

Harold A Taylor

DATE: October 23, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Solid Waste Management Board

EMERGENCY RULE TITLE: Rules and Regulations for the Development of Comprehensive Litter and Solid Waste Control Plans

1. Date of filing: October 23, 1990
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-26-6; 20-9-7; 20-9-12; 20-11-1 et seq.; 29A-3-15.
3. Date of filing of proposed legislative rule: August 22, 1990

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

New language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Comprehensive litter and solid waste control plans are required to be developed and in place by July 1, 1991. The plans are the means by which all solid waste within the area is managed and controlled which is necessary for the protection of public health, safety, and welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

W. Va. Code § 20-9-7(a)

July 1, 1991

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The public interest will be adversely affected if comprehensive solid waste control plans are not developed and implemented in the immediate future since the plans are the means by which all solid waste is managed and controlled.

Administrative Law Division
Secretary of State
Building 1, Room 157-K
State Capitol
Charleston, WV 25305

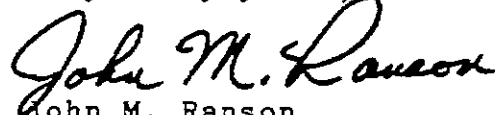
RE: Solid Waste Management Board's Regulations

Attn: Judy Cooper

Dear Ms. Cooper:

This letter is to inform you that as Secretary of the Department of Commerce, Labor and Environmental Resources, I approve of the filing of the Solid Waste Management Board's Series 1, 2, 3, 4 and 5 regulations to be filed on October 23, 1990. I also approve of the filing of Series 3 and 4 as emergency regulations on the same date.

Very truly yours,

A handwritten signature in cursive script that reads "John M. Ranson". The signature is written in dark ink and is positioned above the printed name and title.

John M. Ranson
Secretary of Commerce,
Labor & Environmental
Resources

FILED

OCT 23 PM 2:00

TITLE 54
LEGISLATIVE RULES
WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD

SERIES 3
RULES AND REGULATIONS FOR THE DEVELOPMENT OF
COMPREHENSIVE LITTER AND SOLID WASTE CONTROL PLANS

§4-3-1. General.

1.1. Scope. - The scope and purpose of these regulations is to establish minimum standards and planning requirements for all county and regional solid waste authorities to follow in the development of comprehensive litter and solid waste control plans as required by W. Va. Code §20-9-1 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 to 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. Filing Date. -

1.3. Effective Date. -

1.4. Authority. - W. Va. Code §16-26-6; W. Va. Code §20-9-7; W. Va. Code §20-9-12; W. Va. Code §20-11-1 et seq.

1.5. Savings Clause. - The adoption of these rules and regulations shall in no way preclude the Solid Waste Management Board from altering or amending them, in whole or in part, or from requiring any other or additional standard. Further, these rules and regulations shall not relieve in any way a solid waste authority from any of its duties under the laws of West Virginia. These rules and regulations are intended to supplement the applicable statutes and do not replace or substitute for any of the provisions of such statutes.

§4-3-2. Definitions. - The following words and terms, when used in these regulations, 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 §20-5F- 1 et seq.

2.2. "Authority" - means any solid waste authority of any county or region in West Virginia, established by West Virginia

Code §20-9-3 and §20-9-4; or the County Commission of any county which elected not to establish an authority, as allowed by West Virginia Code §20-9-5a.

2.3. "Board" - means the West Virginia Solid Waste Management Board as established by West Virginia Code §16-26-4, or its authorized representatives.

2.4. "Commercial Solid Waste Facility" - means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and shall not include the legitimate reuse and recycling of materials for structural fill, road base, mine reclamation and similar applications.

2.5. "Composting Facility" - means a facility at which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

2.6. "Energy Recovery Facility" - means any solid waste facility at which solid wastes are incinerated, or processed for future incineration, with the intention of using the resulting energy for generation of steam, electricity, or any other use not specified in these regulations.

2.7. "Incinerator" - means any device used to accomplish incineration, including incinerators associated with resource recovery.

2.8. "Landfill" - means a facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure. The term landfill does not include a land application unit, surface impoundment, solid waste disposal surface impoundment or injection well.

2.9. "Materials Recovery Facility" - means any solid waste facility at which solid wastes are manually or mechanically shredded, separated, and recovered from the general waste stream for the purpose of recycling or reusing the resource recovered.

2.10. "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.

2.11. "Plan" or "Comprehensive Plan" means the comprehensive litter and solid waste control plan required under W. Va. Code §20-9-7.

2.12. "Recycle" or "Recycling" - means the collection, separation, recovery and sale, or reuse of metals, glass, paper, and other materials.

2.13. "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. Sorting of commingled recyclables into separate categories may occur, but the manual or mechanical separation of recyclables from the general waste stream may not.

2.14. "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 facilities include composting facilities, environmentally acceptable incinerators, materials recovery facilities, energy recovery facilities and other such solid waste facilities not herein specified.

