management of Grant.**

10.1. The applicant shall establish a separate interest-bearing checking account through which all grant project-related financial transactions, and only those transactions, shall take place. Grant monies shall be deposited into this dedicated account immediately upon receipt.

10.2. The applicant shall return to the Board all unexpended funds remaining at the end of the grant period, unless the Board finds good cause to waive this requirement. Such unexpended funds, including all accrued interest, must be returned to the Board within sixty (60) days following the end of the grant period.

**§54-5-11. Disposition of Equipment.**

11.1. Disposition of equipment purchased with grant funds, in whole or in part, requires prior Board approval.

11.2. The Board reserves the right to conduct on-site inspections of all equipment purchased with grant funds.

**§54-5-12. General Conditions and Requirements.**

12.1. The proposed project shall be designed to affect a significant and measurable reduction in the solid waste stream.

12.2. If applicable, all grant proposals shall include an analysis and projection of materials that will be diverted from the solid waste currently being landfilled and the costs and/or savings that will directly result from the proposed project.

12.3. If applicable, project proposals shall include a plan to identify markets able to handle the projected volumes of materials to be collected and demonstrate the cost effectiveness and self-sufficiency of the proposed project.

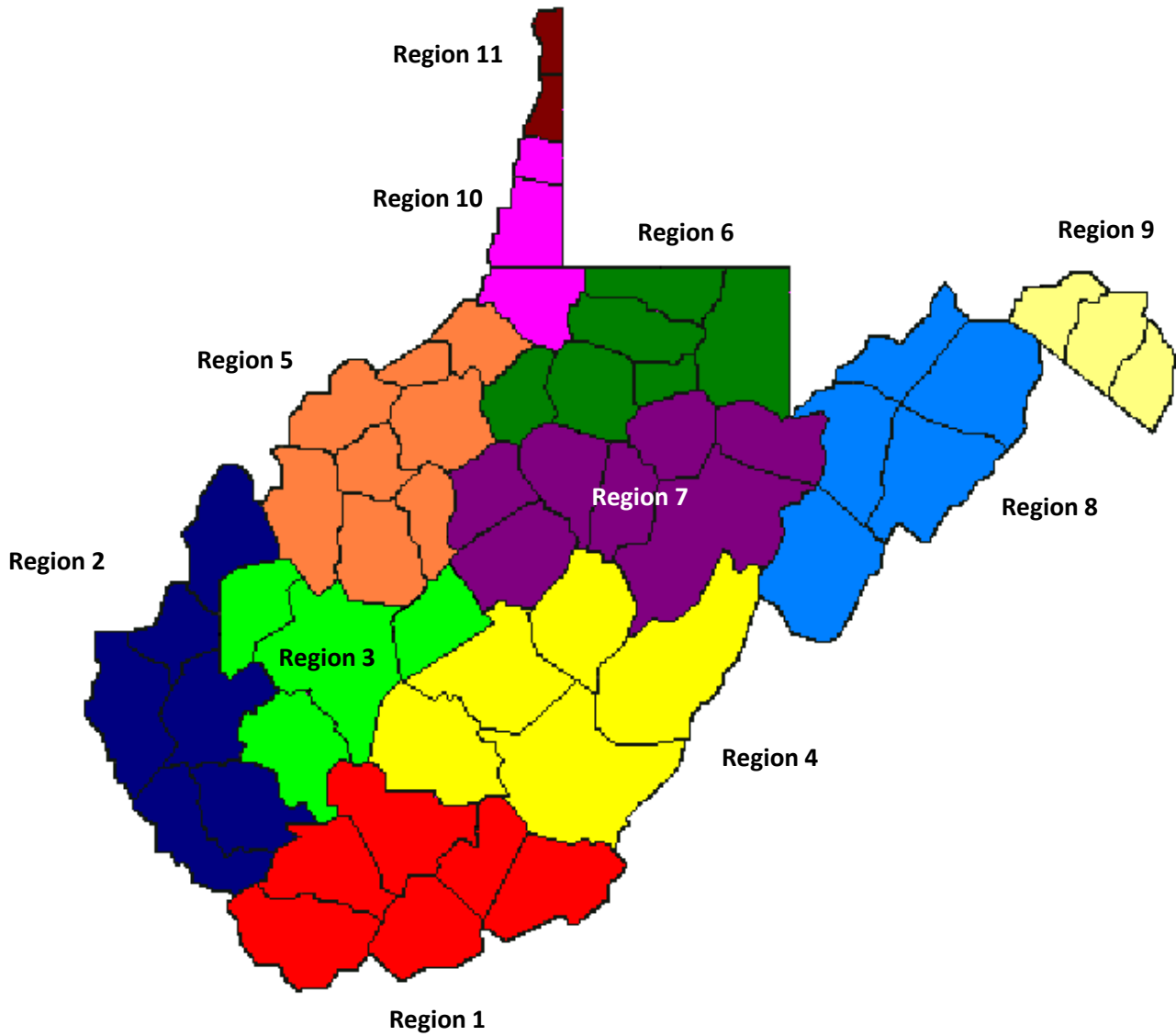
12.4. Grant recipients may request a revision to their grant budget only after approval by the Solid Waste Authority's Board and only if it does not materially alter the original grant proposal approved by the Board.

12.5. Grant recipients will include in their final report an analysis of the project including any or all of the following when it applies: total volume (tons) of waste diverted from the solid waste stream, the estimated cost per ton to recycle that volume, the estimated revenue per ton of recycled material, and the estimated savings from recycling in lieu of landfilling.

**ATTACHMENT 5B:  
REGIONAL PLANNING & DEVELOPMENT COUNCIL DISTRICT MAP**

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Contact information for each district follows on the next page.



**WV Regional Councils Main Website**  
<http://www.wvregionalcouncils.org>

**Region 1 - McDowell, Mercer, Monroe, Raleigh, Summers, Wyoming**

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**Jason Roberts, Executive Director**

1439 E. Main Street, Suite 5  
Princeton, WV 24740  
Phone: 304-431-7225  
Email: [regionone@regiononepdc.org](mailto:regionone@regiononepdc.org)  
Home Page: <http://www.regiononepdc.org/>

**Region 2 - Cabell, Lincoln, Logan, Mason, Mingo, Wayne**

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**Chris Chiles, Executive Director**

400 Third Avenue, Huntington, WV 25712  
PO Box 939, Huntington, WV 25712  
Phone: 304-529-3357  
Email: [cchiles@region2pdc.org](mailto:cchiles@region2pdc.org)  
Home Page: <http://region2pdc.org/>

**Region 3 – Boone, Clay, Kanawha, Putnam**

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**Colt Sandoro, Executive Director**

315 D Street  
South Charleston, West Virginia 25303  
Phone: 304-744-4258 Fax: 304-744-2534  
Home page: <http://www.wvregion3.org/>

**Region 4 – Fayette, Greenbrier, Nicholas, Pocahontas, Webster**

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**John Tuggle, Executive Director**

885 Broad Street, Suite 100  
Summersville, WV 26651  
Phone: 304-872-4970 ext. 307  
Email: [jtuggle@reg4wv.org](mailto:jtuggle@reg4wv.org)  
Home page: <http://reg4wv.org/>

**Region 5 – Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler, Wirt, Wood**

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**Carol Jackson, Executive Director**

PO Box 247, Parkersburg, WV 26102  
Phone: 304-422-4993  
Email: [carol.jackson@movrc.org](mailto:carol.jackson@movrc.org)  
Home Page: <http://movrc.org/>

**Region 6 – Doddridge, Harrison, Marion, Monongalia, Preston, Taylor**

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**Sheena Hall, Executive Director**

34 Mountain Park Drive, White Hall, WV 26554  
Phone: 366-5693  
Email: [regionvi@regionvi.com](mailto:regionvi@regionvi.com)  
Home Page: <http://regionvi.com/>

**Region 7 – Barbour, Braxton, Gilmer, Lewis, Randolph, Tucker, Upshur**

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**Shane Whitehair, Executive Director**

99 Edmiston Way, Suite 225  
Buckhannon, WV 26201  
Phone: 304-472-6564  
Email: [swhitehair@regionvii.com](mailto:swhitehair@regionvii.com)  
Home Page: <http://regionvii.com/>

**Region 8 – Grant, Hampshire, Hardy, Mineral, Pendleton**

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**Terry Lively, Executive Director**

8 Grant County Land Park  
131 Providence Lane  
Petersburg, WV 26847  
Phone: 304-257-2448  
Email: [tlively@regioneight.org](mailto:tlively@regioneight.org)  
Home Page: <http://regioneight.org/>

**Region 9 – Berkeley, Jefferson, Morgan**

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**Bill Clark, Executive Director**

400 W. Stephen St, Suite 301, Martinsburg, WV 25401  
Phone: 304-263-1743  
Email: [bclark@region9wv.org](mailto:bclark@region9wv.org)  
Home Page: <http://region9wv.org/>

**Region 10 – Marshall, Ohio, Wetzel**

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**Scott Hicks, Executive Director**

PO Box 2086, Wheeling, WV 26003  
Phone: 304-242-1800  
Email: [belomar@belomar.org](mailto:belomar@belomar.org)  
Home Page: <http://belomar.org/>

**Region 11 – Brooke, Hancock**

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**Mike Paprocki, Executive Director**

124 North Fourth Street, 2<sup>nd</sup> Floor  
Steubenville, OH 43952  
Phone: 304-797-9666 or 740-282-3685  
Email: [mikepap@bhjmpc.org](mailto:mikepap@bhjmpc.org)  
Home Page: <http://bhjmpc.org/>

**ATTACHEMENT 5C:  
SAMPLE LEASE AGREEMENT**

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Upon execution of this agreement, the lessee, \_\_\_\_\_,  
hereby agrees to lease the following equipment from the \_\_\_\_\_ County Solid Waste Authority  
(lessor):

Description	Serial No.	Value of Equipment

1. The lessee agrees to maintain the above equipment in good operating condition and perform all preventive maintenance as required.
  
2. The lessee will carry insurance for the full value of the equipment (listed above) to include appropriate liability coverage. Lessee will provide certificate of insurance to lessor.
  
3. At the conclusion of this agreement, the lessee agrees to return equipment in original working condition and agrees to pay for any additional damages beyond normal duty wear incurred during the lease period.
  
4. The yearly lease fee is to be \_\_\_\_\_, to be paid \_\_\_\_\_.
  
5. The term of this lease agreement begins \_\_\_\_\_ and ends \_\_\_\_\_.
  
6. Transportation to and from lessee's location is to be paid by lessee using an insured carrier.
  
7. This lease agreement may be terminated by either party (lessor or lessee) at any time during the period of the lease by furnishing written notification to the other party thirty (30) days prior to termination.

Lessee: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Lessee: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Witnessed: \_\_\_\_\_

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

Address: \_\_\_\_\_

Witnessed: \_\_\_\_\_

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**ATTACHMENT 5D:  
SWMB & DEP - REAP GRANT PROGRAM SCHEDULES**

	SWMB Grants	DEP-REAP Litter Control Grants	DEP-REAP Recycling Grants	DEP-REAP CED Grants
January				
February				
March				
April	Grant Deadline (April 30 <sup>th</sup> )			
May		Grant Deadline (May 30 <sup>th</sup> )		
June	To SWMB Grant Committee	DEP-REAP Litter Control Grants Awarded		
July	Recommendations to Governor	Grant Cycle	Grant Deadline (1 <sup>st</sup> business day in July)	
August	SWMB Grants Awarded	Grant Cycle		
September	Grant Cycle	Grant Cycle	DEP-REAP Grant Committee	Grant Deadline (August 31 <sup>st</sup> )
October	Grant Cycle	Grant Cycle	Recommendations to Governor	DEP-REAP CED Grants Awarded
November	Grant Cycle	Grant Cycle		Grant Cycle
December	Grant Cycle	Grant Cycle	DEP-REAP Recycling Grants Awarded	Grant Cycle
January	Grant Cycle	Grant Cycle	Grant Cycle	Grant Cycle
February	Grant Cycle	Grant Cycle	Grant Cycle	Grant Cycle
March	Grant Cycle	Grant Cycle	Grant Cycle	Grant Cycle
April	Grant Cycle	Grant Cycle	Grant Cycle	Grant Cycle
May	Grant Cycle	Grant Cycle	Grant Cycle	Grant Cycle
June	Grant Cycle	End Grant Cycle	Grant Cycle	Grant Cycle
July	Grant Cycle		Grant Cycle	Grant Cycle
August	End Grant Cycle		Grant Cycle	Grant Cycle
September			Grant Cycle	End Grant Cycle
October			Grant Cycle	
November			Grant Cycle	
December			Grant Cycle	
January			Grant Cycle	
February			End Grant Cycle	

*Please refer to each program's Legislative Rule for complete guidelines and rules.*

# **Chapter 6: Solid Waste Regulations and Intergovernmental Affairs**

## CHAPTER 6: SOLID WASTE REGULATIONS AND INTERGOVERNMENTAL AFFAIRS

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### STATE ORGANIZATION OF ENVIRONMENTAL RESPONSIBILITY

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Environmental regulation in West Virginia is divided among several major divisions and “cabinet level” offices. The disposal of solid waste is regulated by a multi-tiered system involving the SWMB, PSC, DEP, various state, county, municipal and regional entities.

