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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 57 Series 1: "Commercial Hazardous Waste Management

Facility Siting Board Certification Requirements"
Type of Rule: xx Legislative Interpretive Procedural

Agency The Commercial Hazardous Waste Management Facility Siting Board

Address _____

1. Effect of Proposed Rule

| | ANNUAL FISCAL YEAR | | | | |
|-----------------------------|--------------------|----------|---------|------|-------------|
| | INCREASE | DECREASE | CURRENT | NEW | INTERPRETER |
| <u>ESTIMATED TOTAL COST</u> | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| PERSONAL SERVICES | | | | | |
| CURRENT EXPENSE | | | | | |
| REPAIRS & ALTERNATIONS | | | | | |
| EQUIPMENT | | | | | |
| OTHER | | | | | |

2. Explanation of above estimates: All expenses incurred will be reimbursed from Siting Application fees.

3. Objectives of these rules: These regulations establish the procedures for obtaining a Certificate of Site Approval prior to the construction of a commercial hazardous waste management facility.

Rule Title: Title 47 Series 35A; "Commercial Hazardous Waste Management Facility Siting Fees"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

No impact.

C. Economic Impact on Citizens/Public at Large.

No impact.

Date:

July 1, 1993

Signature of Agency Head or Authorized Representative

Berge F. Potter, Chair
CHWMA Siting Board

FILED

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DATE: August 16, 1993

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Commercial Hazardous Waste Management Facility Siting Board

LEGISLATIVE RULE TITLE: "Commercial Hazardous Waste Management Facility Siting Board Certification Requirements"

1. Authorizing statute(s) citation

WV Code §20-10-3(j)

2. a. Date filed in State Register with Notice of Hearing:

July 6, 1993

b. What other notice, including advertising, did you give of the hearing?

Newspaper and Radio Advertisements

c. Date of hearing(s): August 10, 1993

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached XX No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 16, 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Dale Moncer -- Office of Waste Management

1356 Hansford Street Charleston, WV 25301

558-5929

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Filed July 6, 1993 No real issues--held hearing to receive
additional comments after 30 day comment period.

b. Date of hearing: August 10, 1993

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

August 16, 1993

d. Attach findings and determinations and reasons:

Attached ☒ XX

SUMMARY TO A LEGISLATIVE RULE CONCERNING THE
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD REGULATIONS

AGENCY: Department of Commerce, Labor and Environmental Resources
Division of Environmental Protection
Office of Waste Management

Regulation: Title 57 Series 1
"Commercial Hazardous Waste Management Facility
Siting Board Certification Requirements"

Authority: West Virginia Code §20-10-3(j)

Action: Filing of a Legislative Rule

On April 8, 1989, the Commercial Hazardous Waste Management Facility Siting Board (CHWMFSB) Act became effective. It established the Board itself, and directed that regulations be promulgated for the siting of commercial hazardous waste facilities.

This proposed Legislative Rule will establish the procedures whereby an applicant can file a Pre-Siting Notice and/or a Siting Application with the CHWMF Siting Board.

TITLE 57
LEGISLATIVE RULES
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD

SERIES 1
CERTIFICATION REQUIREMENTS

§57-1-1. General.

1.1. Scope and Purpose. -- These regulations establish the procedures for obtaining a Certificate of Site Approval prior to the construction of a commercial hazardous waste management facility. By no means do these regulations permit the operation of a commercial hazardous waste management facility, they may only approve or reject the proposed location of a commercial hazardous waste management facility.

1.2. Authority. -- West Virginia Code §20-10-3(j).

1.3. Filing Date. --

1.4. Effective Date. --

§57-1-2. Definitions.

2.1. "Board" means the Commercial Hazardous Waste Management Siting Board established pursuant to West Virginia Code §20-10-3.

2.2. "Commercial Hazardous Waste Management Facility" or "Commercial Facility" means any hazardous waste treatment, storage, or disposal facility, ~~including incinerators,~~ which accepts hazardous waste, as identified or listed by the Director of the Division of Environmental Protection under Title 47, Series 35 "Hazardous Waste Management Regulations" of the West Virginia State Code of Regulations (47 C.S.R. 35), generated by sources other than the owner or operator of the facility and shall not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous waste created by that person or such person or other persons on a cost-sharing or nonprofit basis.

2.3. "Construction" as used in these regulations, means:

2.3.1. For new commercial facilities, pursuant to §20-10-3(c), the significant alteration (as determined by the Board) of a site to install, or the installation of permanent equipment or structures;

2.3.2. For existing commercial facilities, an alteration or expansion that increases the capacity of the facility to accept fifty percent (50%) more hazardous waste, or any change in design or process that results in a substantially different type of facility (e.g., disposal facility being converted to a storage facility).

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~~Comment:~~ 2.3.3. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, or acquisition of options to purchase and other similar activities normally incident thereto.

2.4. "Hazardous Waste Management Facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. A facility may consist of one (1) or more treatment, storage or disposal operational units. For the purposes of these regulations, it does not include:

2.4.1. Facilities for the treatment, storage or disposal of hazardous wastes principally as fuels in an on-site production process; or

2.4.2. Facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

2.5. "Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this state or any other state, municipality, county commission, or any other political subdivision of a state or interstate body.

2.6. All other terms shall have the meaning prescribed in Title 47, Series 35 "Hazardous Waste Management Regulations" of the West Virginia Code of State Regulations (47 C.S.R. 35).

\$57-1-3. Exclusions From the Commercial Hazardous Waste Management Facility Siting Board Regulations.

3.1. ~~Commercial~~ A hazardous waste management facility, as defined in Section 2 of these regulations, shall be exempt from these regulations if: ~~they can demonstrate to the Board that:~~

3.1.1. It is owned and operated by a person(s) solely for the treatment, storage, disposal, or recycling of hazardous waste generated by that person or that person and others on a cost-sharing, nonprofit basis;

3.1.2. The facility treats, stores, disposes, or recycles hazardous wastes used principally as fuels in an on-site production process;

3.1.3. The facility is used exclusively for the pretreatment of wastes discharged directly to a publicly-owned sewage treatment works (POTW).

3.2. Upon receiving a written request from the owner or operator of a facility, the Board may allow, without going through the procedures of this article, any changes in the facilities which are designed:

3.2.1. To prevent a threat to human health or the environment because of an emergency situation;

3.2.2. To comply with federal or state laws and regulations;

3.2.3. To result in demonstrably safer or environmentally more acceptable processes.

§57-1-4. Applying for Site Approval.

