

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6 ☐

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

AGENCY: WV Solid Waste Management Board TITLE NUMBER: 54

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Rules for Developing, Updating and Amending
Comprehensive Litter and Solid Waste Control Plans.

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2663

SECTION 64-3-3(a), PASSED ON April 14, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 21, 2001
May 18, 2001



Authorized Signature

54CSR3

FILED

TITLE 54
LEGISLATIVE RULE
SOLID WASTE MANAGEMENT BOARD

2001 MAY 21 P 12: 06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
~~RULES FOR DEVELOPING, UPDATING AND AMENDING~~ 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 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. ~~1.4~~ Authority. – W. Va. Code §§ 22C-3-6, 22C-4-8, 22C-4-23, and 20-11-1 et seq.

1.3 ~~1.2~~ Filing Date. – ~~April 10, 1996.~~

1.4. ~~1.3.~~ Effective Date. – ~~April 10, 1996.~~

§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 for ~~composting solid waste that is located at the site where the~~

~~waste was generated~~ 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 ~~facilities~~ 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 materials 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 wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage, and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under W. Va. Code §§ 22-2-1 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., or ~~22B-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 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 article 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.
~~The comprehensive litter and solid waste control plan is to be updated and submitted to the Board every five (5) years. The plan shall be submitted five years from the date of initial Board approval 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 the SWMB 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 ~~these~~ this rules 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. ~~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 the Division of Environmental Protection (DEP). Information on recycling facilities is available from the Board and the Division of Natural Resources.~~

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.

5.2.2.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.

5.2.2.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 ~~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 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 without 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 54CSR Series 4 - "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 ~~West Virginia~~ 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 ~~disposal~~ anticipated quantities of solid wastes which are disposed of, but are not generated by, sources situated within the boundaries of the authority 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 ~~media~~ 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 ~~Title 47, 38B~~ 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 ~~submit~~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 §§ 6959-3-1 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.

~~7.1.2.c. 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.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.