### COUNTY AND MUNICIPAL ROLE

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County commissions are the primary local governmental authorities in West Virginia. They have broad governing powers within the county. County commissions play an active part in regulation of land use including planning, solid waste management, recycling, historic preservation, water and sewage. County commissions also appoint two members to the five-member SWA Board. For a regional SWA, two members are appointed by the county commission of each participating county.

Municipalities are classified by population as Class I, II, or III cities and Class IV towns and villages. Each municipal corporation with more than 2,000 citizens has the power to pass laws and ordinances relating to municipal affairs. Such regulations must not conflict with the state constitution or general laws of the state. In the case of a regional SWA, two municipal representatives are appointed by the mayor of each participating municipality within the region.

### ORGANIZATION OF WEST VIRGINIA'S COURTS AND LEGISLATURE

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**Courts:** West Virginia's court system, as it applies to SWAs, consists of magistrate courts, circuit courts and a supreme court of appeals.

**Magistrate courts** oversee the application and enforcement of state laws, municipal laws, and court procedures. They have jurisdiction over civil cases when the claims amount of the dispute is less than \$5,000. In solid waste matters, issues such as littering and open dumping are generally brought before the magistrate system. Each county has no fewer than two and no more than 10 magistrates.

**Circuit courts** are WV's only general jurisdiction trial courts. They have jurisdiction over all criminal and civil matters. West Virginia has 31 judicial circuits, which have from one to seven judges each.

Circuit courts hear appeals from magistrate court, municipal court and administrative agencies, excluding workers' compensation appeals. Environmental statutes specify circuit court jurisdiction over a variety of matters, including civil penalties, injunctions and appeals.

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**Supreme Court of Appeals** is West Virginia's highest court and the court of last resort. The Supreme Court, which consists of five judges, hears appeals of decisions over all matters decided in the circuit courts, including questions of injunctive relief. The Court's appellate jurisdiction is entirely discretionary – it may either grant or refuse to review any case.

**The West Virginia Legislature:** SWA members need to keep themselves abreast of legislation that could impact SWAs. Knowledge of the legislative process and keeping informed about solid waste issues pending before the WV Legislature are important for SWA members in planning and in carrying out their duties.

The WV Legislature includes a 34-member Senate and a 100-member House of Delegates. It is in session for at least 60 days each year. Sessions generally take place January thru March. Interim sessions are held several times during the year.

The Legislature's website allows bill tracking and provides abstracts and full text versions of current legislation. The website is located at [www.wvlegislature.gov](http://www.wvlegislature.gov). The SWMB's website, [www.state.wv.us/swmb](http://www.state.wv.us/swmb), also provides weekly updates of current legislative activity regarding solid waste issues and other related topics.

## **ENVIRONMENTAL QUALITY BOARD**

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The Board (EQB) is composed of five members who are appointed by the Governor with the advice and consent of the Senate. The EQB adjudicates environmental appeals in a fair, efficient and equitable manner for the people of West Virginia.

The EQB performs one statutorily mandated function - - they hear appeals from permitting and enforcement decisions made by the DEP's Division of Water and Waste Management. The regulated community and private citizens may file appeals with the EQB. The EQB's website is [www.wveqb.org](http://www.wveqb.org).

## **SOLID WASTE MANAGEMENT IN WEST VIRGINIA**

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The Solid Waste Management Act (SWMA) W. Va. Code §22-15-1, gives jurisdiction to the DEP over the management of solid waste, under the direction of the Secretary of the DEP and the Director of the Division of Water and Waste Management. The Commissioner of the Bureau of Public Health may enforce the public health laws when solid waste management presents an imminent and substantial danger to public health.

The SWMA was amended in 2005, transferring responsibility for litter control and recycling programs from WV DNR to the DEP. The DEP was also given responsibility for remediation of illegal tire piles.

Some topics in the SWMA include wood waste, Free Day, open dumps, solid waste assessment fees, performance bonding, notice of violations to this article, sewage sludge and waste tire management.

## **REGIONAL PLANNING AND DEVELOPMENT COUNCIL**

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As planning agencies, SWAs have both local and regional impact. Because of this, SWAs must submit copies of their SWMB grant requests to their respective regional intergovernmental councils for review. The regional councils review SWMB grant applications in accordance to W. Va. Code §8-25-9 in order to avoid unnecessary duplication of ideas, equipment, services or imprudent use of grant funds. A listing of regional councils is provided in Attachment 5B.

## **SOLID WASTE MANAGEMENT BOARD**

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The SWMB maintains a website designed to assist SWAs and other interested parties in business assistance, recycling market development, and other waste management issues. Access the website at [www.state.wv.us/swmb](http://www.state.wv.us/swmb).

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# **Chapter 7: Recycling Programs and Market Development**

## CHAPTER 7: RECYCLING PROGRAMS AND MARKET DEVELOPMENT

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Recycling is the process by which recovered products are transformed into new products, it includes the collection, separation, recovery, and sale or reuse of metals, glass, paper, tires, lead-acid batteries, and other materials.

The Legislature has determined that many citizens of West Virginia want recycling programs in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills and reduce the need for new landfills, according to W. Va. Code §22-15A-1-(f.)

The Legislature also found that recycling programs are most successful when encouraging, and in certain instances requiring, the source separation of solid waste and the subsequent curbside collection of recyclables.

Each Solid Waste Authority's Comprehensive Litter and Solid Waste Control Plan shall include provisions for innovative incentives to promote recycling efforts, according to W. Va. §22C-4-8(10).

### RECYCLING PROGRAMS

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There are different types of recycling programs.

**Source separated/curbside** programs require recycled materials be separated from other solid waste and placed at the curb for collection. While source separated/curbside programs can have their own unique design, they share several common elements:

1. Recycled material must be separated from other waste by the individual or business generating the waste.
2. Recyclable items must be placed at the curb.
3. The quality and quantity of recyclables received can be high with proper education and promotion.

**Drop-off programs** require recyclables be dropped off at a recycling station, container or community collection site. Rural areas often opt for this type of program. Participation in drop-off recycling is generally lower than curbside programs.

Drop-off sites can be manned or unmanned. Unmanned sites have more problems with contamination (non-recyclable items and/or garbage deposited into the container).

Drop-off sites must be well maintained, or they end up as eye sores with blowing bags, paper and broken glass and a dumping area for nonrecyclable material.

**Dual programs** have both a curbside collection and drop-off centers. This type of program provides for maximum participation and allows for greater flexibility.

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To help accomplish the recycling goals, the Legislature mandated that municipalities with a population of 10,000 or more establish and commence implementation of a source separated and curbside collection program. Each governing body is to adopt an ordinance requiring each person, partnership or corporation to separate at least three recyclable items from other solid waste.

### **KEY ELEMENTS FOR SUCCESSFUL RECYCLING**

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Major components of any recycling program are education, participation, collection, processing and marketing. The strength of any recycling program is only as strong as its weakest component.

### **TYPES OF MARKETS**

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When marketing recyclable materials, there are a number of options available. They include scrap dealers and processors, scrap brokers, marketing cooperatives and end users.

**Recycling Materials Processor:** The scrap dealer/processor collects recyclable items, grades incoming materials and sorts and packages them to the specifications of end users, usually through baling or some other method so that the transportation costs are minimized.

**Recyclable Materials Broker:** A scrap broker markets materials without acquiring title to them by arranging a transaction or series of transactions between suppliers of recyclable materials and end users. The broker earns a fee in this process.

**Marketing Cooperative:** When entities band together, their bargaining position increases. Cooperatives tend to center around recycling programs or operations that are similar in size and materials recycled.

Some of the most successful marketing cooperatives exist in rural communities because they are so far from the industrial centers that purchase the recyclable materials.

**End Users:** An end user is usually a manufacturing company that uses recyclable materials and converts them into new products or new materials.

### **RECYCLING COLLECTION AND PROCESSING EQUIPMENT**

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One of the key elements of a successful recycling program is having the proper equipment for collection and processing. Determining what equipment to use is most commonly based on the type of collection program you choose and the processing requirements of your potential buyers.

Some other things to consider when choosing your equipment is pricing, future expansion of the program, additional transportation of the products and space in your facility.

## RECYCLING COORDINATORS

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SWAs should carefully examine the role this position can play in meeting their solid waste reduction goals.

The SWA should examine its role in managing solid waste or recycling when making the decision to hire a recycling coordinator. A SWA that operates a recycling program may need a different kind of coordinator than a SWA that wants a coordinator to increase public awareness and education on recycling. Some general skills a recycling coordinator should have include the following:

1. Good knowledge of solid waste and recycling issues and commitment to recycling.
2. The ability to interact with the public.
3. Good interpersonal skills to mediate differences.
4. Basic computer or typing skills.
5. Good mechanical skills, if being hired to run a recycling facility or drop-off program.
6. Bookkeeping skills if the coordinator will also be the individual doing grant management and accounting.
7. Knowledge of SWMB, PSC, DEP and DNR rules. An index of WV Code and Rules is available at [www.state.wv.us/swmb/code.htm](http://www.state.wv.us/swmb/code.htm).

SWAs can help their recycling coordinators succeed by following a few simple steps.

1. Give the coordinator clear objectives and goals.
2. Subscribe to solid waste journals and encourage attendance at conferences and other training opportunities that might have some importance to the SWA.
3. Have the recycling coordinator make monthly written reports on their activities, successes and failures.
4. Have an annual performance evaluation. People want to know if they are doing their job properly.

## QUESTION AND ANSWERS ON RECYCLING

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**Q. Where can I get information on recycling?**

A. There are a number of information sources available to SWAs on recycling. Local private recyclers, scrap yards and solid waste haulers may know about local recycling markets.

**Q. Does the SWA have to provide recycling services?**

A. No. SWAs do not have to provide recycling services directly. They do have an obligation to promote source reduction, recycling and reuse and to help plan and coordinate these activities. Some SWAs operate recycling centers or drop-off programs others work with private recyclers.

**Q. How can a SWA help fund the implementation of a local recycling program?**

A. Grants are available from the SWMB and the DEP.

**Q. What are some of the common problems SWAs encounter when they undertake recycling activities?**

A. The most common problems with recycling programs are lack of public participation, availability of markets, collection, processing capability, storage and transportation and lack of funds.

# **Chapter 8: The Role of Education in Solid Waste Management**

## CHAPTER 8: THE ROLE OF EDUCATION IN SOLID WASTE MANAGEMENT

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SWAs have the task of helping reduce litter and open dumping, and promoting recycling, reuse, and source reduction activities. Each one of these activities requires some behavioral change on the part of the public. The primary mechanism for achieving this change is public awareness education.

In many cases, SWAs do not have to “reinvent the wheel.” There is an abundance of educational material available. The SWMB, DEP, the Conservation Service, the WVU Cooperative Extension Service, private companies and others have developed a host of materials concerning solid waste management topics. The internet has educational and informational material, most of which can be accessed free of charge. A far larger problem is getting the material into the hands of the public and then getting the public involved in solving solid waste management problems.

### SCHOOL SYSTEM INVOLVEMENT

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The school system is one of the best outlets for promoting solid waste management. SWAs should remember that these activities represent extra work for teachers and students.

**Five helpful hints** about setting up an educational program in the school system include:

1. Work with local teachers on setting up educational activities for the following school year.
2. Provide teachers with materials and supplies for carrying out educational activities.
3. Reward students who get involved in the projects.
4. Establish a pilot project in only a few schools; then expand to the entire school system.
5. Coordinate education activities with the local School Board and School Superintendent.

### OTHER EDUCATIONAL OUTLETS

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There are numerous groups that SWAs can partner with on educational activities. Consider working with extension services, garden clubs, the League of Women Voters, hunting and fishing groups, members of the Farm Bureau, 4-H'ers, Boy and Girl Scouts of America, senior citizens, community groups, neighborhood associations, volunteer fire departments, business and labor organizations, contractors and builders and solid waste haulers.

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## MASS MEDIA AND EDUCATION

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SWAs should utilize media coverage to the greatest extent possible for educational purposes. Some local radio stations and newspapers will do articles on solid waste topics or run public service announcements at the SWAs request.