4.1. Prior to submitting a siting application to the Board, the applicant for a commercial hazardous waste management facility shall file pre-siting notices, publish legal notices as prescribed in Chapter 20, Article 10A, Section 3 of the West Virginia Code, and hold a public information hearing in the proposed host community. Then the referendum process shall be carried forth. See Siting Flow Chart (Appendix I) and Pre-Siting Notice (Appendix II).

4.2. After the pre-siting procedure has been executed, and if the referendum indicates that a majority of the legal votes cast upon the question be in favor of the facility, any person(s) wanting to construct or operate a commercial hazardous waste management facility must obtain an application outline from the Board. Applications that do not explicitly follow the outline will be deemed incomplete. See Completeness Outline (Appendix III).

4.3. Any person(s) wanting to construct or operate a commercial hazardous waste management facility must submit to the Board, the information required under Title 47, Series 35, Hazardous Waste Management Regulations, Sections 11.5.1.1 through 11.5.1.m. of the West Virginia Code of State Regulations.

4.4. Such person(s) must submit an indication of whether this is a new or revised application.

4.5. Such person(s) must submit a descriptive history of any previous hazardous waste management activities in which the owner and/or operator was or is involved.

4.6. In addition to the information required under Section 4.3 and 4.5 of these regulations, the applicant must also submit the following information:

4.6.1. A drawing of the commercial facility at a scale of one inch equal to not more than one hundred feet (1" = 100') showing the location, where applicable, of all past, present, and future hazardous waste treatment, storage, disposal, and recycling areas. Existing facilities must provide photographs of the same;

4.6.2. A 7.5 minute series USGS topographic map showing a distance of one thousand (1,000) feet around the commercial facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet) if relief is less than 6.1 meters (20 feet). Owners and operators of commercial hazardous waste facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- 4.6.2.a. Map scale and date;
- 4.6.2.b. 100-year floodplain area;
- 4.6.2.c. Surface waters including intermittent streams;
- 4.6.2.d. Surrounding land uses (e.g., residential, commercial, agricultural, recreational, schools, hospitals, institutions and other businesses);
- 4.6.2.e. A wind rose (i.e., prevailing wind speed and direction);
- 4.6.2.f. Orientation of the map (north arrow);
- 4.6.2.g. Legal boundaries of the commercial hazardous waste management facility site;
- 4.6.2.h. Access control (e.g., fences, gates);
- 4.6.2.i. Injection and withdrawal wells both on-site and off-site;
- 4.6.2.j. Buildings, treatment, storage, or disposal operations or other structures (e.g., recreation areas; runoff control systems; access and internal roads; storm, sanitary, and process sewage systems; loading and unloading areas; and fire control facilities);
- 4.6.2.k. Barriers for drainage or flood control; and
- 4.6.2.l. Location of operational units within the commercial hazardous waste management facility site, where hazardous waste is or will be treated, stored, or disposed (include equipment clean-up areas); and

4.6.3. A listing of all permits or construction approvals received or pending as required under Title 47, Series 35, Section 11.4.1.j of the West Virginia Code of State Regulations;

4.6.4. The Standard Industrial Classification Codes (SIC) that reflect the types of hazardous waste generators to be served by the commercial facility;

4.6.5. A detailed written analysis along with supporting documentation that addresses the nature of the probable environmental and economic impacts of the commercial facility to include, but not limited to the following:

4.6.5.a. The predictable adverse impacts on:

- 4.6.5.a.1. Wetlands;
- 4.6.5.a.2. Farmlands;
- 4.6.5.a.3. Surface water;
- 4.6.5.a.4. Groundwater;
- 4.6.5.a.5. Wildlife;
- 4.6.5.a.6. Endangered species;
- 4.6.5.a.7. Public health and safety;
- 4.6.5.a.8. Transportation networks;
- 4.6.5.a.9. Historic, cultural, and recreational areas;
- 4.6.5.a.10. Air quality;
- 4.6.5.a.11. Counties or communities adjacent to the proposed host community.

Note: If there is a potential for adverse impacts beyond the host community, the Board shall notify the respective County Commission(s) and publish a Class I-O legal advertisement identifying those impacts in a newspaper published in that county(s).

4.6.5.b. An evaluation of and a plan for measures that will mitigate such effects.

4.6.6. The information required under Title 47, Series 35, Section 11.2.9 (exposure information) of the West Virginia Code of State Regulations, except that such information shall be required of all commercial hazardous waste management facilities regardless of the type of management practice employed. Such information shall include a quantitative assessment of the degree of health risk to human populations magnitude and nature of human exposure within a four (4) mile radius of the proposed facility. This assessment shall consider and discuss:

4.6.6.a. Chronic and acute exposure scenarios;

4.6.6.b. Carcinogenic, teratogenic, systemic or other health risks, as appropriate;

4.6.6.c. The above scenarios and risks quantitatively, to the extent possible, as per the Board; and

4.6.6.d. Each pathway identified pursuant to Title 47, Series 35, "Hazardous Waste Management Regulations," Section 11.2.9.a.1 of the West Virginia Code of State Regulations.

4.6.7. The nature of expected environmental benefits;

4.6.8. The nature of expected economic benefits likely to be derived from the commercial facility;

4.6.9. The activities to be conducted at the commercial facility;

4.6.10. A list of hazardous wastes (include EPA Hazardous Waste Codes) that will be received by the commercial facility; their respective annual volumes; and the type of treatment, storage, or disposal;

4.6.11. The latitude and longitude of the commercial facility;

4.6.12. The names, addresses, and telephone numbers of the owner, operator, and principal shareholders of the facility.

4.7. The applicant shall submit twenty (20) copies of the completed application to the Board.

4.8. Signatories to the Application. The following statement must precede any required signatures.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with measures designed to assure that qualified personnel gathered and evaluated the information submitted. Based upon my inquiry of those persons directly involved with the preparation of this application, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false or misleading information, including the possibility of fine and imprisonment for knowing violations."