2.15. "Solid Waste" - means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or from 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 West Virginia Code §20-5A, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under West Virginia Code §20-5E, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power 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 West Virginia Code Chapter 22, Chapter 22A, or Chapter 22B, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters; "solid waste" shall also 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.

2.16. "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.

2.17. "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, environmentally acceptable incinerators, resource recovery facilities, recycling facilities, materials recovery facilities, energy recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of these regulations, in the county where the majority of the spatial area of such facility is located.

2.18. "Transfer Stations" - 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 for movement to another solid waste management facility.

54-3-3. Procedure for Plan Development and Approval.

3.1. Submission to the Board.

No later than March 31, 1991, each authority shall submit to the Board one copy of a draft comprehensive litter and solid waste control plan.

3.2. Administrative Completeness Review.

3.2.1. If the Board finds the draft plan to be incomplete, i.e., to not contain all of the information required by these regulations, it shall return the plan to the authority along with a written statement explaining how the plan is incomplete.

3.2.2. 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.

3.3.1. When a plan is determined to be administratively complete, it will be subjected to a technical review of its contents, procedures, and processes.

~~3.3.2. 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 regulations promulgated in this series.~~

3.3.2. 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.

3.3.3. Within ninety (90) days of receipt of a letter disapproving the plan, or by July 1, 1991, whichever is later, 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.

3.4.1. No later than July 1, 1991 or a later date if allowed under subsection 3.3.4. of these regulations, each county authority shall submit to the Board three (3) copies of its final plan. Each regional authority must submit one additional copy of the plan for each county within that region.

3.4.2. 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 regulations promulgated in this series.

3.5. Plans Developed by the Board.

The Board shall develop a plan for any authority which fails to submit a plan on or before July 1, 1991, or such other date established in subsection 3.3.4. of these regulations, 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 a plan.

3.6. If an authority has previously submitted a draft comprehensive plan to the board, i.e., prior to the effective date of these regulations, it may either withdraw the previously submitted plan and submit a new plan or it may submit a supplement to the previously filed plan. In either case the new or revised plan shall comply with all of the requirements of these regulations, including but not limited to, the public participation requirements under 54-3-7 of these regulations.

54-3-4. Required Format of Plan.

4.1. Required Format.

In addition to the information required in 54-3-5 of these regulations, each plan submitted shall include: (1) a cover sheet which includes the name of the authority, the name of the plan, and the signature of the chairman of the authority; (2) a forward or preface which includes the purpose of the plan; (3) a table of contents indicating the major subdivisions of the plan; (4) a brief summary of the plan and its procedures, its methodology and its conclusions; (5) the published announcement of all public hearings; (6) a brief summary of public comments and a statement describing how the authority responded to the public comments; and (7) appropriate highway maps.

54-3-5. Content of Plan.

5.1. General Information.

The plan shall include the following general information:

5.1.1. Description of the purposes of the plan and objectives for solid waste management within the authority for a period of ~~ten-(10)~~ twenty (20) years;

5.1.2. Descriptions of the funding and resources necessary to implement the plan and a strategy for the provision of those funds and resources; and

5.1.3. ~~Consideration~~ A description of the authority's evaluation of the hierarchy established in W. Va. Code §20-9-1 giving preference and how the authority gives preference to alternatives in the following order of priority:

(1) source reduction, (2) recycling, reuse and resource recovery, and (3) landfilling.

5.2. Specific Information and Data.

In addition, the plan shall include the following specific information:

5.2.1. An assessment of litter and solid waste problems in the county including, but not limited to, a listing of any open and unpermitted dumps and any other problem areas for litter control. A limited amount of information on open dumps is available from the State Division of Natural Resources (DNR).

5.2.2. Provisions for 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 State Public Service Commission.

5.2.2.a. Locate on a county highway map or maps, and include a listing of, haulers and areas served, existing and planned solid waste collection, storage, treatment, transportation, disposal, recycling and other management facilities, their projected capacities and systems for their use. 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. Information on private haulers is available from the State Public Service Commission. Contact local government for information on public haulers. Information on existing permitted landfills and transfer stations is available from DNR. Limited information on recycling facilities is available from DNR and the Governor's Office of Community and Industrial Development.

5.2.2.b. Include demographic information and projections over ~~ten~~ (10) ~~twenty~~ (20) years of population growth and development patterns;

5.2.2.c. Include data on urban concentrations, geographic conditions, markets, transportation conditions, and related factors.

5.2.2.c.A. Regarding urban concentrations, indicate the regions which are predominantly urban in nature, their population density, projected changes in the area or population of these regions. Also indicate any additional regions which are expected to become urban in the future.

5.2.2.c.B. Regarding geographic conditions, include a general description of such conditions 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.

5.2.2.c.C. Regarding markets, describe the existing and anticipated markets for resource recovery, materials recovery, recycling, energy recovery facilities, environmentally acceptable incinerators, and composting facilities within the area.

5.2.2.c.D. Regarding transportation conditions, 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.