## SOURCE REDUCTION: AN EDUCATIONAL IMPERATIVE

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Source reduction is the best way to reduce the size of the waste stream because it eliminates the cost of collection, processing, treatment and disposal. While source reduction is at the top of the waste management hierarchy established by the West Virginia Legislature: 1) source reduction; 2) reuse, recycle and recover; 3) landfill, it receives the least attention in both public education and in practice.

Source reduction involves redesigning products or packages to reduce the amount of materials used, lengthening the lifespan of products, reducing the amount of materials and packaging used by businesses, reusing products or packaging and finding alternative uses for used products. It reduces collection cost and extends the lifespan of landfills.

## HOUSEHOLD SOURCE REDUCTION

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Everyone should be encouraged to reduce waste at home whenever and wherever possible:

**Food Scraps:** Household leftovers can be used in home composters along with yard trimmings. Food scraps have a low carbon/nitrogen ratio and can serve to offset the higher carbon content of leaves and grass making composting units more efficient. Meat and meat products **should not** be used in home composters.

**Textiles:** Used clothing and other textiles can be passed on to foreign and domestic charitable organizations that distribute to individuals in need. Textiles can also be reused as polishing or cleaning rags.

**Reuse:** Consumers should be encouraged to reuse containers and other items as much as possible.

**Purchases:** Everyone should purchase products that demonstrate real source reduction efforts. Consumers should look for products that use less packaging and can be reused or recycled easily.

**Borrow, rent, share, repair:** Another option is to borrow, rent and share products whenever possible. In addition, the cost of repairing something should not simply be weighed against the cost of replacing it, but also the cost of disposing of it.

## BUSINESS SOURCE REDUCTION

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Businesses have a large potential for reducing the waste they produce by establishing environmentally responsible business practices. These practices save businesses money by reducing disposal cost, reducing procurement cost and can enhance overall efficiency and productivity. In addition, waste reduction measures can help demonstrate concern for the environment, possibly increasing customer loyalty.

The following suggestions for source reduction are appropriate for most businesses.

**Purchases:** Businesses can reduce disposal cost by purchasing items that use as little packaging as possible. In situations where purchases are made in volume, goods can be packaged in bulk containers reducing the need for cardboard, shrink wrap and other materials. High volume buyers can often specify the type of packaging they want. This can have the dual effect of using less packaging and reducing the time it takes to unpack goods. Many purchases can be shipped in reusable containers. Companies can employ multi-use pallets which typically are twice as heavy as single-use pallets and have a significantly longer lifespan. Once pallets are no longer useful, they can be ground up and used for mulch.

**Durable Goods:** Businesses should purchase quality, long-lasting equipment that can be easily repaired. They should also establish regular maintenance schedules for each item. Higher initial costs are often justified by lower maintenance, disposal and replacement cost. Whenever possible, consideration should be given to the recyclability of the product. Before executing a purchase order, ask, can this item be recycled?

**Reusable Materials:** Whenever possible businesses should consider reusable goods. Restaurants can buy glass dishes and metal utensils instead of paper and plastic. Offices can reuse file folders, labels and reconditioned toner cartridges.

**Efficiency:** Most companies have the option of initiating more efficient business practices such as double-sided copying, electronic transfer of documents and using lighter weight office paper.

## EXTENDED PRODUCT RESPONSIBILITY (EPR)

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Manufacturers are in a unique position to reduce the environmental impact of the products they produce through a concept called “green design.” Products can be designed to use less material, more recyclable material, fewer toxic components or higher recycled content raw material. Products can be developed that are more durable, energy efficient, easily repairable, upgradable, and more reusable. Manufacturers should also be willing to take back products for repair, reuse or recycling.

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Buy-back programs are an important part of EPR and are becoming more common. For example, the Rechargeable Battery Recycling Corporation was founded by five industry leaders as a nonprofit corporation that collects and recycles rechargeable batteries from stores, manufacturers, recycling centers and others. Many electronics manufacturers have take-back programs.

Lease agreements have also evolved into an important part of EPR. Leases relieve the buyer of disposal responsibility by sending used products back to the manufacturer, who is most able to reuse or refurbish it.

## QUESTIONS AND ANSWERS ON EDUCATION

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**Q. Where can a SWA get help on setting up a local solid waste education program?**

A. SWAs can get education materials on a number of solid waste issues from the SWMB, their local WVU Extension Service, the DEP REAP Program and the EPA.

# Chapter 9: Cleaning Up Open Dumps

## CHAPTER 9: CLEANING UP OPEN DUMPS

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SWAs are responsible for implementing programs that identify and prioritize open dumps. As part of their overall comprehensive planning responsibilities they coordinate local, state, and federal programs as well as volunteer efforts. There are a number of tools available to help accomplish their goals.

**Identification and prioritization of open dumps:** As part of its bylaws a SWA can create a standing committee addressing open dumps. The committee could consist of SWA members, government officials and private citizens. Functions of the committee could include identifying, prioritizing and coordinating all open dump cleanup projects. The SWA or the open dump standing committee should prioritize dumps for cleanup each year.

### OPEN DUMP CLEANUP MECHANISMS

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**Authority resources:** SWAs can spend their own monies for open dump cleanups. Projects sponsored by SWAs should follow some basic guidelines. These include:

1. The most hazardous open dumps should be cleaned up first.
2. In most cases, cleanup projects should be competitively bid.
3. The cleanup must include the reclamation and stabilization of the site.
4. To the extent possible, materials from the cleanups should be recycled rather than landfilled.
5. The SWA should work with public and private landfill operators on a program to waive disposal fees from cleanup projects.

The DEP's Pollution Prevention and Open Dump (PPOD) Program was established to assist in reclamation and encourage the cleanup of open dumps in West Virginia. SWAs should work closely with program officials when setting dump cleanup priorities and maximizing cleanup costs.

**Solid Waste Management Board Grants:** Although SWAs may apply for financial assistance to clean up open dumps through the grant program administered by the SWMB such requests are given less priority than source reduction and recycling proposals because PPOD provides funding of these projects.

**REAP (Rehabilitation Environmental Action Plan) Litter Control Grants:** This program, administered by DEP, awards grants to municipalities, county commissions and SWAs, to assist with litter prevention programs.

**Other means:** There are a number of other mechanisms SWAs can utilize in cleaning up open dumps. Private corporations and individuals can be enlisted. Pursuant to W. Va. Code §22C-4-22, incarcerated prisoners may be used for such purposes. It is highly recommended that SWAs work through their local judicial system in devising a program to use inmates or individuals sentenced to perform community service.

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## **OPEN DUMP CONTRACT REQUIREMENTS**

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If a SWA contracts with a private business to perform open dump cleanups the following procedures may be helpful.

1. The SWA should draw up bid specifications for the cleanup. Bid specs should include the location, size and estimated amount of waste to be removed from the dump. Reclamation and re-vegetation requirements, duration of the contract and payment schedule should also be addressed.
2. The SWA should have a pre-bid meeting on the site. The meeting should be advertised in a legal notice. A pre-bid meeting on-site is important because the cleanup may be spread over a large area and potential bidders need to be aware of the exact area to be cleaned up.
3. The SWA needs to verify if material taken from the open dump can be deposited free at an approved solid waste facility or if the SWA or successful contractor will have to pay a tipping fee.
4. The contractor should be required to present the SWA with receipts or disposal slips for all material landfilled.

## **DISPOSAL OF ABANDONED MOTOR VEHICLES, TIRES AND APPLIANCES**

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Abandoned vehicles, tires, and appliances are major solid waste problems. SWAs can seek some relief for these problems by working with law enforcement officials and the Division of Highways in enforcing the provisions of W. Va. Code §17-24A concerning abandoned vehicles, which states:

“No person shall, within this State, abandon a motor vehicle upon the right-of-way of any public highway, upon any other public property, or upon any private property which he does not own, lease, rent or otherwise control unless it be as a licensed salvage yard or at the business establishment of a demolisher.”

Similar provisions exist for vehicle tires and household appliances.

W. Va. Code §22-15A-9 establishes that the Commissioner of the Division of Highways shall work with and may use moneys in the A. James Manchin Fund to contract with the Secretary of the DEP to accomplish the remediation of waste tire piles. The Fund consists of the proceeds from the sale of waste tires, fees collected by the Division of Motor Vehicles and any other funding source available for waste tire remediation. Any balance remaining in the Fund at the end of the fiscal year is transferred to the State Road Fund.

In addition, W. Va. Code §22-15A-10 gives the Secretary the authority to establish a tire disposal program within the DEP to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at locations designated by the DEP. The Secretary may pay a fee for each tire and may also establish a limit on the number of tires an individual or business may be paid for during any calendar month.

Waste tires can be disposed of legally in waste tire monofills. Waste tire monofills are approved solid waste facilities in which waste tires are not mixed with any other waste for the purpose of eventual retrieval for marketing. Currently, there are three waste tire monofills in West Virginia.

**DEP-REAP LITTER CONTROL HOTLINE:** The DEP-REAP program has established a litter control hotline as part of its overall litter control program. You can report litter, open dumps and tire pile problems at 800-322-5530. You can find a map of PPOD Districts in Attachment 9A of this document.

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## QUESTIONS AND ANSWERS ON OPEN DUMPS

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**Q. What is an open dump?**

A. An open dump means any solid waste disposal which does not have a permit or does not comply with state law.

**Q. Are private landowners liable for unauthorized dumps on their land?**

A. Owners of land on which unauthorized dumps have been or are being made are liable for such unauthorized dumping. Landowners are required to cooperate with the DEP in the cleanup of unauthorized dumping.

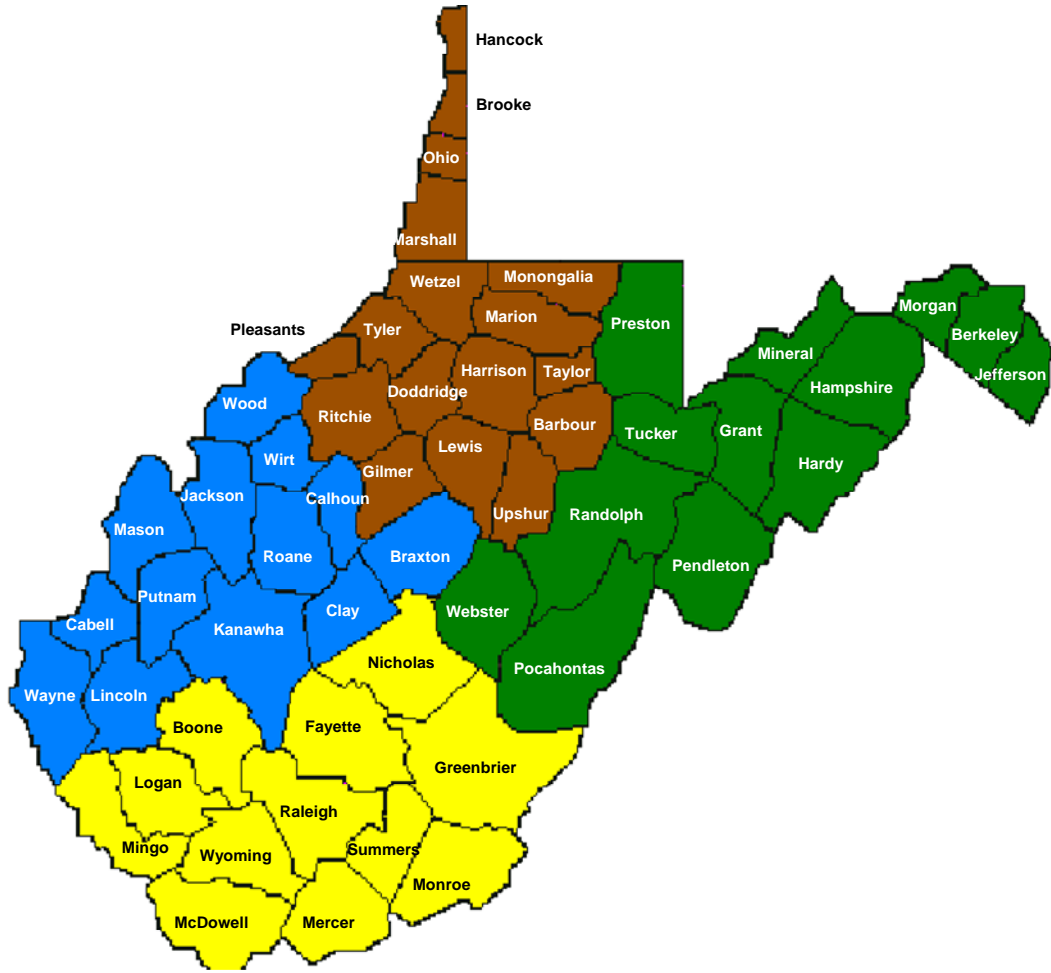
**Q. Are private dumps allowed for use by landowners for disposal of their own household solid waste?**

A. Private dumps are illegal. Every household and business must have proof that their solid waste is being properly disposed.