4.8.1. The application must be signed by the following person(s):

4.8.1.a. For a corporation, the "responsible corporate officer" as defined in Title 47, Series 35, Section 2 (47 C.S.R. 35-2) of the West Virginia Code of State Regulations;

4.8.1.b. For a partnership or sole proprietorship, by a general partner or proprietor, respectively; or

4.8.1.c. For a municipality, State, federal, or other public agency, by either the principal executive officer, or ranking elected official.

4.9. On or before sixty (60) calendar days of the receipt of the application for Site Approval by the Board, the Board shall mail written notice to the applicant as to whether or not the application is complete. If the application is determined to be incomplete, the Board shall notify the applicant and assess the resubmittal fees pursuant to Title 47, Series 35A (47 C.S.R. 35A). When the application has been determined to be complete, the Board shall notify the applicant and the County Commission of the intended host county and the County Commissions of all Counties within the 4 mile radius of the quantitative assessment required under Section 4.6.6 of these regulations. The County Commission of the host County shall, within thirty (30) calendar days of such notice, appoint two (2) ad hoc members to the Board to act upon the application.

Note: When a commercial facility or proposed commercial facility is owned and operated by different persons, it is the operator's obligation to submit the application, but the owner must also sign the application.

§57-1-5. Determination of Completeness and Notification.

5.1. Within thirty (30) calendar days upon the Board's determination that the application is complete, the Board shall, at the expense of the applicant, do the following:

5.1.1. Publish in the State Register a notice of a public comment period and a public hearing and provide a copy of the application to the public library in the proposed host community (or the most proximate library) for public inspection;

5.1.1.a. The public hearing shall be held within sixty (60) calendar days of the Board's determination of the completeness of the application;

5.1.1.b. The public hearing shall be in the county in which the commercial facility is proposed to be located, and at a location convenient to a population center nearest to the proposed facility location;

5.1.1.c. An accurate record, transcribed at the applicant's expense, of the hearing shall be kept by the Board (i.e., cassette recording, stenographer);

5.1.1.d. The close of the hearing shall also end the written comment period. No written comments received after the close of the hearing will be considered, except as provided under Section 5.1.1.e of these regulations;

5.1.1.e. The Board shall reopen the public comment period and schedule an additional public hearing if the Board finds it necessary for additional input on any unsettled issues concerning the application;

5.1.1.f. The Board will make transcripts of the hearing available through the Division of Environmental Protections Public Information Office at a reasonable cost;

5.1.2. Provide written notice to the Chief Executive Officer of each affected municipality in which the proposed commercial facility is to be located; and

5.1.3. Direct the applicant to publish a Class I-O legal advertisement in at least two (2) daily or weekly newspapers having circulation within the vicinity of the proposed commercial facility. The legal advertisement shall identify the proposed location; the type of facility and activities involved; the name of the owner and the operator; the date, time, and place that the Board will convene a public hearing regarding the application; an address to which written comments can be sent; and the name, address, and telephone number of a person from whom interested parties may obtain further information, including copies of the application.

Note: A qualified daily or weekly newspaper shall meet the criteria of West Virginia Code §59-3-1(b).

§57-1-6. Approval or Denial of Application.

6.1. Upon completion of the public hearing, the Board shall render a decision based upon written and oral comments received concerning the application, the application and the record as set forth in Sections 4. and 5. of these regulations, and the WV Code §20-10-3(i).

6.2. Before a decision is made, the Board may seek consultation from the applicant or the Division of Environmental Protection if clarification is needed regarding the application and any comments received.

6.3. Within sixty (60) calendar days of the public hearing the Board shall render one of the following decisions:

6.3.1. Grant Certificate of Site Approval;

6.3.2. Grant Conditional Certificate of Site Approval; or

6.3.3. Deny Certificate of Site Approval.

6.4. Immediately upon the decision of the Board, the Board shall send a written ~~notification~~ decision to the applicant. The written ~~notification~~ decision shall enumerate its findings and conclusions, and be sent by certified mail. The written decision shall be available to the public upon request.

6.5. Any person, pursuant to West Virginia Code §§20-10-6 and 20-10-7, having an interest adversely affected by the decision of the Board is entitled to judicial review thereof in the Circuit Court of Kanawha County, or the county in which the public hearing took place, by filing a petition with the court within sixty (60) calendar days of the Board's written decision.

Note: The certification process is outlined in Appendix I of these regulations.

§57-1-7. Effect of Certification.

7.1. The approval and conditions thereto of the Certificate of Site Approval shall supersede any local ordinance or regulation that is inconsistent or conflicts with the terms contained in the Certificate of Site Approval.

