

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Solid Waste Management Board TITLE NUMBER: 54

CITE AUTHORITY W.Va. Code §§ 22C-3-6; 22C-4-8; 22C-4-23; 20-11-1, et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

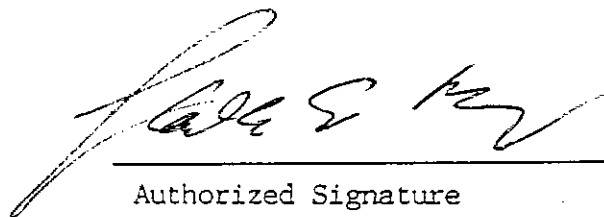
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.


Authorized Signature



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

October 25, 1995

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

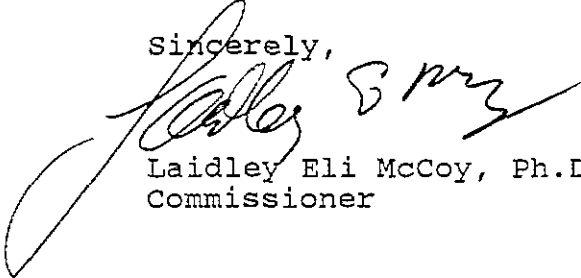
RE: 54CSR3 - "Rule for Developing, Updating and Amending
Comprehensive Litter and Solid Waste Control Plans"

Dear Ms. Cooper:

This is to advise you that I am giving approval for the re-filing of the above-captioned, modified rule, now approved by the Legislative Rule-Making Review Committee (LRMRC) as technically modified, with the Secretary of State's Office and LRMRC.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall, at 759-0515.

Sincerely,


Laidley Eli McCoy, Ph.D.
Commissioner

LEM:jrb

TITLE 54
LEGISLATIVE RULES
SOLID WASTE MANAGEMENT BOARD

SERIES 3
~~RULES AND REGULATIONS FOR THE DEVELOPMENT OF~~ DEVELOPING,
UPDATING AND AMENDING COMPREHENSIVE LITTER AND SOLID WASTE
CONTROL PLANS

§ 54-3-1. General.

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

1.3. Effective Date. --

1.4. Authority. -- W. Va. Code §§ ~~16-26-6; 20-9-7; 20-9-12; 22C-3-6; 22C-4-8;~~ 22C-4-23; 20-11-1 et seq.

§ 54-3-2. Definitions

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

2.2:2.1. "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~~ 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 ~~West Virginia Code §20-9-5a~~ W.Va. Code § 22C-4-6.

2.3:2.2. "Board" - means the West Virginia Solid Waste Management Board as established by ~~West Virginia Code §16-26-4~~ W.Va. Code § 22C-3-4, 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.~~

2.5:2.3. ~~"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.~~ means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

2.6. ~~"Energy Recovery Facility" - means any resource recovery 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.~~

2.8:2.4. ~~"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.~~ means any solid waste facility for the disposal of solid waste on land. Such facility, for the purposes of this rule, is situated in the county where the majority of the spatial area of such facility is located.

2.9:2.5. ~~"Materials Recovery Facility" - means any resource recovery 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.~~ 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.

~~2-10-2.6.~~ "Open Dump" - means any solid waste disposal which does not have a permit under W. Va. Code ~~§20-5F-1~~ § 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.

~~2-11-2.7.~~ "Plan" or "Comprehensive Plan" - means the comprehensive litter and solid waste control plan or update of such plan required under W. Va. Code ~~§20-9-7~~ § 22C-4-8 and Sections 5 and 6 of this rule.

~~2-12-2.8.~~ "Recycle" or "Recycling" - means the collection, separation, recovery and sale, or reuse of metals, glass, paper, tires, lead-acid batteries and other materials.

~~2-13-2.9.~~ "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. Sorting of recyclables into separate categories may occur, but the manual or mechanical separation of recyclables from the general waste stream may not. 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, 22-15, 22C-4.

