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Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Solid Waste Management Board TITLE NUMBER: 54 CSR 06

RULE TYPE: Legislative CITE AUTHORITY: W.Va. § 22C-3-26, 22C-4-9a(d), and 22C-4-9a(g)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: N/A

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 54 CSR 06

TITLE OF RULE BEING PROPOSED: Performance Measures and Review Standards for Solid Waste Authorities Operating Commercial Solid Waste Facilities

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 6, 2007 AT 4:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Solid Waste Management Board
Attn: Richard P. Cooke
601 57th Street, SE
Charleston, WV 25304

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Richard P. Cooke
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$4.40

SUMMARY OF PROPOSED RULE

This legislative rule establishes a system for performance reviews and measures to be conducted by the West Virginia Solid Waste Management Board. Solid waste authorities operating a commercial solid waste facility shall report quarterly, or more often, in the areas of regulatory/statutory compliance, finances, operations, and management.

Biennial performance reviews shall be conducted of each county and regional solid waste authority operating a commercial solid waste facility. These reviews will benchmark both the performance of the authority and of the commercial solid waste facility.

STATEMENT OF CIRCUMSTANCES

On April 8, 2005 the West Virginia State Legislature passed House Bill 3356 which was signed by Governor Joe Manchin III on May 4, 2005 and became effective on July 7, 2005. This new law mandated that the West Virginia Solid Waste Management Board propose legislative rules for promulagation to implement a performance review process and system of quarterly performance measures.

The Legislature determined that there were circumstances regarding the productivity and operational health of solid waste authorities that operate commercial solid waste facilities that necessitate performance measures and reviews to gauge their health and foster accountability.

Fiscal Note for Proposed Rules

Rule Title: "Performance Measures and Review Standards For Solid Waste Authorities Operating Commercial Solid Waste Facilities"

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: Solid Waste Management Board

Address: 601 57th Street, S.E.

Charleston, WV 25304

Phone Number: 304-926-0448 Email: dcooke@wvswmb.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Biennial Performance Reviews on the Solid Waste Authorities that operate commercial solid waste facilities should not have a significant impact on SWMB finances.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of breakdown by fiscal year, including long-range effect.

	FISCAL YEAR		
Effect of Proposal	Current Increase/Decrease (use "- ")	Next Increase/Decrease (use"- ")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	$1,100	$5,000
Personal Services	0	0	0
Current Expenses	0	$1,100	$5,000
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: "Performance Measures and Review Standards For Solid Waste Authorities Operating Commercial Solid Waste Facilities"

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

The SWMB fiscal year 2007 budget will not be impacted.

The estimated costs to be incurred in conducting Performance Reviews on the seven (7) Solid Waste Authorities (SWAs) that operate commercial solid waste facilities: County SWAs of Greenbrier, Mercer, Nicholas, Pocahontas, Raleigh, Tucker and the Regional SWA of Region Eight.

7 facilities x 4 days each =
28 overnight stays x 2 employees= 56 overnight stays
56 x $125 expenses per night (meals and lodging) =
$7,000 expense to conduct performance reviews plus
$575 gasoline expense (16 mpg @ $4.00 per gallon) for 2,300 miles, round-trip to all seven facilities.

The total estimated additional expense for two SWMB employees to conduct a performance review on the seven (7) SWAs that are impacted, is approximately $7,575.

In order to be proactive, it will be necessary for at least one SWMB employee to attend periodic monthly board meetings of these authorities. At least one (1) trip to each entity can be coordinated with the performance reviews, but attending additional meetings will incur the following estimated expenses:

7 facilities x 1 employee =
5 overnight stays (two trips may not necessitate an overnight stay) x $125/night=
$625 x 2 additional monthly board meetings per SWA =
$1,250 expense to attend SWA monthly board meetings plus
$1,150 gasoline expense (16 mpg @ $4.00 per gallon) for 2,300 miles, round-trip x 2 trips.

The total estimate for one SWMB employee to attend two additional monthly board meetings for each impacted SWA throughout the year, is $2,400.