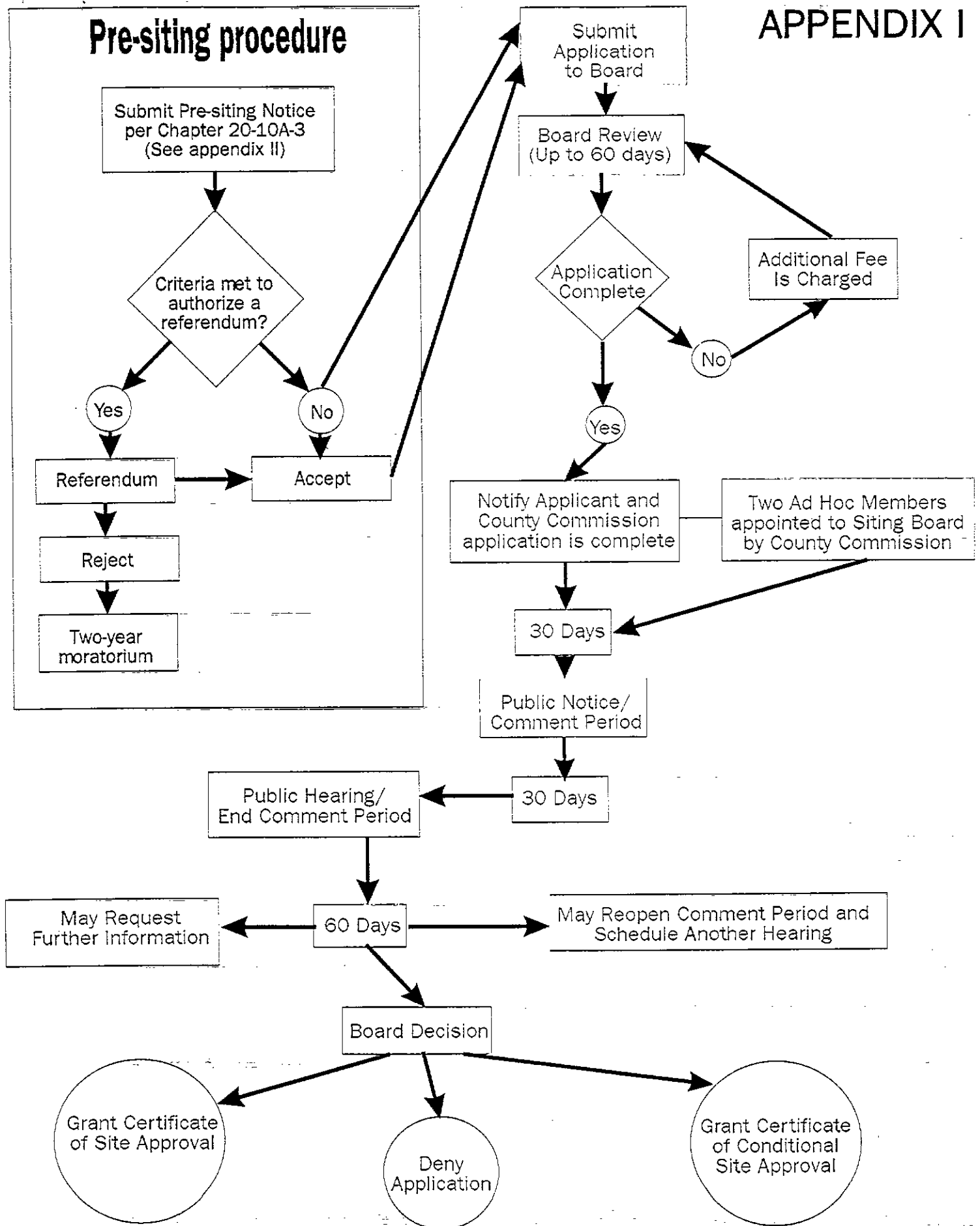
7.2. Nothing in these regulations shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the approval certificate.

Note: There may be state or federal laws which pre-empt or supercede, or otherwise preclude or restrict the enforcement of local regulations and ordinances.

7.3. Commercial facility site approval will not preclude or excuse the applicant from any required permits or approvals under any State or federal laws and regulations.

APPENDIX I

Pre-siting procedure



APPENDIX II

West Virginia Commercial Hazardous Waste Management Facility Siting Board

Pre-Siting Notice Outline

The Pre-Siting Notice shall contain, at a minimum, the following information in an outline format:

- I. Name of owner(s) and description of prior hazardous waste management experience.
- II. Name of operator(s) and description of prior hazardous waste management experience.
- III. Type of facility (ie. hazardous waste management processes to be employed).
- IV. Volume, type and source of wastes to be managed.
- V. A topographic map of the proposed facility and its environs. The contour interval of the map shall be sufficient to clearly show the pattern of surface water flow. The map shall also include:
 - Map scale and date;
 - 100 year floodplain;
 - Surface waters, including intermittent streams;
 - Surrounding land uses;
 - Locations of schools, hospitals, recreational facilities and other public institutions and places, major businesses or commercial activities;
 - Wind rose;
 - Orientation of map;
 - Municipal and county boundaries;
 - Injection and withdrawal wells.
- VI. Synopsis of potential adverse impacts.
- VII. Synopsis of potential beneficial impacts.

APPENDIX III

INSTRUCTIONS FOR OBTAINING A CERTIFICATE OF SITE APPROVAL

Siting Fee

Each application shall be accompanied by a money order or a cashier's check made payable to "The Commercial Hazardous Waste Management Facility Siting Fund" in the amount specified in Section 3.1 of Title 47, Series 35A (Commercial Hazardous Waste Management Facility Siting Fees). An additional fee in the amount specified in Section 3.3 of Title 47, Series 35A shall be paid by the applicant for each incomplete application that must be resubmitted to the Board, or for any subsequent modifications offered by the applicant after the Board has determined that the application is complete pursuant to the "Commercial Hazardous Waste Management Facility Siting Board Regulations" under Title 56, Series 1.

Number of Copies

Twenty (20) complete sets of the application are to be submitted to the Board at the following address:

Format

An outline is attached which describes the requirements for siting approval. Part I specifies the items to be submitted as part of the application and the format in which these are to be provided. Part II specifies the duties of the Siting Board.

Effect of Certification

The approval and conditions of the Certificate of Site Approval shall supersede any local ordinance or regulation that is inconsistent or conflicts with the terms in the Certificate of Site Approval, but will not preclude or excuse the applicant from any required permits or approvals under any State or federal laws and regulations.

WEST VIRGINIA SITING APPLICATION FORMAT

PART 1

References are to Sections of the following West Virginia Administrative Regulations: The Certification Requirements of the Commercial Hazardous Waste Management Facility Siting Board (Title 56, Series 1), the Commercial Hazardous Waste Management Siting Fees (Title 47, Series 35A), and The Hazardous Waste Management Regulations (Title 47, Series 35).

| | | Page No. |
|-------|---|-------------|
| A. | FACILITY DESCRIPTION | |
| A-1. | General Description: 4.6.9, 4.6.10 (Title 56, Series 1) | _____ |
| | 1. Describe activities to be conducted at the facility: | _____ |
| | - type of treatment, storage, or disposal | |
| | - types of wastes and industries served | |
| | - list of hazardous wastes; including: | |
| | - EPA hazardous waste codes | |
| | - their respective volumes | |
| | 2. Provide descriptive history: | _____ |
| | - previous hazardous waste management activities | |
| | - present hazardous waste management activities | |
| | - SIC Codes applicable to the hazardous waste facility | |
| | - listing of all permits or construction approvals received or pending as required under Title 47, Series 35, Section 11.4.1.j. | |
| | 3. Latitude and longitude of the facility | _____ |
| | 4. Names, addresses, and telephone numbers of the owner, operator, and principal shareholders of the facility. | _____ |
| A-2. | Maps and Drawings: 4.6 (Title 56, Series 1) | _____ |
| A-2a. | General Requirements for Drawing: | _____ |
| | 1. Scale | |
| | - Must be 1" to 100' (or less) | |
| | 2. Indicate (where applicable) location of all past, present, and future hazardous waste treatment, storage, disposal, and recycling areas. | |

A-2b. General Requirements for topographic map _____

1. Scale _____

No.