## Chapter 9: Attachments

**ATTACHMENT 9A:  
DEP POLLUTION PREVENTION OPEN DUMP (PPOD) PROGRAM DISTRICT MAP**

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**DEP LITTER HOTLINE NUMBER: 800-322-5530**

**Report Litter Problems - Report Open Dumps - Report Illegal Tire Piles**

# Chapter 10: Enforcing Mandatory Disposal

## **CHAPTER 10: ENFORCING MANDATORY DISPOSAL**

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As part of their regulatory duties, SWAs are required to promulgate rules with respect to implementing a program for mandatory garbage disposal. W. Va. Code §22C-4-10 requires local SWAs establish a mandatory garbage disposal program in their Comprehensive Litter and Solid Waste Control Plans.

The DEP, state, and local law enforcement agencies have the authority to enforce this requirement.

The mandatory garbage disposal program states in part:

Each person occupying a residence or operating a business establishment in this state shall either subscribe to and use a solid waste collection service and pay the fees established, or provide proper proof at least once within every 30 day period that said person properly disposes of solid waste at approved solid waste facilities or in any other lawful manner.

### **ENFORCEMENT**

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The mechanism for enforcing the mandatory disposal program is a civil penalty of \$150. This provision states: “A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid.”

A person in this situation is also guilty of a misdemeanor and subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten or more than forty hours of community service or both. A person that provides proof that they are properly disposing of solid waste at an approved solid waste facility or in any other lawful manner is not subject to civil penalty or misdemeanor charges.

It is not necessary to go to court to collect the penalty. It may simply be assessed to any person not receiving collection services or not providing proper proof that they are properly disposing of solid waste at an approved solid waste facility or in any other lawful manner. If a person does not receive collection services and fails or refuses to properly dispose of his waste, the civil penalty is available for enforcement.

SWAs do not have the authority to enter private lands. This means that if a local SWA finds it necessary to enter private property to verify compliance with the mandatory garbage disposal program, it must use law enforcement agencies such as the DEP pursuant to W. Va. Code §22C-4-23(16).

In addition to the DEP, the Department of Public Safety, local police officers and county sheriffs have the authority to enter private lands for the purpose of enforcing the mandatory garbage disposal requirement.

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## **BULKY GOODS**

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The term “bulky goods” as defined by the Public Service Commission’s 150CSR9 Legislative Rule, Rules and Regulations for the Government of Motor Carriers and Private Commercial Carriers means items or materials which cannot be reasonably and conveniently collected during regularly scheduled weekly pickups, including any of the following discarded items; refrigerators, washing machines, clothes dryers, dishwashers, ovens, stoves, microwave ovens, and other appliances; televisions; home computers; air conditioners; bicycles; furniture; waste tires off the rim, having a radius of no more than 16.5 inches, from automobiles, from pickup trucks, from motorcycles, from all-terrain vehicles, and from farm tractors; and other items, not included in the above, that are at least three (3) feet in length, width, or height or at least fifty (50) pounds in weight. “Bulky goods” do not include: (a) automotive components, parts, or frames that weigh at least two hundred (200) pounds each; (b) automotive parts, such as motors and transmissions, that have a high density; (c) hazardous waste; (d) items that can be easily divided and placed into bags, boxes, or other containers, less than three (3) feet high, long, or wide, that, with contents, weigh less than fifty (50) pounds each; and (e) construction and demolition debris generally.”

In response to the need to dispose of bulky goods, the Public Service Commission (PSC) amended the Motor Carrier Rule to require all common carriers of solid waste in West Virginia to establish a regularly scheduled bulky goods collection service. Each carrier is to offer the service to all households in its operating territory on a monthly basis.

The order required every common carrier of solid waste to have a bulky goods program in effect by January 1, 1999. To recover additional cost associated with the program, carriers can apply to the PSC for approval of a surcharge to be applied to all of that carrier’s regular residential customers. The surcharge is currently \$1.00 per month per customer. A carrier can also request an additional surcharge for households that are not part of the carrier’s regular customers. The usual fee is \$15 per pickup.

## QUESTIONS AND ANSWERS ON MANDATORY DISPOSAL

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**Q. What kind of penalties can be applied to the enforcement of mandatory disposal?**

A. A \$150 civil penalty and/or a misdemeanor charge and fined of \$50 to \$1,000 and 10 to 40 hours of community service.

**Q. What role do SWAs have in respect to mandatory disposal?**

A. SWAs have an administrative and coordinating role in respect to mandatory disposal.

# Chapter 10: Attachments

# ATTACHMENT 10A: PUBLIC SERVICE COMMISSION COMPLAINT FORM AND RULE

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## COMPLAINT State of West Virginia Public Service Commission Charleston

### INSTRUCTIONS FOR FILING FORM 1 - FORMAL COMPLAINT

The Commission's Rules of Practice and Procedure, 150 CSR1, contain specific provisions relating to a formal complaint. These instructions are intended to provide general instruction. The reader is referred to those rules for more specific detail of rights and responsibilities.

Any person, firm, association of person or entity may complain to the Commission substantially in the form hereinafter prescribed (See Form No. 1) of anything done or omitted to be done by any public utility in violation of any of the provisions of the Public Service Commission Law of West Virginia.

Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and involve substantially the same violation of law and a statement of facts. When any defendant is operated by a receiver or trustee, both the utility and its receiver or trustee must be made defendants.

The names of all parties, complainant and defendant, must be printed and stated in full without abbreviation and the address and phone number of each complainant must be given. If the complainant is represented by an attorney, the attorney's name and address must be given.

Formal Complaints should be written to fully and completely advise the defendant or defendants and the Commission wherein the provisions of the law have been, are, or will be violated. Each distinct charge should be stated concisely in a separate paragraph.

The complaint should state specifically the relief sought. If the complainant is also seeking emergency or interim relief, this should be clearly stated. The complaint must explain the need for interim relief and specify the interim relief sought, for example, that service be restored while the complaint is pending. The complaint must allege extraordinary facts of immediate and irreparable injury or public interest as would justify the Commission granting interim relief.

All Formal Complaints must be typewritten or printed on **ONE SIDE** of the paper only, on paper no more than 8½ inches wide and 11 inches long, and must be signed in ink. Additional information on separate one-sided sheets may be attached to the complaint.

**The Formal Complaint Form 1 MUST BE NOTARIZED to be processed.** Send Form 1 to the attention of: Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323 or by fax to 304-340-0325 and follow-up by mailing the hard copy to the above address.

**WHAT HAPPENS WHEN THE PSC RECEIVES YOUR FORM 1?** When a Formal Complaint is filed in the Secretary's Office, it is then assigned a **case number** and placed on the Commission's docket of active cases. A copy of the complaint is served upon each defendant, together with a copy of the Commission's Order requiring the defendant or defendants to satisfy the said complaint or file a written answer to the complaint within 10 days from the date it is received by the defendant/defendants. **Instructions for filing Form 1 (continued page 2 of 2)**

The complainant will be sent a letter acknowledging receipt by the Commission and stating the case number assigned to the formal complaint. It is important to **have the case number ready** if you call the Commission regarding the formal complaint. The Complainant is also sent a "Notice to Complainant" form that explains responsibilities and procedures.

#### **DEFENDANT'S ANSWER**

Within ten (10) days from the date of service of the Complaint and Order described above, the defendant or defendants complained against shall file a typewritten answer or answers, **duly verified**. This period may be shortened or extended by the Commission when it deems advisable.

The original answer and twelve (12) copies thereof must be filed with Sandra Squire, the Executive Secretary of the Commission, **and, at the same time, a copy of said answer shall be served by the defendant upon each complainant or his/her Attorney**. The defendant shall certify to the Secretary that said service has been made. All attorneys must provide their WV State Bar ID number on all pleadings.

All answers should fully and completely advise the parties and the Commission of the nature of the defense, and should admit or deny specifically and in detail each material allegation of the complaint being answered.

If a defendant satisfies a Formal Complaint, either before or after answering, a statement to the effect signed by the complainant and defendant must be filed setting forth when and how the complaint has been satisfied. The proceeding may then be dismissed by Commission Order.

**Attached: FORM 1 - FORMAL COMPLAINT FORM**

**Form No. 1  
COMPLAINT  
State of West Virginia  
Public Service Commission  
Charleston**

**TYPE OR PRINT CLEARLY USING BLACK INK**

CASE NO. \_\_\_\_\_ (leave blank), Complainant  
(Mr./Mrs./Ms.) \_\_\_\_\_ (your name)  
\_\_\_\_\_  
\_\_\_\_\_ (your full address)  
  
\_\_\_\_\_ (your county)

vs.

\_\_\_\_\_, Defendant

The petition of the above-named \_\_\_\_\_ (your name), complainant, respectfully shows:

1. That the above-named \_\_\_\_\_ (name of defendant), is a public utility engaged in the business of \_\_\_\_\_ (state the public **utility business** of the defendant, i.e. gas, electric telephone, etc.) at \_\_\_\_\_ (their address), in the State of West Virginia, and as such is subject to the provisions of Chapter 24 (or 24A) of the Code of West Virginia, 1931, as amended, and the provisions thereof applicable to said class of public utilities.

2. That the said defendant has violated the laws of the State of West Virginia, governing said public utility business, in the following particulars, to-wit:

(a) [Here state concisely the matters complained f.]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Here state the remedy you seek:

\_\_\_\_\_  
\_\_\_\_\_

DO **NOT** WRITE ON BACK OF PAGE - attach a sheet of paper

Wherefore, the complainant prays that the said defendant \_\_\_\_\_ (defendant's name) be required to answer the charges herein above set out, and that, after due investigation, an order may be made commanding the said defendant to cease and desist from the wrongful conduct aforesaid, and for such other and further Order as the Public Service Commission of West Virginia may deem necessary, reasonable and just in the premises.

[Prayer may ask for the ascertainment of lawful rates of practices, and an order requiring the defendant to conform thereto.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Signed) \_\_\_\_\_,  
Signature of Complainant

(Your  
Full Address) \_\_\_\_\_  
\_\_\_\_\_

(Phone) \_\_\_\_\_ (Fax) \_\_\_\_\_

(If you have an attorney, his/her name) \_\_\_\_\_, Attorney, if applicable.

Attorney's Address: \_\_\_\_\_

**THIS FORM MUST BE NOTARIZED**

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

(Official signature and official seal of notary)

[If Complainant is signing out-of-state, please use verification Form No. 12]

**PLEASE NOTE:**

**It is extremely important to notify the Commission of any changes to your address and to promptly retrieve Certified Mail upon notification of such.**

DO **NOT** WRITE ON BACK OF PAGE - attach a sheet of paper

**150CSR1**  
**TITLE 150**  
**PROCEDURAL RULES**  
**PUBLIC SERVICE COMMISSION**  
**SERIES 1**  
**RULES OF PRACTICE AND PROCEDURE**  
**§150-1-6. Rule 6, Complaints.**

6.1. Informal complaints.

6.1.a. Informal Complaints may be made by letter, other writing, telephone or any other form of direct contact with Commission staff. Informal complaints are then taken up by correspondence or other form of communication between Commission staff and the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

6.1.b. An informal complaint need not be in a specific format but must contain the essential elements of a formal complaint, including name and address of complainant, the correct name of the utility against which complaint is made, a clear and concise statement of the facts involved, and a request for relief. If Commission Staff takes an informal complaint over the telephone, Staff shall make a record of the foregoing essential elements.

6.1.c. The utility shall provide a response to Commission staff by letter, other writing, telephone call or any other form of direct contact with staff within ten (10) days of the Commission staff's contact with the utility.

6.1.d. This informal procedure is recommended in the majority of cases. In the event the informal complaint fails to bring about satisfaction of the complaint the complainant may file and prosecute a formal complaint, and the informal proceeding will be discontinued. The informal complaint procedure does not preclude the filing of a formal complaint.

6.2. Formal complaints.

6.2.a. Any person or entity may complain to the Commission by petition substantially in the form of Form No. 1 attached to these Rules of anything done or omitted to be done by the public utility in violation of any of the provisions of the Public Service Commission law of West Virginia. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and involve substantially the same violation of law and like set of facts. When any defendant is operated by a receiver or trustee, both the utility and its receiver or trustee must be made defendants.

6.2.b. The names of all parties must be stated in full without abbreviation, and the address of each complainant with the name and address of his/her attorney, if any, must be given.

6.2.c. Formal complaints should be so drawn as to fully and completely advise the defendant or defendants and the Commission wherein the provisions of the law have been, are, or will be violated. Each distinct charge should be stated concisely in a separate paragraph. The complaint should also state specifically the relief sought.