~~2-14-2.10.~~ "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 include composting facilities, environmentally acceptable incinerators, materials recovery facilities, energy recovery facilities and other such solid waste facilities not herein specified.

~~2-15-2.11.~~ "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 W. Va. Code §20-5A § 22-11, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under W. Va. Code ~~§20-5E~~ § 22-18, 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 Chapter ~~§§ 22-2, 22-3, 22-4, 22-6, 22-7, 22-8, 22-9, 22-10, Chapter 22A-1, et seq., or Chapter 22B-1, et seq.,~~ so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters; "solid waste" shall also 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.

~~2.16-2.12.~~ "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.

~~2.17-2.13.~~ "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, environmentally acceptable incinerators, resource recovery facilities, recycling facilities, materials recovery facilities, mixed waste processing facilities, composting facilities energy recovery 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 facility shall be deemed to be situated, for purposes of these regulations ~~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.

~~2.18-2.15.~~ "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. 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.

3.1.3.2. Submission to the Board.

~~3.1.1.3.2.1.~~ 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. The comprehensive litter and solid waste control plan is to be updated and submitted to the Board every five 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.

3.2.2. A grant may be obtained from the Solid Waste Management Board for the purpose of updating the comprehensive plan in accordance with Section 4.4 of the

SWMB, Title 54, Series 5, Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities.

3.2:3.3. Administrative Completeness Plan Review.

~~3.2.1:3.3.1.~~ 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 these regulations this rule, 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.~~ 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.

~~3.3.3-3.3.2.~~ 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 corrected plan to the Board.

~~3.3.3.4.~~ Final Submission to the Board.

~~3.4.2:3.4.1.~~ 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 rules promulgated in this series.

~~3.4.1:3.4.2.~~ No later than July 1, 1991 or a later date if allowed under subsection 3.3.3. of these regulations sixty (60) days after approval, each county authority shall submit to the Board three (3) 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 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.

~~3.4.1:3.5.1~~ 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 3.3.3. of these regulations, an update and for any new authority that fails to submit a plan within ninety (90) days of the due date under Section 3.2.1. 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 an update or for those new authorities that fail to complete a plan.

3.5.2 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 regulations~~ this rule, each plan submitted shall include:

(1) 4.1.1. A cover sheet which includes the name of the authority, the name title of the plan, and the signature of the chairman of the authority chair;

(2) 4.1.2. A forward or preface which includes the purpose of the plan; An introduction explaining the plan's background, scope and purpose;

(3) 4.1.3. A table of contents indicating the major subdivisions of the plan;

(4) 4.1.4. A brief summary of the plan and its procedures, its methodology and its conclusions; An executive summary of the plan which briefly describes its methodology, goals and objectives, conclusions and recommendations;

(5) 4.1.5. The published announcement of all public hearings; A copy of the Class I legal advertisement as specified in Section 7.1 of these rules regarding the required public hearings;

(6) 4.1.6. A brief summary of public comments and a statement describing how the authority responded to the public comments; and

(7) 4.1.7. Appropriate highway maps; Maps of an appropriate size and scale that will allow the reader to identify the location of features, services, facilities and population listed in Sections 5.2.2a and 5.2.2c of this rule;

§ 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 goals and objectives for solid waste management within the authority for a period of for the next twenty (20) years;

5.1.2. 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:

5.1.2.3. Descriptions of the funding and resources necessary to implement the plan and a strategy for the provision of those funds and resources; and Describe how funds, including grant funding, have been used and will be used to implement the plan:

5.1.3.4. A description of the authority's evaluation of Describe the actions taken by the authority to implement the hierarchy established in W. Va. Code §20-9-1 § 22C-4-1 and how the authority gives preference to alternatives in the following order of priority: (1) source reduction, (2) recycling, reuse and resource materials 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 or the region 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 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.