- 7.5 minute series USGS topographic map
- Must be 1" to 200' (or less)

2. Contour interval _____

- Must be sufficient to determine pattern of surface water flow (5 feet if relief is greater than 20 feet; 2 feet if less than 20 feet; larger contour interval if located on mountains).

3. Coverage _____

- At least 1000 feet around the facility _____

4. Show the following (more than one topo map or drawing may be used for clarity): _____

- map scale
- date
- 100-year floodplain area
- surface water (including intermittent streams)
- wind rose (prevailing wind speed and direction)
- map orientation
- legal boundaries of hazardous waste management facility site
- access control
- injection and withdrawal wells (on-site and off-site)
- buildings and other structures
- sewers (process, storm, sanitary)
- loading and unloading areas
- access and internal roads
- fire control facilities
- run-off control systems
- flood control or drainage barriers
- location of operational TSD units within hazardous waste management facility site
- equipment clean-up areas
- surrounding land uses (e.g., residential, commercial, agricultural, recreational, schools, hospitals, institutions, and other businesses)

A-3. Facility Location Information: 4.3 (Title 56, Series 1), _____
11.5.1.1 (Title 47, Series 35)

A-3a. Location Standards: 11.5.1.1, 12 (Title 47, Series 35) _____

A-3a(1). Seismic Considerations 11.5.1.1.1 (Title 47, Series 35) _____

1. No faults within 3,000 feet of facility based on data from:

- U.S. Geological Survey (USGS) Publications
- USGS Aerial Reconnaissance within 5 miles
- aerial photo analysis within 3,000 feet
- reconnaissance based on walking area within 3,000 feet, or

2. No faults within 200 feet of facility's hazardous waste management activity based on data from:
 - a comprehensive geologic analysis of the site
 - subsurface exploration (trenching) if necessary

A-3a(2). Karst Terrain Standard: 11.5.1.1.2 (Title 47, Series 35) _____

1. No solution cavities underlying or possibly influencing the site based upon:
 - U.S. Geological Survey and WV Geological and Economic fracture trend maps and Karst subsidence maps.
 - test borings and engineering analysis sufficient to determine overburden stability.

A-3a(3). Subsurface Mining Area Standard: 11.5.1.1.3 (Title 47, Series 35) _____

1. Facility not within 1,000 feet of a probable area of subsidence influence based upon:
 - WV Department of Mines reports and maps
 - U.S. Bureau of Mines maps
 - provide calculations (include angle of draw) if necessary

A-3a(4). Critical Recharge Standard: 11.5.1.1.4 (Title 47, Series 35) _____

1. Not within an area which serves to recharge a public groundwater supply based upon:
 - U.S. Geological Survey Maps
 - Office of Water Resources
 - Department of Health and Human Resources

A-3a(5). Wetlands Standard: 11.5.1.1.5 (Title 47, Series 35) _____

1. Not within or in an area influencing a wetlands based upon:
 - U.S. Geological Survey Maps
 - WV Division of Natural Resources, Section of Wildlife Resources.
 - demonstrate that the site is not within, or topographically or hydrogeologically upgradient from a wetland.

A-3a(6). Dam-related Flood Standard: 11.5.1.1.6 (Title 47, Series 35) _____

1. Not within a floodpool
2. Not within danger-reach of unpermitted dam
 - document dam permit or approval
 - provide danger-reach flood level

3. Sources of information include:

- U.S. Army Corps of Engineers reports
- U.S. Geological Survey maps
- Office of Water Resources

A-3a(7). Floodplain Standard: 11.5.1.1.7, 11.5.1.1.8, 11.5.1.1.9
(Title 47, Series 35)

1. Provide documentation as to whether the facility will be located in the 100-year floodplain based upon:
 - Federal Insurance Administration (FIA) flood map
 - provide calculations and maps used where FIA map is not available.
 - other sources of information
 - U.S. Army Corps of Engineers
 - Soil Conservation Service
 - U.S. Geological Survey
 - identify the 100 year flood level and any other special flooding (e.g. wave action).

A-3a(8). Demonstration of Compliance: 11.5.1.1.9, 12.1.7 (Title 47, Series 35)

1. If the facility is located within the 100 year floodplain, it must be designed, constructed, operated and maintained to prevent washout of hazardous waste by either:
 - floodproofing and flood protection measures; or
 - flood plan

A-3a(9). Flood Proofing and Flood Protection: 11.5.1.1.8 (Title 47, Series 35)

1. Provide the following:
 - engineering analysis of hydrodynamic and hydrostatic forces expected from a 100-year flood.
 - structural or other engineering studies of the design of the hazardous waste units and flood protection devices (e.g. floodwalls, dikes) and how they will prevent washout.

A-3a(10) Flood Plan: 11.5.1.1.8 (Title 47, Series 35)

1. Describe procedures for removing waste before flooding:
 - timing relative to flood levels including time estimated to remove waste.
 - location to which waste will be moved and demonstration that the new location is eligible to receive waste in accordance with the regulation under Sections 8 and 11, (Title 47, Series 35).

- procedures, equipment, and personnel to be used and means to ensure they will be available in time for use.
- potential for accidental discharge during movement

B. ENVIRONMENTAL ANALYSIS: 4.6.5 (Title 56, Series 1)

B-1. Provide a written analysis of environmental and economic impacts of the facility, including, but not limited to the following: _____

1. Predictable adverse impacts on: _____

- Wetlands
- Farmlands
- Surface Water
- Groundwater
- Wildlife
- Endangered Species
- Public Health and Safety
- Transportation networks
- Historical, cultural, and recreational areas
- Air Quality
- Counties or communities adjacent to proposed host community

2. Mitigation of such effects _____

- Evaluate and provide plan for mitigation

B-2. Exposure Information and Quantitative Assessment: 4.6.6 (Title 56, Series 1), 11.2.9 (Title 47, Series 35)

B-2a. Provide information on potential for public to be exposed to hazardous wastes or hazardous constituents through releases from the unit, including: _____

1. Potential releases from normal operations and accidents at the unit, including transportation to and from the unit.
2. Potential pathways of human exposure resulting from the release.
3. Potential magnitude and nature of human exposure due to the release.