6.2.d. All formal complaints must be signed and sworn to as set forth on Form No. 1.

6.2.e. When a formal complaint has been filed and ordered to be investigated, the Commission will cause a copy of such complaint to be served upon each defendant, together with a copy of an order requiring

the defendant or defendants to satisfy the said complaint or make answer thereto within ten (10) days. Such service shall be by certified mail unless otherwise ordered.

6.2.f. When issues are joined, the time and place for an evidentiary hearing may be set which will be held at the Commission's offices in the City of Charleston or elsewhere in the state at the discretion of the Commission. The Commission may issue its order based on the information contained in the file, if there are no substantial issues of fact.

6.2.g. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the complaint.

6.2.h. In case of failure to answer, the Commission may hear such proof of facts as it may deem proper and reasonable, and may make such investigation and enter such order as the facts justify and the circumstances may require.

### 6.3. General Investigations.

6.3.a. The Commission may initiate a general investigation of a public utility, or of any general issue affecting public utilities or other entities, on motion of the Commission, Commission staff, or any other person. Any motion, other than the Commission's own motion, to initiate a general investigation should be served on the utility in the same manner as a formal complaint is served.

### 6.4. Interim relief.

6.4.a. Request for interim relief may be included in a complaint. The title must clearly indicate that interim relief is requested. The pleading must allege such extraordinary facts of immediate and irreparable injury or public interest as would justify the Commission granting interim relief prior to a final decision.

## **§150-1-7. Rule 7, Answer and Service.**

### 7.1. Answer to Formal Complaint.

Within ten (10) days from the date of service of the complaint and order as provided in Rule 6, the defendant or defendants complained against shall file answer or answers, duly verified, substantially in the form of Form No. 2. The period so fixed may be shortened or extended by the Commission when it deems advisable.

### 7.2. Answer to General Investigation.

The Commission may require an answer to a motion for initiation of a general investigation made by the Commission, Commission Staff, any other person.

### 7.3. Service.

The original answer and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission; and, at the same time, a copy of said answer shall be served by the defendant personally, or by first class mail, upon each complainant or his attorney. The said defendant shall certify to the Executive Secretary that said service has been made.

#### 7.4. Content.

All answers shall be drawn as to fully and completely advise the parties and the Commission of the nature of the defense, and should admit or deny specifically and in detail each material allegation of the pleading answered.

#### 7.5. Satisfaction.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant and defendant must be filed, setting forth when and how the complaint has been satisfied. The Commission will then consider whether the proceeding should be dismissed.

#### 7.6. Computation of Time.

In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When calculating a period of time from the date of service of a notice or other paper, the date of service shall be the date the sender certified in writing that he or she mailed an item by first class mail, or the date of personal service.

# **Chapter 11: Operating and Closing Solid Waste Authority Owned Facilities**

## CHAPTER 11: OPERATING AND CLOSING SOLID WASTE AUTHORITY OWNED FACILITIES

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When making the determination to construct and operate a solid waste facility SWAs should carefully evaluate their current solid waste management situation in three criteria:

1. Can the private sector provide these services? If not, why?
2. Could the private sector provide these services with assistance from the SWA?
3. Can other public entities provide these services alone or in conjunction with the SWA?

If a SWA believes it necessary to operate a solid waste facility, they should be fully aware that the operation of any landfill, transfer station, compost facility or recycling center is complex and expensive. Such operations require careful planning, long-term commitment and funding.

In evaluating the operation, design and construction of a solid waste facility, SWAs should seek professional assistance. This might include state agencies such as the Solid Waste Management Board (SWMB), the Department of Environmental Protection (DEP), and the Public Service Commission (PSC). City engineers, planners, geologists, and county extension agents may also be able to provide expertise.

SWAs should conduct a solid waste facility feasibility study, compiling the following information.

- The existing solid waste demand.
- The long-range demand over the facility's expected lifespan.
- Construction costs.
- Operating costs.
- Permits required.
- Alternatives.
- Financing options.

Once a SWA has developed a feasibility plan, they can determine their role in constructing and operating a solid waste facility.

**Certificate of Need and Rates:** The initial step for permitting a landfill is a Certificate of Need (CON) from the PSC. The PSC also sets the base rate for solid waste facilities. The base rate plus state and local assessment fees equals the tipping fee charged for every ton of solid waste received at the facility. The PSC designates a percentage of the base rate be set aside in escrow accounts for closure and post-closure costs. They may also require construction and/or equipment accounts.

NOTES

**Permits:** SWAs must adhere to the same regulatory requirements as private facilities, meeting all state and federal requirements. A proposed facility must also conform to the requirements of the SWAs siting plan and allow appropriate opportunity for public input. A brief description of DEP rules can be found in Attachment 11A.

**Financing:** The financing of solid waste facilities is complex. It requires substantial investments in land, equipment and regulatory costs, as well as considerable operating reserve. Even financing a small recycling center requires significant financial support. Some options for that financing are listed below.

**Grants:** Grants administered by the SWMB could potentially be used in planning and development studies related to SWA's projects, aid in the construction of solid waste facilities and the purchase of equipment. In recent years, SWMB grants have been capped at \$25,000 per SWA annually.

Grant funds made available from the DEP's Rehabilitation Environmental Action Plan (REAP) can only be used for recycling programs, their creation, equipment purchases, projects and other recycling related cost. Neither of these grant programs can fully support the construction of large-scale operations.

**Bonds:** SWAs are authorized in W. Va. Code §22C-4 to issue revenue bonds or notes for constructing or acquiring solid waste facilities. Such bonds or notes may be issued in one or more series and may mature at such time or times not to exceed 40 years from their respective dates of issuance. These bonds, known as revenue bonds, are secured from the revenue derived from the operation of the proposed solid waste facility.

In general, the quality of bonds will be dependent on the perceived risk of the facility being financed. Careful planning and a good business plan can reduce potential risk to the SWA and bond holders. The bond sale may include, but is not limited to, the following costs:

- Acquisition or construction of the facility.
- Closure of solid waste facilities.
- Property rights, easement and franchises deemed necessary.
- Interest on bonds and notes prior to and during construction or acquisition and for twelve months after completion of construction or acquisition.
- Engineering, fiscal agents and legal expenses.
- Expenses for plans, surveys, feasibility studies and administrative expenses.

## **HEALTH AND SAFETY**

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SWAs that operate landfills, transfer stations, materials recovery facilities and recycling centers should be aware that such operations are subject to the State's health and safety plan. Section (3)(5) of the Occupational Safety and Health (OSHA) Act Of 1970 specifically excluded State and local government employees from Federal OSHA authority. The Act provides for the State to assume responsibility for occupational safety and health programs under its own plan.

The State's plan must be approved by the U.S. Department of Labor. Each state plan must include coverage of public employees and it must be "at least as effective" as Federal OSHA's protection of private employees. For more information refer to the WV Division of Labor at [www.labor.wv.gov](http://www.labor.wv.gov).

Most solid waste facilities and related equipment must comply with State regulations and best management practices. Compliance costs and penalties for safety violations are a substantial portion of the facility's overall operation and design.

Health and safety standards describe methods employers must use to protect employees from hazards. Employees must be informed and trained on hazardous substances in the workplace.

As an employer, your duty is to provide employees a workplace free from recognized hazards.

To reduce the risk of workplace accidents, employers must train employees based on their job duties to understand the hazards related to these duties.

Controlling hazards at their source is the best way to protect workers against workplace hazards. Management should perform a 'hazard assessments' for all job duties for each job description at a SWA. This analysis duties are a systematic tool to identify potential hazards in the workplace to implement procedures that eliminate or control hazards.

When engineering, work practice and administrative controls are not enough to minimize risk to workplace hazards, employers must provide personal protective equipment (PPE). PPE is worn to minimize exposure to a variety of hazards if used with appropriate training. Identifying and providing appropriate PPE is a must.

When designing and operating solid waste facilities SWAs should conform to local fire codes, vertical clearances, proper railings around any pits and maintenance of clear aisle ways. You should also adhere to industrial standards for noise levels, lighting, odor control, confined spaces, ventilation and walking and working surfaces.

Below is a reference checklist of some of the Federal OSHA and National Consensus Industrial Standards that are potentially applicable to many solid waste facilities (Source: [29CFR1910](#) Safety and Health Standards).

**1. Walking/working areas.**

- Stairs and ladders.
- Floor and wall openings.
- Scaffolds.
- Means of entry.
- Aerial lift safety.

**2. Environmental control.**

- Ventilation. Pay attention to any compressed air system.
- Sampling airborne micro-organisms in solid waste.

Processing facilities.  
Occupational exposure to quartz dust and silicates.  
Sanitation in places of employment.  
Noise.  
Operation ergonomics.  
Machine guarding.  
Confined space.

**3. Personal protection equipment.**

Eye and face protection.  
Respiratory.  
Head protection.  
Foot protection.  
Back safety.  
Hearing safety.

**4. Signage.**

Accident prevention signs.  
Marking of physical hazards.  
Medical and first aid markers.

**5. Fire protection.**

Fire suppression.  
Recognizing ignition sources and flammables for proper handling.  
Fire protection for material-handling equipment.  
Fire protection systems. Pay attention to waste compactors and waste storage rooms.  
Fire evacuation routes and procedures.

**6. Electrical systems.**

National electrical code.  
Electrical work practice.  
Ground Fault Circuit Interrupter use with extension cords or power tools.

**7. Mobile equipment.**

Operation standards for lift trucks.  
Standards for mobile collection and compaction equipment.  
Noise measurement for heavy trucks.  
Hand and power tool usage.

**8. Safety standards for equipment.**

Stationary compactors.  
Balers.  
Scrap processing equipment.  
Conveyors. Include performance tests on resource recovery conveyors.  
Forklift safety.  
Pre-operation safety checks.

**9. Health and safety records.**

Incident investigation records.

Hazard Communication Standards consisting a chemical inventory, Safety Data Sheets, Container labels, training and the written program.  
Recordkeeping requirements including recording all work-related injuries and illnesses.

Establishing or updating operating materials handling procedures and communicating them so that employees follow safety and health requirements.

Safety meetings agendas and sign-in sheets.

Driver training documentation.

Emergency Action Plan procedures.

Bloodborne Pathogen exposure prevention.

Disaster Readiness/Emergency Action Plan.

### **10. Equipment Storage**

Compresses gas cylinder handling and storage.

Fuel storage and control

Lock-out/ tag-out procedures

This represents a very brief summary of Health and Safety rules that may pertain to the operation of a solid waste facility. Overall, occupational health and safety rules are complicated and lengthy. To learn more about health and safety standards SWAs can contact the WV Division of Labor at [www.labor.wv.gov](http://www.labor.wv.gov); or the Solid Waste Association of North America (SWANA) [www.swana.org](http://www.swana.org).

## **TRAINING REQUIREMENTS FOR SOLID WASTE PERSONNEL**

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W. Va. Code Rules §33-1-4.3, requires that landfill managers be certified. The Solid Waste Association of North America (SWANA) and several major universities offer certification programs for landfill and transfer station managers, compost operators, and managers of materials recovery facilities. SWANA's website is [www.SWANA.org](http://www.SWANA.org).

Meeting environmental and health and safety standards warrants increased attention to training. SWAs wishing to build or to ensure a solid waste facility may find that certain levels of training and standards may be insisted upon by sponsoring financial institutions.

## **FINANCIAL RESPONSIBILITY FOR SOLID WASTE FACILITY CLOSURE**

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A major responsibility in the operation of a landfill, is proof of financial responsibility for the liability to close the landfill, providing post-closure care and corrective action for known releases. SWAs will be required to provide financial assurance of meeting these requirements, as a condition of receiving a DEP permit. The PSC and DEP coordinate oversight to determine adequate performance bonding and financial assurance.

For SWAs wishing to build and operate a landfill, it is advisable to estimate closure costs using a worst-case analysis. SWAs should remember that as the permittee

of a landfill, they are responsible for the landfill during the life of the site and 30 years after closure.

Accounting for landfills must be done in compliance with Governmental Accounting Standards Board (GASB) Statement Number 18.

### **SOLID WASTE FACILITY CLOSURE/POST-CLOSURE**

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Two major responsibilities of landfill operation after the landfill ceases to accept waste are closure and post-closure. The two basic goals are to minimize the need for further maintenance with the least possible detrimental impact on the environment. Closure and post-closure must be done according to federal and state regulations. Responsibilities include maintaining final cover, maintaining and monitoring gas, leachate, ground water and surface water as well as remediate any corrective action that may be needed.

# Chapter 11: Attachments

## ATTACHMENT 11A: DEFINITIONS AND SYNOPSIS OF DEP RULES

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**Approved solid waste facility:** means a solid waste facility or practice which has a valid permit or compliance order under W. Va. Code §22-15-1.