5.2.2.a. Locate on a county or regional 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, and 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 the Division of Environmental Protection (DEP). Limited information on recycling facilities is available from the Board and the DNR Division of Natural Resources and Governor's Office of Community and Industrial Development.

5.2.2.b. Include demographic information and projections over the next twenty (20) years of population growth and development patterns. Information may be obtained from Regional Research Institute at West Virginia University.

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

5.2.2.c.1. ~~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 urbanize or where growth is anticipated.~~

5.2.2.c.2. ~~Regarding geographic conditions, Include a general description of such conditions 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.c.3. ~~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.4.3. ~~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. 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 the authority's geographic area.

5.2.3.b. 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 54 CSR Series 4.

5.2.3.c. 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.

~~5.2.4. 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 twenty percent (20%) by January 1, 1994 and to further reduce the solid waste stream by thirty percent (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;~~

~~5.2.8.4. 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 section 5.2. of these regulations this rule and the parties responsible for each step in the timetable;~~

~~5.2.9.5. 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 DEP.~~

~~5.2.10.6. A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;~~

~~5.2.11.7. 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;~~

~~5.2.12.8. 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.

~~5.2.13.9.~~ 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.

~~5.2.14.10.~~ 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 may be available from the ~~Division of Natural Resources~~ DEP and landfills within the county or region for which the plan is being developed.

~~5.2.15.11.~~ 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.11.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.11.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 five (5) tons of solid waste per month.

~~5.2.15.c.11.c.~~ The authority shall evaluate the information and data it collects pursuant to paragraph ~~5.2.15.11.b.~~ of these regulations this rule for the following purposes:

~~5.2.15.c.1.11.c.1.~~ 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.2.11.c.2.~~ To ensure that such wastes are disposed of in an approved solid waste facility or in an otherwise lawful manner.

~~5.2.15.d.11.d.~~ The authority shall include 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.

~~5.2.16-12.~~ A The authority shall provide a summary of all written and oral public comments received at the public hearings required under Section 7 of these regulations 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:

5.3.1. 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;

5.3.2. 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. Before designation of the materials, the following should be examined:

5.3.2.a. 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.

5.3.2.b. 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.

5.3.3. 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.

5.3.3.a. 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.

5.3.3.b. Estimate the likely program requirements for the collection, storage and retrieval, processing and marketing of yard waste and tires.

5.3.4. 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 where the ordinance is adopted should also be included.

5.3.5. A public education program to include:

5.3.5.a. Definition of the goals and objectives of the recycling educational efforts.

5.3.5.b. Identification of target audiences and the development of appropriate messages and formats. This should include the selection of an appropriate media for conveying recycling messages and development of educational materials. Use of materials that are readily available is encouraged.

5.3.5.c. 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.

5.3.5.d. 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 car tires in playground construction.

5.3.5.e. 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:

5.4.1 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 Series 38B rules.

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

§ 54-3-6. Review Development, Update and Amendment Process.

6.1. Each authority shall ~~review~~ update the plan for its county or region every five 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 ~~these regulations~~ this rule. Any ~~changes~~ updates or amendments proposed by the authority shall be submitted to the Board for approval in the same manner as provided in Section 3.4.

6.2. At the time of the five year ~~review~~ 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 ~~review date~~ update. 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 twenty (20) 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 giving notice and holding a public hearing as detailed in Section 7 of these regulations 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 submittal 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.

7.1.1. 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.

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 record the proceedings of the hearing or and 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 § 69-3-1, 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 under subsection 7.1.2., the authority shall place for public review a copy of the draft plan at the county clerk's office or clerks' offices and 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.

7.3.1. 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.

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FILED

OCT 23 10 45 AM '95

West Virginia Legislature
Legislative Rule-Making Review Committee

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

October 17, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Laidley Eli McCoy, Ph.D., Commissioner
Bureau of Environment
10 McJunkin Road
Nitro, WV 25143-2506

FROM: Legislative Rule-Making Review Committee

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

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency

X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Charles F. Jordan
Eleanor Dewey
Charles Capet