B-2b. Quantitative Assessment of Health Risks _____

This assessment shall consider and discuss the following, quantitatively and for each pathway identified: _____

No. _____

1. Assessment of risk to human populations within a four (4) mile radius of the proposed facility.
2. Acute and chronic exposure scenarios.

3. Carcinogenic, teratogenic, systemic or other health risks,
as appropriate.

B-3. Describe expected environmental benefits. _____

B-4. Describe expected economic benefits. _____

C. ADDITIONAL INFORMATION REQUIRED: 4.4 (Title 56, Series 1)

C-1. Indicate whether this is a new or revised application: 4.4
(Title 56, Series 1). _____

C-2. Provide a statement which indicates that, when the application
is deemed to be complete by the Board, a legal advertisement
containing required information will be published in at least 2
newspapers in vicinity of proposed location: 5.1.3 (Title 56,
Series 1). _____

D. SIGNATORIES TO THE APPLICATION: 4.8 (Title 56, Series 1)

D-1. The required signature shall accompany the certification
statement of Section 4.8 of Title 56, Series 1. _____

D-2. The application must be signed in accordance with
Sections 4.8.1 and 4.9 of Title 56, Series 1. _____

D-3. Submit twenty copies of the completed application to
the Board.

PART II
ACTIONS REQUIRED TO BE TAKEN BY THE SITING BOARD

A. NOTIFICATION TO APPLICANT AND COUNTY COMMISSIONS: 4.6.5.a.11.,
4.9 (Title 56, Series 1).

A-1. The Board shall, within 60 days of receipt of application,
mail written notice to applicant as to whether or not the
application is complete.

1. If incomplete, the Board shall:
 - Notify applicant of incompleteness
 - Assess resubmittal fees
2. When complete, the Board shall notify the following persons
of the quantitative assessment required:
 - County Commission of host county
 - County Commissions of all counties within a 4 mile radius

NOTE: The County Commission must appoint 2 ad hoc
members to the Board within 30 days of the notice.

A-2. The Board shall, if potential adverse impacts beyond host
community are identified, perform the following:

1. Notify the respective County Commission(s).
2. Publish Class I-O legal advertisement in that county's
newspaper identifying impacts.

B. DETERMINATION OF COMPLETENESS AND NOTIFICATION: 5 (Title 56,
Series 1)

B-1. The Board shall perform the following within 30 calendar days
after the Board's determination that the application is complete:

1. Publish the following information in the State Register:
 - notice of public comment period
 - notice of public hearing
2. Provide copy of the application to public library in
proposed host community (or in closest library) for public
inspection.
3. Hold the public hearing within 60 calendar days of
completeness determination.
4. Hold the public hearing in the county:
 - where the facility is to be located.
 - convenient to a population center nearest to the
proposed facility location.

5. Keep an accurate record (transcription) of the hearing.
(At the applicant's expense.)
6. Consider no written comments after close of hearing.
(Except as provided under Section 5.1.1.e (Title 56, Series 1.)
7. Reopen public comment public period and schedule additional public hearing, if necessary, for unsettled issues.
8. Make transcripts of the hearing available through the Office of Waste Management Public Information Office.
9. Provide written notice to Chief Executive Officer in affected municipality.
10. Direct applicant to publish legal advertisement containing required information in at least 2 newspapers in vicinity of proposed location.

C. APPROVAL OR DENIAL OF APPLICATION: 6 (Title 56, Series 1)

- C-1. The Board shall render one of the following decisions, upon completion of the public hearing and within 60 days of the public hearing: _____

1. Grant Certificate of Site Approval
2. Grant Conditional Certificate of Site Approval
3. Deny Certificate of Site Approval

Note: Board may seek consultation with applicant or Office of Waste Management for clarification before decision is made.

- C-2. The Board shall send immediate, certified, written notification of the decision to the applicant and, upon request, to the public. _____

- C-3. The Board shall become involved in judicial review of interests adversely affected by the decision when a petition is filed. _____

TITLE 57
LEGISLATIVE RULES
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD

SERIES 1
CERTIFICATION REQUIREMENTS

§57-1-1. General.

1.1. Scope and Purpose. -- These regulations establish the procedures for obtaining a Certificate of Site Approval prior to the construction of a commercial hazardous waste management facility. By no means do these regulations permit the operation of a commercial hazardous waste management facility, they may only approve or reject the proposed location of a commercial hazardous waste management facility.

1.2. Authority. -- West Virginia Code §20-10-3(j).

1.3. Filing Date. --

1.4. Effective Date. --

§57-1-2. Definitions.

2.1. "Board" means the Commercial Hazardous Waste Management Siting Board established pursuant to West Virginia Code §20-10-3.

2.2. "Commercial Hazardous Waste Management Facility" or "Commercial Facility" means any hazardous waste treatment, storage, or disposal facility, which accepts hazardous waste, as identified or listed by the Director of the Division of Environmental Protection under Title 47, Series 35 "Hazardous Waste Management Regulations" of the West Virginia State Code of Regulations (47 C.S.R. 35), generated by sources other than the owner or operator of the facility and shall not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous waste created by that person or such person or other persons on a cost-sharing or nonprofit basis.

2.3. "Construction" as used in these regulations, means:

2.3.1. For new commercial facilities, pursuant to §20-10-3(c), the significant alteration (as determined by the Board) of a site to install, or the installation of permanent equipment or structures;

2.3.2. For existing commercial facilities, an alteration or expansion that increases the capacity of the facility to accept fifty percent (50%) more hazardous waste, or any change in design or process that results in a substantially different type of facility (e.g., disposal facility being converted to a storage facility).

2.3.3. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, or acquisition of options to purchase and other similar activities normally incident thereto.

2.4. "Hazardous Waste Management Facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. A facility may consist of one (1) or more treatment, storage or disposal operational units. For the purposes of these regulations, it does not include:

2.4.1. Facilities for the treatment, storage or disposal of hazardous wastes principally as fuels in an on-site production process; or

2.4.2. Facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

2.5. "Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this state or any other state, municipality, county commission, or any other political subdivision of a state or interstate body.

2.6. All other terms shall have the meaning prescribed in Title 47, Series 35 "Hazardous Waste Management Regulations" of the West Virginia Code of State Regulations (47 C.S.R. 35).

§57-1-3. Exclusions From the Commercial Hazardous Waste Management Facility Siting Board Regulations.