**Bulky goods:** means items or materials which cannot be reasonably and conveniently collected during regularly scheduled weekly pickups, including any of the following discarded items; Refrigerators, washing machines, clothes dryers, dishwashers, ovens, stoves, microwave ovens, and other appliances; air conditioners; bicycles; furniture; waste tires off the rim, having a radius of no more than 16.5 inches, from automobiles, from pickup trucks, from motorcycles, from all-terrain vehicles, and from farm tractors; and other items, not included above, that are at least three (3) feet in length, width, or height, or at least fifty (50) pounds in weight. "Bulky goods" do not include: (a) automotive components, parts, or frames that weigh at least two hundred (200) pounds each; (b) automotive parts, such as motors and transmissions, that have a high density; (c) hazardous waste; (d) items that can be easily divided and placed into bags, boxes, or other containers, less than three (3) feet high, long, or wide, that, with contents, weigh less than fifty (50) pounds each; and (e) construction and demolition debris generally.

**Class A solid waste facility:** means a commercial solid waste facility which handles an aggregate of between ten thousand (10,000) and thirty thousand (30,000) tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

**Class B solid waste facility:** means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred (100) tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand (40,000) persons, but which does not receive solid waste exceeding an aggregate of ten thousand (10,000) tons per month. Class B facilities do not include construction/demolition facilities: Provided; That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the Secretary may establish by legislative rule proposed in accordance with the provisions of W. Va. Code §29A-1-1 et seq.

**Class C solid waste facility:** means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste of less than one hundred (100) tons each working day, and serves or is expected to serve a population of less than forty thousand (40,000) persons. Class C solid waste facilities do not include construction/demolition facilities.

**Class D solid waste facility:** means any commercial solid waste facility for the disposal of only construction/demolition waste, and does not include the legitimate beneficial reuse of clean waste concrete/masonry substances for the purpose of structural fill or road base material.

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

**Composting/demolition waste:** means waste building materials, packaging, and grubbing waste resulting from construction, remodeling, repair, and demolition operations on houses, commercial and industrial buildings, and other structures and pavements, including, but not limited to: wood, plaster, metals, asphaltic substances, bricks, blocks and concrete, other masonry materials, trees, brush, stumps, and other vegetative materials, but shall not include asbestos waste.

**Leachate:** means any liquid that has come into contact with, passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

**Monofill or Waste Tire Monofill:** any approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

**Post-closure:** means activities after the closure of a solid waste facility which are necessary to ensure compliance with the provisions of the Act and any rules promulgated thereunder including the application of final cover, grading, revegetation, groundwater monitoring, surface water monitoring, gas monitoring and control, leachate treatment, erosion control, and the abatement of any pollution or degradation to land, water, air, or other natural resources.

**Transfer station:** means a structure, or combination of structures, machinery, or devices at a place, location or facility where solid waste is taken from collection vehicles, and placed in other transportation units for movement to another solid waste management facility, provided that when the generator of said waste disposes of said waste into a container such as a roll-off, greenbox or bin which is temporarily positioned (not more than five days) at a specific location for transport by a transportation unit, such container will not be considered a transfer station. Under any circumstances, leachate, litter and windblown materials must be properly managed.

**Wetlands:** mean those naturally occurring areas, as defined under 40CFR232.2(r) that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal circumstances, do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## **SUMMARY OF DEP RULES\***

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### **Prohibitions**

A solid waste facility may not be permitted within an area where there is a reasonable probability that the facility will cause:

1. A significant adverse impact on wetlands.
2. A significant adverse impact on critical habitat areas.
3. A significant adverse impact on any surface waters.
4. A significant adverse impact on groundwater.
5. A violation of surface waters quality standards.
6. The migration and concentration of explosive gases in any facility structure or beyond the facilities property boundary.
7. The emission of any contaminant exceeding West Virginia Air Pollution Control Commission standards.

### **Location standards**

Unless otherwise approved by the director, a landfill may not be sited in the following locations:

1. Within 300 feet of any surface waters.
2. Within a perennial stream.
3. Within 100-year flood plain.
4. Within 1,000 feet of the nearest edge of the right-of-way of any state trunk highway, interstate or federal aid primary highway, or the boundary on any public park unless the facility is screened by natural objects, planting, fences, or other appropriate means so that it is not visible from the highway or park.
5. Within 200 feet of a fault.
6. Within six miles of any airport runway or within other areas where a substantial bird hazard to aircraft would be created.
7. Within 500 feet of an occupied dwelling unless permission is received from the owner of the dwelling.

8. Within 1,200 feet of any public or private water supply well.
9. Within 1,000 feet of any area considered by the department to be unmonitorable due to extreme geologic and hydrologic conditions (e.g., immaturely to maturely developed karst terrain, solution cavities).
10. Above deep-mine workings or within the critical angle of draw.
11. Within surface-mined areas, unless otherwise approved by the director.

#### **Pre-siting requirements**

Any person investigating an area for the purpose of siting a commercial solid waste facility shall conduct pre-siting activities. These activities include:

1. A Class II legal advertisement must be published in a qualified newspaper.
2. A pre-siting notice must be filed with the director within five days of the publication of the legal advertisement.
3. The director, at his discretion, may hold a public hearing on the contents of the pre-siting notice.
4. The director may require the applicant to submit additional information on the siting of the proposed facility.

#### **Permit application requirements**

1. All application documents, including supporting documents, shall be submitted to the Solid Waste Section in quadruplicate.
2. A description of the legal documents upon which the applicant bases his legal right to enter and conduct operations.
3. All application documents shall be compiled, signed and sealed by a professional engineer who is registered to practice in West Virginia.
4. Cover letter and table of contents.
5. Visuals.
6. Quality Assurance and Quality Control Plan.
7. Approval of the Department of Culture and History.
8. Lands Inquiry Response from the Division of Wildlife.
9. Disclosure Statement.
10. Bond.
11. Discussion of alternatives to the facility, as well as a description of any waste reduction incentives and recycling services to be instituted or provided with the proposed facility.
12. An analysis of the geologic, hydrogeologic, topographic and hydrologic features of the facility that may be favorable or unfavorable for facility development.
13. Identification and characterization of potential lending sources.
14. For an expansion of any existing facility, the effectiveness of the existing design and operation must be discussed.
15. A proposed facility design, including liner design, and a general discussion of proposed operating procedures.
16. A notarized signature of the principal officer verifying that the information contained in the application is true and correct to the best of that individual's knowledge and belief.

\*The reader is advised that this is a summary of the siting and locations standards, the pre-siting requirements and the permit application requirements. Consult DEP Rules 33CSR1 for complete text.

## **Appendix A: WV Code §§ 22C-4 and 22C-4A**

## APPENDIX A:

### W. Va. CODE §§ 22C-4 and 22C-4A

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#### CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

#### ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

##### §22C-4-1. Legislative findings and purposes.

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

(1) *Source reduction.* -- This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste and similar activities.

(2) *Recycling, reuse and materials recovery.* -- This involves separating and recovering valuable materials from the waste stream, composting food and yard waste and marketing of recyclables.

(3) *Landfilling.* -- To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transportation network, property values, economic growth,

environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land-use conflicts engendered by these proposed facilities. The Legislature also finds that such local land-use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision making process and the land-use planning values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.

#### **§22C-4-2. Definitions.**

Unless the context clearly requires a different meaning, as used in this article, the terms:  
(a) "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under article fifteen, chapter twenty-two of this code.

(b) "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 does 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 that person and another person on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

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

(d) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(e) "Class B facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities: *Provided*, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of chapter twenty-nine-a of this code.

(f) "Compliance order" means an administrative order issued pursuant to section ten, article fifteen, chapter twenty-two of this code authorizing a solid waste facility to operate without a solid waste permit.

(g) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(h) "Person" means 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; the 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.

(i) "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.

(j) "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, other discarded material, 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 article eleven, chapter twenty-two of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen, chapter twenty-two of this code, or refuse, slurry, overburden or other waste 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 article two, three, four, six, seven, eight, nine or ten, chapter twenty-two or chapter twenty-two-a of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

(k) "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.

(l) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section nine, article three of this chapter.

(m) "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, resource-recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

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

(o) "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.

(p) "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.

(q) "Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically

shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

**§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.**

(a) Each and every county solid waste authority authorized and created by the county commission of any county pursuant to former article sixteen, chapter seven of this code is hereby abolished on and after the first day of January, one thousand nine hundred eighty-nine. On and after the first day of January, one thousand nine hundred eighty-nine, a new county solid waste authority is hereby created and established as a public agency in every county of the state and is the successor to each county solid waste authority which may have been created by the county commission: *Provided*, That such county solid waste authorities shall not be established or shall cease to exist, as the case may be, in those counties which establish a regional solid waste authority pursuant to section four of this article. The solid waste management board may require a county solid waste authority to cooperate and participate in programs with other authorities if the need arises.

(b) The authority board of directors is comprised of five members who are appointed as follows: One by the director of the division of environmental protection, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by the chairman of the public service commission. The members of the board are appointed for terms of four years for which the initial shall start on the first day of July, one thousand nine hundred eighty-eight: *Provided*, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter: *Provided, however*, That on and after the first day of July, two thousand, the member appointed by the director of the division of environmental protection shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter: *Provided further*, That the member appointed by the chairman of the public service commission shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

**§22C-4-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.**

(a) On and after the first day of January, one thousand nine hundred eighty-nine, any two or more counties within the same solid waste shed and with the approval of the solid waste management board, may establish a regional solid waste authority. Such a regional solid waste authority is a public agency and is the successor to any county solid waste authority existing on the date of said approval by the solid waste management board. The solid waste management board may require a county authority to cooperate and participate in programs with other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste authority are appointed as follows: One by the director of the division of environmental protection, two by the county commission of each county participating therein, one by the board of supervisors for each soil conservation district in which a county of the region is situated, one by the chairman of the public service commission and two municipal representatives from each county having one or more participating municipality to be selected by the mayors of the participating municipality from each such county. The members of the board are appointed for terms of four years for which the initial terms start on the first day of July, one thousand nine hundred eighty-eight: *Provided*, That the members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and to terms of four years after

the expiration of each such initial term : *Provided, however,* That on and after the first day of July, two thousand, the member appointed by the director of the division of environmental protection shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter: *Provided further,* That the member appointed by the chairman of the public service commission shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter: *And provided further,* That of the two members appointed by the mayors from each county, one shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter, and one shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

#### **§22C-4-5. Authorities as successor to county commissions and former county solid waste authorities.**

The county and regional solid waste authorities created herein, as the case may be, are the successors to the county commissions of each county, or the solid waste authority previously created by said commission and abolished as of the first day of January, one thousand nine hundred eighty-nine, by this article, in the ownership, operation and maintenance of such dumps, landfills and other solid waste facilities, solid waste collection services and litter and solid waste control programs. The county commission of each county, or the solid waste authority thereof, shall, on the first day of January, one thousand nine hundred eighty-nine, transfer all ownership, operation, control and other rights, title and interests in such solid waste facilities, services and programs, and the properties, funds, appropriations and contracts related thereto to the county or regional solid waste authority established pursuant to this article.

#### **§22C-4-6. Election by county commission to assume powers and duties of the county solid waste authority.**

Notwithstanding any provision of this article, any county commission which, on the first day of July, one thousand nine hundred eighty-eight, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article fifteen, chapter twenty-two of this code, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to the first day of October, one thousand nine hundred eighty-nine, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the solid waste management board. Thirty days after entry of said order by the county commission the county solid waste authority ceases to exist and the county commission assumes all the duties, powers, obligations, rights, title and interest vested in the former authority pursuant to this chapter or chapter twenty-two of this code.

#### **§22C-4-7. Management of authority vested in board of directors; expenses paid by county commissions, procedure.**

(a) The management and control of the authority, its property, operations and affairs of any nature is vested in and governed by the board of directors.

(b) The expenses of any county solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, in the development of the litter and solid waste control plan under section eight of this article and to provide solid waste collection and disposal services under this article shall be paid by the county commission from the general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds received by the authority from other sources. The county commission has the authority to determine the amount to be allocated annually to the authority.

(c) The expenses of any regional solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, or for the development of the litter and solid waste control plan under section eight of this article, or to provide solid waste collection and disposal services under this article shall be paid by the county commissions of each participating county from general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds from other sources received by the authority. Each county participating in the regional solid waste authority shall pay a pro rata share of such expenses based upon the population of said county in the most recent decennial census conducted by the United States Census Bureau. Prior to any county becoming liable for any expenses of the authority under this subsection, the authority's annual budget must first be approved by the solid waste management board.