The SWMB fiscal year 2008 budget will be impacted approximately $1,100. This is based on completing one Performance Review between the time 54 CSR 6 becomes law and June 30, 2008.

Because every SWA will be examined biennially the total estimated expenses for this program will be approximately $10,000, or $5,000 annually. The SWMB will not have any change in the revenue it receives to operate its agency.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues not captured elsewhere on this form.

If the SWMB determines through a performance review or performance measures that an authority's commercial solid waste facility is seriously impaired and the authority does not correct the impairments, implementation of the intervention process may incur the following expenses:

- Appointing a team of improvement consultants. Costs associated with representatives from the private sector are the responsibility of the Authority. However, if the Authority is not financially able to pay these costs, the SWMB may have to bear the expense of consulting engineers, heavy equipment specialists, financial managers, etc.

- Conducting additional on-site reviews. Depending on the severity of the circumstances, semi-monthly visits to a SWA could be necessary.

- Presiding as Chair over the SWA's monthly board meeting. This would include a monthly visit to the SWA that may be coordinated with the semi-monthly visits to conduct on-site reviews.

- Supersedure of a SWA would involve significant effort and expense on behalf of the SWMB.

Costs associated with these scenarios would only occur if a SWA was found to be "seriously impaired". These costs would vary, depending on the circumstances and severity of the problem.

Date:

Signature of Agency Head or Authorized Representative

TITLE 54
LEGISLATIVE RULE
SOLID WASTE MANAGEMENT BOARD

FILED
2007 JUN -6 AM 10: 29
OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 6
PERFORMANCE MEASURES AND REVIEW STANDARDS FOR SOLID WASTE AUTHORITIES OPERATING COMMERCIAL SOLID WASTE FACILITIES

§ 54-6-1. General.

1.1. Scope. -- This legislative rule establishes a system for performance reviews and measures to be conducted by the West Virginia Solid Waste Management Board. The Board shall conduct a biennial performance review of a county and regional solid waste authority that operates a commercial solid waste facility to gauge the productivity and operational health of the authority. The Board shall also conduct a biennial performance review of each commercial solid waste facility operated by a county or regional solid waste authority to promote accountability, support effective and efficient facility operations and identify serious impairments of the facility.

1.2. Authority. -- W. Va. § 22C-3-26, W. Va. § 22C-4-9a(d), and W. Va. § 22C-4-9a(g).

1.3. Filing Date. --

1.4. Effective Date. –

1.5. Incorporation by Reference.

§ 54-6-2. Definitions.

2.1. All terms used herein shall, unless the context indicates otherwise, have the meanings ascribed to them as set forth below.

2.1.a. "Act" means W. Va. Code § 22C-4-1 et seq.

2.1.b. "Audit" means a systematic examination and collection of sufficient, competent evidential matter needed for an auditor to attest to the fairness of management's assertions in the financial statements, and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations. An audit shall be conducted in accordance with generally accepted auditing standards, standards issued by the WV State Auditor's chief inspector division, and, as applicable, the single audit requirement of OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations.

2.1.c. "Benchmark" means a reference point to evaluate and determine the effective and efficient performance of a solid waste authority and its commercial solid waste facility and to assist in the identification of any impairments.

2.1.d. "Board" means the West Virginia Solid Waste Management Board, as established by W. Va. Code § 22C-3-4.

2.1.e. "Commercial Solid Waste Facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis, and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation, and similar applications.

2.1.f. "Director" means the appointed executive director of the West Virginia Solid Waste Management Board.

2.1.g. "Examination" includes an audit or review as defined in W. Va. Code § 6-9-1a.

2.1.h. "Financial audit" includes financial statement audits and financial related audits, as defined by government auditing standards and conducted by the WV State Auditor's office or designee.

2.1.i. "Improvement Consultants" means a team of experienced professionals in the field of solid waste management, appointed by the director, to conduct on-site reviews and make strategic recommendations toward remedy of serious impairments at a commercial solid waste facility operated by a county or regional solid waste authority.

2.1.j. "Impairment" means any operational, financial, managerial or any other practice(s) which diminishes the current or future efficient and/or effective operation of a solid waste authority or its commercial solid waste facility.