3.1. A hazardous waste management facility, as defined in Section 2 of these regulations, shall be exempt from these regulations if:

3.1.1. It is owned and operated by a person(s) solely for the treatment, storage, disposal, or recycling of hazardous waste generated by that person or that person and others on a cost-sharing, nonprofit basis;

3.1.2. The facility treats, stores, disposes, or recycles hazardous wastes used principally as fuels in an on-site production process;

3.1.3. The facility is used exclusively for the pretreatment of wastes discharged directly to a publicly-owned sewage treatment works (POTW).

3.2. Upon receiving a written request from the owner or operator of a facility, the Board may allow, without going through the procedures of this article, any changes in the facilities which are designed:

3.2.1. To prevent a threat to human health or the environment because of an emergency situation;

3.2.2. To comply with federal or state laws and regulations;

3.2.3. To result in demonstrably safer or environmentally more acceptable processes.

§57-1-4. Applying for Site Approval.

4.1. Prior to submitting a siting application to the Board, the applicant for a commercial hazardous waste management facility shall file pre-siting notices, publish legal notices as prescribed in Chapter 20, Article 10A, Section 3 of the West Virginia Code, and hold a public information hearing in the proposed host community. Then the referendum process shall be carried forth. See Siting Flow Chart (Appendix I) and Pre-Siting Notice (Appendix II).

4.2. After the pre-siting procedure has been executed, and if the referendum indicates that a majority of the legal votes cast upon the question be in favor of the facility, any person(s) wanting to construct or operate a commercial hazardous waste management facility must obtain an application outline from the Board. Applications that do not explicitly follow the outline will be deemed incomplete. See Completeness Outline (Appendix III).

4.3. Any person(s) wanting to construct or operate a commercial hazardous waste management facility must submit to the Board, the information required under Title 47, Series 35, Hazardous Waste Management Regulations, Sections 11.5.1.1 through 11.5.1.m. of the West Virginia Code of State Regulations.

4.4. Such person(s) must submit an indication of whether this is a new or revised application.

4.5. Such person(s) must submit a descriptive history of any previous hazardous waste management activities in which the owner and/or operator was or is involved.

4.6. In addition to the information required under Section 4.3 and 4.5 of these regulations, the applicant must also submit the following information:

4.6.1. A drawing of the commercial facility at a scale of one inch equal to not more than one hundred feet (1" = 100') showing the location, where applicable, of all past, present, and future hazardous waste treatment, storage, disposal, and recycling areas. Existing facilities must provide photographs of the same;

4.6.2. A 7.5 minute series USGS topographic map showing a distance of one thousand (1,000) feet around the commercial facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet) if relief is less than 6.1 meters (20 feet). Owners and operators of commercial hazardous waste facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- 4.6.2.a. Map scale and date;
- 4.6.2.b. 100-year floodplain area;
- 4.6.2.c. Surface waters including intermittent streams;
- 4.6.2.d. Surrounding land uses (e.g., residential, commercial, agricultural, recreational, schools, hospitals, institutions and other businesses);
- 4.6.2.e. A wind rose (i.e., prevailing wind speed and direction);
- 4.6.2.f. Orientation of the map (north arrow);
- 4.6.2.g. Legal boundaries of the commercial hazardous waste management facility site;
- 4.6.2.h. Access control (e.g., fences, gates);
- 4.6.2.i. Injection and withdrawal wells both on-site and off-site;
- 4.6.2.j. Buildings, treatment, storage, or disposal operations or other structures (e.g., recreation areas; runoff control systems; access and internal roads; storm, sanitary, and process sewage systems; loading and unloading areas; and fire control facilities);
- 4.6.2.k. Barriers for drainage or flood control; and
- 4.6.2.l. Location of operational units within the commercial hazardous waste management facility site, where hazardous waste is or will be treated, stored, or disposed (include equipment clean-up areas); and

4.6.3. A listing of all permits or construction approvals received or pending as required under Title 47, Series 35, Section 11.4.1.j of the West Virginia Code of State Regulations;

4.6.4. The Standard Industrial Classification Codes (SIC) that reflect the types of hazardous waste generators to be served by the commercial facility;

4.6.5. A detailed written analysis along with supporting documentation that addresses the nature of the probable environmental and economic impacts of the commercial facility to include, but not limited to the following:

4.6.5.a. The predictable adverse impacts on:

- 4.6.5.a.1. Wetlands;
- 4.6.5.a.2. Farmlands;
- 4.6.5.a.3. Surface water;
- 4.6.5.a.4. Groundwater;
- 4.6.5.a.5. Wildlife;
- 4.6.5.a.6. Endangered species;
- 4.6.5.a.7. Public health and safety;
- 4.6.5.a.8. Transportation networks;
- 4.6.5.a.9. Historic, cultural, and recreational areas;
- 4.6.5.a.10. Air quality;
- 4.6.5.a.11. Counties or communities adjacent to the proposed host community.

Note: If there is a potential for adverse impacts beyond the host community, the Board shall notify the respective County Commission(s) and publish a Class I-O legal advertisement identifying those impacts in a newspaper published in that county(s).

4.6.5.b. An evaluation of and a plan for measures that will mitigate such effects.

4.6.6. The information required under Title 47, Series 35, Section 11.2.9 (exposure information) of the West Virginia Code of State Regulations, except that such information shall be required of all commercial hazardous waste management facilities regardless of the type of management practice employed. Such information shall include a quantitative assessment of the magnitude and nature of human exposure within a four (4) mile radius of the proposed facility. This assessment shall consider and discuss:

4.6.6.a. Chronic and acute exposure scenarios;

4.6.6.b. Carcinogenic, teratogenic, systemic or other health risks, as appropriate;

4.6.6.c. The above scenarios and risks quantitatively, to the extent possible, as per the Board; and

4.6.6.d. Each pathway identified pursuant to Title 47, Series 35, "Hazardous Waste Management--Regulations," Section 11.2.9.a.1 of the West Virginia Code of State Regulations.

4.6.7. The nature of expected environmental benefits;

4.6.8. The nature of expected economic benefits likely to be derived from the commercial facility;

4.6.9. The activities to be conducted at the commercial facility;

4.6.10. A list of hazardous wastes (include EPA Hazardous Waste Codes) that will be received by the commercial facility; their respective annual volumes; and the type of treatment, storage, or disposal;

4.6.11. The latitude and longitude of the commercial facility;

4.6.12. The names, addresses, and telephone numbers of the owner, operator, and principal shareholders of the facility.

4.7. The applicant shall submit twenty (20) copies of the completed application to the Board.

4.8. Signatories to the Application. The following statement must precede any required signatures.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with measures designed to assure that qualified personnel gathered and evaluated the information submitted. Based upon my inquiry of those persons directly involved with the preparation of this application, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false or misleading information, including the possibility of fine and imprisonment for knowing violations."