(d) An organizational meeting of each board of directors shall be held as soon as practicable at which time a chair and vice chair shall be elected from among the members of the board to serve a term of one year after which such officers shall be elected annually. The board of directors shall also appoint a secretary-treasurer, who need not be a member of the board of directors, and who shall give bond in a sum determined adequate to protect the interests of the authority by the director of the division of environmental protection. The board shall meet at such times and places as it or the chair may determine. It is the duty of the chair to call a meeting of the board upon the written request of a majority of the members thereof. The board shall maintain an accurate record and minutes of all its proceedings and is subject to the provisions of article one, chapter twenty-nine-b of this code, the freedom of information act and article nine-a, chapter six of this code, open governmental proceedings. A majority of the board is a quorum for the transaction of business.

**§22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.**

(a) Each county and regional solid waste authority is required to develop a comprehensive litter and solid waste control plan for its geographic area and to submit said plan to the solid waste management board on or before the first day of July, one thousand nine hundred ninety-one. Each authority shall submit a draft litter and solid waste control plan to the solid waste management board by the thirty-first day of March, one thousand nine hundred ninety-one. The comments received by the county or regional solid waste authority at public hearings, two of which are required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of garbage collection fee; or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be,

consistent with the comprehensive county plan prepared by the county planning commission and the anticipated volumes of solid waste originating within or without the county or region which are likely to be disposed of within the county or region;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid waste collection and disposal services of municipalities and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling efforts;

(11) A program to identify the anticipated quantities of solid wastes which are disposed of, but are not generated by sources situated, within the boundaries of the county or the region established pursuant to this section;

(12) Coordination with the division of highways and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps;

(13) Establishment of a program to encourage and utilize those individuals incarcerated in the regional jail and those adults and juveniles sentenced to probation for the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal governments.

(c) The solid waste management board shall establish advisory rules to guide and assist the counties in the development of the plans required by this section.

(d) Each plan prepared under this section is subject to approval by the solid waste management board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.

(e) The solid waste management board shall develop a litter and solid waste control plan for any county or regional solid waste authority which fails to submit such a plan on or before the first day of July, one thousand nine hundred ninety-two: *Provided*, That in preparing such plans the director may determine whether to prepare a regional or county based plan for those counties which fail to complete such a plan.

**§22C-4-9. Assistance to county or regional solid waste authorities by the solid waste management board, division of natural resources, division of environmental protection, bureau of public health and the attorney general.**

(a) The division of natural resources, the division of environmental protection, the solid waste management board, and the bureau of public health shall provide technical assistance to each county and regional solid waste authority as reasonable and practicable for the purposes of this article within the existing resources and appropriations of each agency available for such purposes. The attorney general shall provide legal counsel and representation to each county and regional solid waste authority for the purposes of this article within the existing resources and

appropriations available for such purposes, or with the written approval of the attorney general, said authority may employ counsel to represent it.

(b) The solid waste management board shall provide assistance to the county or regional solid waste authorities, municipalities and other interested parties in identifying and securing markets for recyclables.

**§22C-4-9a. Findings, Solid Waste Management Board performance reviews and measures, legislative rules, intervention of impaired authorities, establishment of uniform chart of accounts, financial examination requirements.**

(a) The Legislature finds that performance review and performance measurement are valuable tools for identifying serious impairments of commercial solid waste facilities operated by county or regional solid waste authorities and fostering accountability and effective and efficient facility operations.

(b) The Solid Waste Management Board shall conduct a biennial performance review of each county and regional solid waste authority that operates a commercial solid waste facility: *Provided*, That the Solid Waste Management Board may conduct a performance review at any time it determines a performance review to be necessary.

(c) The Solid Waste Management Board shall develop and maintain a system of annual and quarterly or more frequent performance measures useful in gauging the productivity and operational health of county and regional solid waste authorities operating commercial solid waste facilities. The authorities shall provide the performance measurement data in accordance with the legislative rule required under subsection (d) of this section.

(d) No later than the first day of August, two thousand six, the Solid Waste Management Board in consultation and collaboration with the Public Service Commission, shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement a performance review process and system of quarterly performance measures designed pursuant to subsections (b) and (c) of this section.

(e) For the purposes of this section, "performance review" means an accountability system which establishes benchmarks to evaluate and determine the effective and efficient performance of a county solid waste authority operating a commercial solid waste facility or regional solid waste authority operating a commercial solid waste facility.

(f) For the purposes of this section, "performance measures" means outcome and output measures. "Outcomes" represent effects or results of programs. "Outputs" represent the units of services or activities produced.

(g) In promulgating the rules required by subsection (d) of this section, the Solid Waste Management Board shall establish criteria to be considered in conducting performance reviews, establish benchmarks to identify serious impairments, establish a recommendation process for correcting impairments and establish penalties for failure to comply, including a process for temporary intervention by the Solid Waste Management Board to correct impairments.

(h) When the Solid Waste Management Board determines through a performance review or regular monitoring of performance measures that an authority's commercial solid waste facility is seriously impaired and the authority does not correct the impairments, the intervention process may include, but is not limited to, the following methods:

(1) Appointing a team of improvement consultants to conduct on-site reviews and make strategic recommendations toward remedy of the serious impairments;

(2) Directing the authority's board of directors to prioritize and target its funds strategically toward alleviating the serious impairments;

(3) Recommending to the agencies that appoint the members of the authority's board of directors, as provided by subsection (b), section three, and subsection (b), section four of this article, that one or more members of the authority's board of directors be replaced;

(4) The Director of the Solid Waste Management Board, or his or her designee, may temporarily during intervention, preside as chair of the county or regional solid waste authority board meetings; and

(5) Exercising powers of supersedure provided under section twenty-six, article three of this chapter.

(i) The State Auditor in consultation and collaboration with the Solid Waste Management Board and the Public Service Commission shall establish a uniform chart of accounts delineating common revenue and expense account naming conventions to be adopted by all county and regional solid waste authorities, beginning no later than the first day of July, two-thousand six.

(j) The chief inspector and supervisor of local government offices shall conduct an annual examination on the financial report of county and regional solid waste authorities with an audit occurring every third year. Additionally, the chief inspector, upon request by the Solid Waste Management Board, shall conduct an audit of any county or regional solid waste authority that operates a commercial solid waste facility as a part of the performance review required by this section. The definitions of "examination", "audit" and "review" provided in section one-a, article nine, chapter six of this code apply to this subsection.

**§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.**

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten nor more than forty hours of community service, such as picking up litter, or both fined and sentenced to community service.

(b) The Solid Waste Management Board, in consultation and collaboration with the Public Service Commission, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: *Provided*, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

(c) The Public Service Commission, in consultation and collaboration with the Division of Human Services, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report

concerning the feasibility of reducing solid waste collection fees to individuals who directly pay such fees and who receive public assistance from state or federal government agencies and are therefore limited in their ability to afford to pay for solid waste disposal. This report shall consider the individual's health and income maintenance and other relevant matters. This report shall also include recommended procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

**§22C-4-11. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.**

Upon approval of the litter and solid waste control plan by the solid waste management board, the county or regional solid waste authority may acquire, by purchase, lease, gift or otherwise, land for the establishment of solid waste facilities and is authorized to construct, operate, maintain and contract for the operation of such facilities. The authority may pay for lease or acquisition of such lands and the construction, operation and maintenance of such solid waste facilities from such fees, grants, financing by the solid waste program of the division of environmental protection or funds from other sources as may be available to the authority. The authority may prohibit the deposit of any solid waste in such solid waste facilities owned, leased or operated by the authority which have originated from sources outside the geographic limits of the county or region. The authority board of directors shall establish and charge reasonable fees for the use of such facilities operated by the authority.

**§22C-4-12. Bonds and notes.**

For constructing or acquiring any solid waste facilities for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extension thereto, and also for reimbursing or paying the costs and expenses of creating the authority, if any, the board of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds or notes of such authority, payable from the revenues derived from the operation of the solid waste facilities under control of the authority or from such other funds as are available to the authority for such purpose. Such bonds or notes may be issued in one or more series, may bear such date or dates, may mature at such time or times not to exceed forty years from their respective dates, may bear interest at such rate or rates, payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond or note is nonnegotiable, all such bonds or notes are, and shall be treated as, negotiable instruments for all purposes. The bonds or notes shall be executed by the chair of the board, who may use a facsimile signature. The official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond or note and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached to any bond or note shall bear the signature or facsimile signature of the chair of the board. Bonds or notes bearing the signatures of officers in office on the date of the signing thereof are valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds or notes may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous. Any resolution or resolutions providing for the issuance of such bonds or notes may contain such covenants and restrictions upon the issuance of additional bonds or notes thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds or notes thereby authorized.

#### **§22C-4-13. Items included in cost of properties.**

The cost of any solid waste facilities acquired under the provisions of this article includes the cost of the acquisition or construction thereof, costs of closure of solid waste facilities, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds or notes prior to and during construction or acquisition and for twelve months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

#### **§22C-4-14. Bonds or notes may be secured by trust indenture.**

In the discretion and at the option of the board such bonds or notes may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia. The resolution authorizing the bonds or notes and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its board and officers in relation to the construction or acquisition of solid waste facilities and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or notes or revenues of the solid waste facilities or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or noteholders and such trustee.

#### **§22C-4-15. Sinking fund for bonds or notes.**

At or before the time of the issuance of any bonds or notes under this article, the board may by resolution or in the trust indenture provide for the creation of a sinking fund and for payments into such fund from the revenues of the solid waste facilities operated by the authority or from other funds available thereto such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds or notes at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and principal and for the retirement of such bonds or notes or at prior to maturity as may be provided or required by such resolution.

#### **§22C-4-16. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.**

The board for any such authority has power to insert enforceable provisions in any resolution authorizing the issuance of bonds or notes relating to the collection, custody and application of revenues or of the authority from the operation of the solid waste facilities under its control or other funds available to the authority and to the enforcement of the covenants and undertakings of the authority. In the event there is default in the sinking fund

provisions aforesaid or in the payment of the principal or interest on any of such bonds or notes or, in the event the authority or its board or any of its officers, agents or employees, fails or refuses to comply with the provisions of this article, or defaults in any covenant or agreement made with respect to the issuance of such bonds or notes or offered as security therefor, then any holder or holders of such bonds or notes and any such trustee under the trust indenture, if there be one, have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of such bonds or notes, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by her or his agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the authority exercise all of the rights and powers of such authority as found expedient, and such receiver has power and authority to collect and receive all revenues and apply same in such manner as the court directs. Whenever the default causing the appointment of such receiver has been cleared and fully discharged and all other defaults have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its board. Such receiver so appointed has no power to sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.

#### **§22C-4-17. Operating contracts.**

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the solid waste facilities for such period of time and under such terms and conditions as are agreed upon between the board and such persons, firms or corporations. The board has power to provide in the resolution authorizing the issuance of bonds or notes, or in any trust indenture securing such bonds or notes, that such contracts or agreements are valid and binding upon the authority as long as any of said bonds or notes, or interest thereon, are outstanding and unpaid.

#### **§22C-4-18. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.**

Unless otherwise provided by resolution of the board, there is a statutory mortgage lien upon such solid waste facilities of the authority, which exists in favor of the holders of bonds or notes hereby authorized to be issued, and each of them, and the coupons attached to said bonds or notes, and such solid waste facilities remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds or notes. Any holder of such bonds or notes, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds or notes, and may foreclose such statutory mortgage lien in the manner now provided by the laws of the state of West Virginia for the foreclosure of mortgages on real property.

#### **§22C-4-19. Refunding bonds or notes.**

The board of any authority having issued bonds or notes under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds or notes of such authority for the purpose of retiring or refinancing any or all outstanding bonds or notes, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds or notes are applicable to such refunding bonds or notes, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds or notes to be so refunded.

#### **§22C-4-20. Indebtedness of authority.**

No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on

indebtedness which may be incurred by municipalities, counties or other public or governmental bodies applies to the indebtedness of an authority. No indebtedness of any nature of authority is an indebtedness of the state of West Virginia or any municipality or county therein or a charge against any property of said state of West Virginia or any municipalities or counties. No indebtedness or obligation incurred by any authority gives any right against any member of the governing body of any municipality or any member of the authority of any county or any member of the board of any authority. The rights of creditors of any authority are solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

**§22C-4-21. Property, bonds or notes and obligations of authority exempt from taxation.**

The authority is exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipalities. The property of the authority is exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, are exempt from taxes.