5.2.3. A recommendation, and the reasons for such recommendation, for the siting of one or more properly permitted public or private solid waste landfills and other 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 plan prepared by the county planning commission;

5.2.3.a. An authority may recommend the siting of one or more landfills and other solid waste facilities either within its own geographic area or outside of its own geographic area.

5.2.3.b. Whether an authority proposes siting a facility

within its area or outside its area, it shall provide documentation that the facility will meet the authority's future disposal needs.

5.2.4. 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;

5.2.5. A comprehensive recycling plan as required under W. Va. Code §20-11-4 designed to reduce the solid waste stream by 20% by January 1, 1994 and to further reduce the solid waste stream by 30% by January 1, 2000. The comprehensive recycling plan shall include, but not be limited to:

5.2.5.a. Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

5.2.5.b. 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.

5.2.6. A copy of any ordinance adopting a county recycling program pursuant to W. Va. Code §20-11-5, if applicable;

5.2.7. Innovative incentives to promote recycling efforts, e.g., a competition between schools for tonnage recycled, a poster or essay contest in schools, developing a new recycling market such as using shredded paper for animal bedding or car tires in playground construction.

5.2.8. A timetable for the implementation of the plan over the ~~ten--(10)~~ twenty (20) year projection including stages of progress toward the accomplishment of each item in section 5.2. of these regulations and the parties responsible for each step in the timetable;

5.2.9. 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 DNR.

5.2.10. A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;

5.2.11. Coordination with the West Virginia 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;

5.2.12. Establishment of a program to encourage and utilize those individuals incarcerated in the county jail and those adults and juveniles sentenced to probation for the purposes of litter pickup. Coordination with the local Sheriff's office and magistrate's office will be required.

5.2.13. 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.

5.2.14. A program to identify the disposal of solid wastes which are not generated by sources situated within the boundaries of the authority. Information on the source of wastes ~~is~~ may be available at all landfills from the Division of Natural Resources and landfills within the county or region for which the plan is being developed.

5.2.15. 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.

5.2.15.a. 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.

5.2.15.b. 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 ~~one (1)~~ five (5) tons of solid waste per month.

5.2.15.c. The authority shall evaluate the information and data it collects pursuant to paragraph 5.2.15.b. of these regulations for the following purposes:

5.2.15.c.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.

5.2.15.c.B. To ensure that such wastes are disposed of in an approved solid waste facility or in an otherwise lawful manner.

5.2.15.d. The authority shall include ~~a discussion of~~ its evaluation of this information and conclusions reached in the comprehensive plan.

5.2.16. The establishment of an appropriate mandatory garbage disposal program which shall include 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 and regulations implementing this provision as required under W. Va. Code §20-9-12(3). In establishing the methods for providing proper proof the authority shall comply with the regulations of the West Virginia Division of Natural Resources pertaining to such methods under 47 CSR 38B.

5.2.17. Provisions for how the authority will assist local law enforcement officials in the enforcement of the mandatory garbage disposal program.

5.2.18. A summary of all written and oral public comments received at the public hearings required under §54-3-7 of these regulations, including a statement of how the authority responded to the comments.

54-3-6. Review and Amendment Process.

6.1. Each authority shall review the plan for its county or region every five years. Public notice and hearing on any amendments shall be held in the same manner as outlined in §54-3-7 of these regulations. Any changes or amendments proposed by the authority 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 ~~ten (10)~~ twenty (20) years following the five year review date. The authority shall amend the plan by revising the following:

6.2.1. Purposes and objectives for solid waste management within the authority;

6.2.2. Demographic information and projections over the ten (10) year period;

6.2.3. Timetable for the implementation of the plan, including each item in section 5.2. of these regulations.

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 §54-3-7 of these regulations. No amendments may become effective until approved by the Board in the same manner as the original plan.

54-3-7. Public Participation Process.

7.1. Public Notice and Hearing.

7.1.1. 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. ~~Such public notice and hearing shall follow the procedures specified in subsections 7.1.1.3., 7.1.1.4., 7.1.1.5., and 7.1.1.6. of these regulations.~~

7.1.1.a. 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, whichever is appropriate.

7.1.1.b. The authority shall consider the public comments received at the public hearing and shall either record the proceedings of the hearing or prepare a written summary of the proceedings.

7.1.2. 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.

7.1.2.a. 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, whichever is appropriate, and by posting the public notice at the appropriate county courthouse or courthouses.

7.1.2.b. 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.

7.1.2.c. 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.

7.1.2.d. The proceedings of the public hearing shall be recorded by mechanical means, and such recording and a copy of all written comments received shall be retained by the authority for a period of three (3) years from the date of the public hearing.

7.1.2.e. 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, under subsection 7.1.2.,~~ the authority shall place a copy of the draft plan at the county clerk's office or offices and at all public libraries and branch libraries in the county, or counties, for public review.

7.3. Consideration of Public Comments.

7.3.1. The authority shall consider all public comments received, written and oral, in the development of the final plan.

7.3.2. 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.

7.3.3. If requested by the Board, the authority shall submit all or any part of the public comment record to the Board for its review.