2.1.k. "Internal Controls" are procedures and devices that serve to monitor routines, in an effort to eliminate error or impropriety.

2.1.l. "Performance Measure" means outcomes and outputs. "Outcomes" represent effects or results of programs. "Outputs" represent the units of services or activities produced.

2.1.m. "Performance Review" means an accountability system which establishes benchmarks to evaluate and determine the effective and efficient performance of a county or regional solid waste authority operating a commercial solid waste facility.

2.1.n. "Program" means solid waste disposal, recycling, composting, reduction, transferring or other solid waste management practices or any combination thereof.

2.1.o. "Review" means an inquiry or analytical procedure that provides the auditor with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting and conducted by the WV State Auditor's office or designee.

2.1.p. "Seriously impaired" means any operational, financial, managerial or other practice(s) which adversely affects the current or future efficient and/or effective operation of a solid waste authority or its commercial solid waste facility.

2.1.q. "Solid Waste Authority" means a county or regional governmental agency as defined in W. Va. Code § 22C-3-3, and also as created and established by W. Va. Code § 22C-4-3 and 22C-4-4.

2.1.r. "Supersedure" means the temporary intervention by the West Virginia Solid Waste Management Board to exercise in part or whole, the powers granted to only county or regional solid waste authorities that operate solid waste facilities as provided in chapters seven, twenty two, twenty two-c and twenty-four of the W. Va. Code, and as provided in W.Va. Code § 22C-3-26.

2.1.s. "Uniform Chart of Accounts" means delineating common revenue and expense account naming conventions to be used by all solid waste authorities as provided in § 22C-4-9a(i).

§ 54-6-3. Performance Measures for Accountability.

3.1. Written quarterly reports shall be submitted to the Board by a solid waste authority operating a commercial solid waste facility on forms provided by the Board. The performance measurement report shall include, but is not limited to, accurate information in the areas of regulatory/statutory compliance, financial records, business operations management, number of full and part-time employees, program outcomes and outputs. A solid waste authority shall provide the performance measurement data, based on a calendar year's quarter, by the last day of the month following each quarter. Data shall be submitted more frequently if required by the Board. The last quarterly report of each calendar year shall also include a copy of the solid waste facility's annual operating report required by 33 CSR 1-4.12.g.

§ 54-6-4. Performance Review.

4.1. A performance review by the Board shall be conducted at least once every two years of each county and regional solid waste authority that operates a commercial solid waste facility. The review shall benchmark both the performance of the county or regional solid waste authority and its commercial solid waste facility. Provided that the performance review shall not duplicate areas of environmental regulatory oversight performed by the Department of Environmental Protection

4.1.a. Notification - The director will send a standard letter notifying the county or regional solid waste authority of the upcoming performance review. The letter should include:

4.1.a.1. Statutory and regulatory authority for conducting the review;

4.1.a.2. A request to hold an entrance conference;

4.1.a.3. Identification of assigned Board staff; and

4.1.a.4. A request for advanced information such as an organizational chart, bylaws, policies and procedures, annual operations report, budgetary documents, minutes of solid waste authority board meetings, etc.

4.1.b. Criteria to Evaluate - The Board's performance review shall, at a minimum, evaluate the following criteria of the county or regional solid waste authority:

4.1.b.1. Agency appointments to board of directors, vacancies and attendance record of board members;

4.1.b.2. Review of all business operations including but not limited to, financial/administrative functions, loans, notes or lines of credit, contracts, agreements and procurement practice, pending or potential litigation involving more than five thousand dollars ($5,000);

4.1.b.3. Review or recommend solid waste management training/education for the solid waste authority's board and staff members;

4.1.b.4. Solid waste authority's general status of compliance with W. Va. Code, Chapter 22C, Article 4 (County and Regional Solid Waste Authorities Act);

4.1.b.5. Operation of composting activities and facilities, or operation of recycling activities and facilities, or operation of drop-off locations for solid waste and composting activity or facility, and

4.1.b.6. Other criteria as determined by the director for evaluation.