**§22C-4-22. Use of prisoners for litter pickup; funds provided from litter control fund; county commission, regional jail and correctional facility authority and sheriff to cooperate with solid waste authority.**

Upon the approval of the litter and solid waste control plan as provided in section eight hereof, each county and regional solid waste authority is hereby authorized and directed to implement a program to utilize those individuals incarcerated in the county or regional jails for litter pickup within the limits of available funds. Such program shall be funded from those moneys allocated to the authority by the director of the division of natural resources from the litter control fund pursuant to section twenty-six, article four, chapter twenty of this code. The authority may expend such additional funds for this program as may be available from other sources. The county commission and the sheriff of each county and the regional jail and correctional facility authority shall cooperate with the county or regional solid waste authority in implementing this program pursuant to section one, article eleven-a, and sections three and thirteen, article twelve, chapter sixty-two of this code.

**§22C-4-23. Powers, duties and responsibilities of authority generally.**

The authority may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the following:

- (1) Sue and be sued, plead and be impleaded and have and use a common seal.
- (2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.
- (3) The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.
- (4) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.
- (5) To promulgate such rules as may be proper and necessary to implement the purposes and duties of this article.
- (6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or

contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.

(7) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein.

(8) Make available the use or services of any solid waste facility collection, transportation and processing facilities related thereto, to any person, partnership, corporation or governmental agency consistent with this article.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and duties.

(10) Make and enter all contracts, leases and agreements and to execute all instruments necessary or incidental to the performance of its duties and powers.

(11) Employ managers, engineers, accountants, attorneys, planners and such other professional and support personnel as are necessary in its judgment to carry out the provisions of this article.

(12) Receive and accept from any source such grants, fees, real and personal property, contributions, funds transferred from a solid waste facility and funds of any nature as may become available to the authority, in order to carry out the purposes of this article including but not limited to the development, operation or management of litter control programs and recycling programs: *Provided*, That nothing contained in this subsection shall be construed to extend the authority or jurisdiction of the public service commission to activities under this subsection solely because the activities are funded by moneys transferred from a solid waste facility, nor may the use of transferred funds by a solid waste authority be considered by the public service commission in carrying out its duties under section one-f, article two, chapter twenty-four of this code.

(13) Cooperate with and make such recommendations to local, state and federal government and the private sector in the technical, planning and public policy aspects of litter control and solid waste management as the authority may find appropriate and effective to carry out the purposes of this article.

(14) Charge, alter and collect rentals, fees, service charges and other charges for the use or services of any solid waste facilities or any solid waste collection, transportation and processing services provided by the authority.

(15) Prohibit the dumping of solid waste outside the hours of operation of a solid waste facility.

(16) Enforce the hours of operation of a solid waste facility and the mandatory disposal provision in section ten of this article by referring violations to the division of environmental protection or the appropriate law-enforcement authorities.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority by this article and powers conferred upon the authority by this article.

All rules promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of this code.

**§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by Solid Waste Management Board; effect on facility siting; public hearings; rules.**

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste

authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: *Provided*, That the Solid Waste Management Board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available, the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other public participation in the preparation of the siting plan as required by the rules promulgated by the Solid Waste Management Board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the Solid Waste Management Board.

(d) The siting plan takes effect upon approval by the Solid Waste Management Board pursuant to the rules promulgated for this purpose. Upon approval of the plan, the Solid Waste Management Board shall transmit a copy thereof to the Secretary of the Department of Environmental Protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the Solid Waste Management Board, it is unlawful for any person to establish, construct, install or operate a commercial solid waste facility at a site not authorized by the siting plan: *Provided*, That an existing commercial solid waste facility which, on the eighth day of April, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the Division of Natural Resources pursuant to the former provisions of article five-f, chapter twenty of this code may continue to operate, but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or

compliance order and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules promulgated by the Solid Waste Management Board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a presiting notice pursuant to section thirteen, article fifteen, chapter twenty-two of this code, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The Solid Waste Management Board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The Solid Waste Management Board shall prepare and adopt a siting plan for any county or regional solid waste authority which does not complete and file with the said state authority a siting plan in compliance with the provisions of this section and the rules promulgated thereunder. Any siting plan adopted by the Solid Waste Management Board pursuant to this subsection shall comply with the provisions of this section, and the rules promulgated thereunder, and has the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the Solid Waste Management Board.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the Solid Waste Management Board pursuant to section eight of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste facility capacity.

(j) The Solid Waste Management Board is authorized and directed to promulgate rules specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

(k) To the extent that current solid waste plans approved by the board are approved as provided for in this section, and in place on the effective date of this article, provisions which limit approval for new or expanded solid waste facilities based solely on local solid waste disposal needs without consideration for national waste disposal needs are disallowed as being in conflict with the public policy of this article: *Provided*, That all other portions of the solid waste management plans as established in the litter and solid waste control plan as provided for in this section and the comprehensive recycling plan as provided for in section seventeen, article fifteen-a, chapter twenty-two of this code are continued in full force and effect to the extent that those provisions do not conflict with the provisions of this article.

#### **§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.**

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section twenty-three, article fifteen-a, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment of this code, and facilities which were otherwise exempted from local site approval under any prior enactment of this code, shall be deemed to

have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twenty-six, twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority shall base its determination upon the following criteria: The efficient disposal of solid waste anticipated to be received or processed at the facility, including solid waste generated within the county or region, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) of this section which support its decision to issue or deny a certificate of site approval.

(d) The siting approval requirements for composting facilities, materials recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.

#### **§22C-4-26. Approval of new Class A facilities by solid waste authorities.**

Except as provided below with respect to Class B facilities, from and after the tenth day of March, one thousand nine hundred ninety, in order to obtain approval to operate a new Class A facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code and in section thirteen, article fifteen, chapter twenty-two of this code;

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

#### **§22C-4-27. Approval of conversion from Class B facility to Class A facility.**

From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code, and in section thirteen, article fifteen, chapter twenty-two of this code; and

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located or proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

#### **§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.**

From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility's permit tonnage limitation within a two-year period, the permittee shall:

- (1) File an application for approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located. Such application shall be a modification of the Class A facility's certificate of site approval. The county or regional solid waste authority shall act upon such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and
- (2) File an application for approval with, and obtain approval from, the public service commission to modify the certificate of need in the manner set forth in section one-c, article two, chapter twenty-four of this code.

#### **§22C-4-29. Judicial review of certificate of site approval.**

(a) Any party aggrieved by a decision of the county or regional solid waste authority or county commission granting or denying a certificate of site approval may obtain judicial review thereof in the same manner provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in said section, in the circuit court of Kanawha County.

(b) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with the supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

#### **§22C-4-30. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.**

(a) *Imposition.* -- Effective the first day of July, one thousand nine hundred eighty-nine, a solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected at the rate of one dollar per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) *Collection, return, payment and record.* -- The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules of the tax commissioner.

(c) *Regulated motor carriers.* -- The fee imposed by this section and section twenty-two, article five, chapter seven of this code is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition of solid waste disposal facility.* -- For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* -- The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of environmental protection as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division of environmental protection of solid waste authority, upon request.

(f) *Procedure and administration.* -- Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties.* -- Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds.* -- The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue account known as the "Solid Waste Planning Fund" which is hereby continued. The solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: *Provided*, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the solid waste management board for:

(A) Grants to the county or regional solid waste authorities for the purposes of this article; and

(B) Administration, technical assistance or other costs of the solid waste management board necessary to implement the purposes of this article and article three of this chapter.

(i) *Effective date.* -- This section is effective on the first day of July, one thousand nine hundred ninety.

#### **ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.**

##### **§22C-4A-1. Local participation, legislative findings and purposes; referendum.**

(a) The Legislature finds that the potential impacts of commercial solid waste disposal facilities have a deleterious and debilitating effect upon the transportation network, property values, economic growth, environmental quality, other land uses, and the public health and welfare. These impacts are borne predominantly by the local residents in the communities where the facilities are located. The Legislature also recognizes that economic benefits exist for having a solid waste facility, including new jobs in the local community and increased tax and fee revenues for the state. The largest of facilities authorized to operate in West Virginia, Class A facilities, receive up to thirty thousand tons of solid waste per month. Class A facilities inevitably cause the most severe impacts to the local area. The Legislature further finds that Class A facilities cause significant impact on the local community

above and beyond those of smaller landfills, that this impact requires the local community be afforded the opportunity to participate in the decision of locating a landfill of this size in their community. Further, local citizens need governmental entities to assure and verify that the Class A facility will be developed and operated in a manner that complies with all laws, rules and regulations which regulate landfills, and that the local infrastructure and environment are appropriately suited for a Class A facility. As a result, the Legislature finds that a mechanism must be in place to allow for the local community to be a significant participant in the Class A facility siting and expansion decision-making process.

(b) Therefore, it is the purpose of the Legislature to allow the local decision for location of new Class A landfills by county referendum, and further that a petition process be established to allow demand for a county referendum for expansion of an existing Class A landfill or redesignation of a Class B landfill to Class A.

#### **§22C-4A-2. Approval of new Class A facility.**

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriments of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter for a new Class A facility, the county commission shall cause a referendum to be placed on the ballot not less than fifty-six days before the next primary, general or other countywide election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a new Class A facility be constructed. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature has found that the location of a Class A solid waste facility has impact upon the county in which it will be located, and further that local citizens should be given the opportunity to participate in the decision of locating a new Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month.

The \_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_ (name of applicant) has obtained site approval for a Class A commercial facility from the \_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills in areas of a county where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has issued a certificate of need, and has approved the operation of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_ commercial solid waste facility located within \_\_\_\_\_ County, be permitted to handle between ten and thirty thousand tons of solid waste per month?

\_\_\_\_\_ For the facility

\_\_\_\_\_ Against the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the facility, the division of environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: *Provided*, That such vote is not binding on nor does it require the division of environmental protection to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

### **§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.**

(a) The purpose of the petition and referendum for approval of conversions of Class B facilities to Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriate for expansion of a Class B facility to a Class A facility, and to assure that the local community accepts the associated benefits and detriments of having a Class A facility located in their county.

(b) Within twenty-one days following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste authority approval as required in section twenty-six, article four of this chapter, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the secretary of state, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within thirty days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, and not less than seventy days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include

the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and article fifteen, chapter twenty-two of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature finds that expansion of a Class B solid waste facility to a Class A solid waste facility has impact to the county in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month. Fifteen percent of the registered voters in \_\_\_\_\_ county have signed a petition to cause a referendum to determine the following question:

The \_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_ (name of applicant) has obtained site approval for a Class A commercial facility from the \_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has issued a certificate of need, and has approved the operation of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_ solid waste facility, located within \_\_\_\_\_ County, West Virginia, be permitted to handle between ten and thirty thousand tons of solid waste per month?

For conversion of the facility

Against conversion of the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the facility, then the division of environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: *Provided*, That such vote is not binding on nor does it require the division of environmental protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

**§22C-4A-4. Approval of increase in maximum allowable monthly tonnage of Class A facilities.**

(a) The purpose of the petition and referendum for approval of modification of Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment

are appropriately suited for expansion of the Class A facility, and to assure that the local community accepts the associated benefits and deterrents of having a Class A facility located in their county.

(b) The referendum provisions contained herein must be met in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility's permit tonnage limitation within a two-year period.

(c) Within twenty-one days following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class A facility be permitted to increase the maximum tonnage allowed to be received at the facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the secretary of state, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within thirty days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, and not less than seventy days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class A facility applicant be permitted to increase the maximum tonnage allowed to be received at the facility not to exceed thirty thousand tons per month. Any election at which such question is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and article fifteen, chapter twenty-two of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature finds that expansion of a Class A solid waste facility has significant impact to the community in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. The \_\_\_\_\_ facility is currently authorized to receive \_\_\_\_\_ thousand tons of solid waste per month. The \_\_\_\_\_ facility is proposing to be authorized to receive \_\_\_\_\_ thousand tons of solid waste per month. Fifteen percent of the registered voters in \_\_\_\_\_ county have signed a petition to cause a referendum to determine the following question:

The \_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_ (name of applicant) has obtained site approval to expand a Class A commercial facility from the \_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has issued a certificate of need, and has approved the expansion of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_ solid waste facility located within \_\_\_\_\_ County, West Virginia, be allowed to handle a maximum of \_\_\_\_\_ solid waste per month?

For the increase in maximum allowable tonnage

Against the increase in maximum allowable tonnage

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at the facility, then the division of environmental protection shall not proceed to modify the Class A facility permit to increase the maximum allowable tonnage. If a majority of the legal votes cast upon the question is for allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at such facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: *Provided*, That such vote is not binding on nor does it require the county or regional solid waste authority or the division of environmental protection to approve an application to modify the permit. If the majority of the legal votes cast is against the question, that does not prevent the question from again being submitted to a vote at any subsequent election in the manner provided for in this section: *Provided, however*, That an applicant may not resubmit the question for a vote prior to a period of two years from the date of the previous referendum herein described.