4.1.c. The Board's performance review shall also evaluate the effective and efficient operation of the county or regional solid waste authority's commercial solid waste facility including but not limited to recordkeeping, internal controls, equipment maintenance and procurement and overall safety program.

§ 54-6-5. Benchmarking

5.1. In order to evaluate and determine performance of a solid waste authority and its commercial solid waste facility, benchmarks will be used in, but not limited to, the following areas:

5.1.a. Compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.

5.1.b. Financial accountability including but not limited to examinations on financial records, loan payments, and debt leveraging.

5.1.c. General business procedures and training programs.

§ 54-6-6. Performance Review Categories.

6.1. Each member of the solid waste authority's board of directors shall receive a copy of the Final Performance Review, which shall identify any impairments that exist requiring corrective action by the solid waste authority. Based upon the final performance review the solid waste authority and its commercial solid waste facility shall be placed in one of the following categories:

6.1.a. "Satisfactory," when the Board determines that the solid waste authority's performance and progress allows for a efficient and/or effective operation.

6.1.b. "Impaired," when the Board determines that any operational, financial, managerial or other practice by the solid waste authority, diminishes the current or future efficient and/or effective operation of the authority's commercial solid waste facility.

6.1.c. "Seriously Impaired," when the Board determines that any operational, financial, managerial or other practice by the solid waste authority, has adversely affected the current or future efficient and/or effective operation of the solid waste authority's commercial solid waste facility.

§ 54-6-7. Process for Correcting Impairments.

7.1. A solid waste authority placed in a category of impaired or seriously impaired shall correct the impairments within ninety (90) days after receiving the final performance review which begins the intervention process. Any impairment to be corrected shall not duplicate or conflict with regulatory oversight performed by the Department of Environmental Protection. Provided, That prior to correction the director may require the solid waste authority to employ an appropriate professional such as an engineer, accountant or planner to make strategic recommendations for remedy. Upon written request of the solid waste authority's board, the Board may determine that extraordinary circumstances necessitate an extension of time to correct serious impairments. Provided, However, the Board or its director as part of the intervention process may at any time require but is not limited to the following:

7.1.a. Appoint a team of improvement consultants specific to the area of impairment(s) to conduct on-site reviews and make strategic recommendations toward remedy of serious impairments.

7.1.a.1. The team of improvement consultants may include representatives from the Board, solid waste authority, Department of Environmental Protection, Public Service Commission, State Auditor's Office and if deemed necessary by the Board, representatives from the private sector.

7.1.a.2. Costs associated with representatives from the private sector to be the responsibility of the solid waste authority.

7.1.b.Require that the solid waste authority's board prioritize and target its funds strategically toward alleviating the serious impairments.

7.1.c. Require the solid waste authority to prepare an annual fiscal budget, which must be submitted to the Board for approval.

7.1.d. Recommend to the agencies that appoint the members to the solid waste authority's board of directors that one or more members of the solid waste authority's board of directors be replaced.

7.1.e. The director or his or her designee, may preside as chair of the solid waste authority board meetings during intervention.

7.1.f. After receiving a final performance review or through regular monitoring of performance measures that identify serious impairments, a solid waste authority shall not be eligible to receive grant funds from the Board's grant program in accordance with 54CSR5-4.5 or from the Department of Environmental Protection's recycling grant program, in accordance with 58CSR5-10.7 until such impairments have been corrected. Provided, That the Board or the Department of Environmental Protection may, at their discretion, award grant funds if they determine that the specific purpose of such funds is to correct the serious impairments.

7.1.g. The director shall notify the solid waste authority in writing that the temporary intervention has ended only after a determination by the Board that impairments have been corrected.

§ 54-6-8. Supersedure over Solid Waste Authorities.

8.1. The Board may by resolution supersede and exercise, in part or whole, the powers granted to only county or regional solid waste authorities that operate commercial solid waste facilities as provided by W. Va Code §22C-3-26 which are impaired or seriously impaired, following the 90-day improvement period.

8.2 Actions of the Board supersede those powers granted to such solid waste authorities. Provided, That nothing in this rule relieves the solid waste authority of its legal duties, obligations or liabilities incident to the ownership or operation of its solid waste facility.