4.8.1. The application must be signed by the following person(s):

4.8.1.a. For a corporation, the "responsible corporate officer" as defined in Title 47, Series 35, Section 2 (47 C.S.R. 35-2) of the West Virginia Code of State Regulations;

4.8.1.b. For a partnership or sole proprietorship, by a general partner or proprietor, respectively; or

4.8.1.c. For a municipality, State, federal, or other public agency, by either the principal executive officer, or ranking elected official.

4.9. On or before sixty (60) calendar days of the receipt of the application for Site Approval by the Board, the Board shall mail written notice to the applicant as to whether or not the application is complete. If the application is determined to be incomplete, the Board shall notify the applicant and assess the resubmittal fees pursuant to Title 47, Series 35A (47 C.S.R. 35A). When the application has been determined to be complete, the Board shall notify the applicant and the County Commission of the intended host county and the County Commissions of all Counties within the 4 mile radius of the quantitative assessment required under Section 4.6.6 of these regulations. The County Commission of the host County shall, within thirty (30) calendar days of such notice, appoint two (2) ad hoc members to the Board to act upon the application.

Note: When a commercial facility or proposed commercial facility is owned and operated by different persons, it is the operator's obligation to submit the application, but the owner must also sign the application.

§57-1-5. Determination of Completeness and Notification.

5.1. Within thirty (30) calendar days upon the Board's determination that the application is complete, the Board shall, at the expense of the applicant, do the following:

5.1.1. Publish in the State Register a notice of a public comment period and a public hearing and provide a copy of the application to the public library in the proposed host community (or the most proximate library) for public inspection;

5.1.1.a. The public hearing shall be held within sixty (60) calendar days of the Board's determination of the completeness of the application;

5.1.1.b. The public hearing shall be in the county in which the commercial facility is proposed to be located, and at a location convenient to a population center nearest to the proposed facility location;

5.1.1.c. An accurate record, transcribed at the applicant's expense, of the hearing shall be kept by the Board (i.e., cassette recording, stenographer);

5.1.1.d. The close of the hearing shall also end the written comment period. No written comments received after the close of the hearing will be considered, except as provided under Section 5.1.1.e of these regulations;

5.1.1.e. The Board shall reopen the public comment period and schedule an additional public hearing if the Board finds it necessary for additional input on any unsettled issues concerning the application;

5.1.1.f. The Board will make transcripts of the hearing available through the Division of Environmental Protection's Public Information Office at a reasonable cost;

5.1.2. Provide written notice to the Chief Executive Officer of each affected municipality in which the proposed commercial facility is to be located; and

5.1.3. Direct the applicant to publish a Class I-O legal advertisement in at least two (2) daily or weekly newspapers having circulation within the vicinity of the proposed commercial facility. The legal advertisement shall identify the proposed location; the type of facility and activities involved; the name of the owner and the operator; the date, time, and place that the Board will convene a public hearing regarding the application; an address to which written comments can be sent; and the name, address, and telephone number of a person from whom interested parties may obtain further information, including copies of the application.

Note: A qualified daily or weekly newspaper shall meet the criteria of West Virginia Code §59-3-1(b).

§57-1-6. Approval or Denial of Application.

6.1. Upon completion of the public hearing, the Board shall render a decision based upon the application and the record as set forth in Sections 4. and 5. of these regulations, and the WV Code §20-10-3(i).

6.2. Before a decision is made, the Board may seek consultation from the applicant or the Division of Environmental Protection if clarification is needed regarding the application and any comments received.

6.3. Within sixty (60) calendar days of the public hearing the Board shall render one of the following decisions:

6.3.1. Grant Certificate of Site Approval;

6.3.2. Grant Conditional Certificate of Site Approval; or

6.3.3. Deny Certificate of Site Approval.

6.4. Immediately upon the decision of the Board, the Board shall send a written decision to the applicant. The written decision shall enumerate its findings and conclusions, and be sent by certified mail. The written decision shall be available to the

public upon request.

6.5. Any person, pursuant to West Virginia Code §§20-10-6 and 20-10-7, having an interest adversely affected by the decision of the Board is entitled to judicial review thereof in the Circuit Court of Kanawha County, or the county in which the public hearing took place, by filing a petition with the court within sixty (60) calendar days of the Board's written decision.

Note: The certification process is outlined in Appendix I of these regulations.

§57-1-7. Effect of Certification.

7.1. The approval and conditions thereto of the Certificate of Site Approval shall supersede any local ordinance or regulation that is inconsistent or conflicts with the terms contained in the Certificate of Site Approval.

7.2. Nothing in these regulations shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the approval certificate.

Note: There may be state or federal laws which pre-empt or supercede, or otherwise preclude or restrict the enforcement of local regulations and ordinances.

7.3. Commercial facility site approval will not preclude or excuse the applicant from any required permits or approvals under any State or federal laws and regulations.

Commercial Hazardous Waste Management Facility
Proposed Rules Public hearing
August 10, 1993, 7 p.m.
Office of Air Quality Conference Room

BUDDY DAVIDSON: Ladies and gentlemen, the public hearing on the draft regulations for the commercial hazardous waste management facility siting board is now open for public comment. Where shall we begin? Mr. Foster? Please speak into the mike for the record.

BOB FOSTER: I'm Bob Foster, Chairman of the Environmental Committee for the West Virginia Manufacturers Association. We do have some comments upon the proposed regulations for the siting board's certification rules. We had previously submitted some comments, and today we have developed a few supplemental comments, which we'd like to present these tonight. To do that, I'm asking Mike McThomas to come forward and present those for us, if you don't mind.

MIKE McTHOMAS: Thank you, Mr. Chairman, my name is Michael McThomas, counsel with Robinson & McElwee. We are counsel for the West Virginia Manufacturers Association. As Bob mentioned, we previously submitted written comments by the deadline of August fifth, I believe it was. And we'd like to state for the record on our interpretation of the Administrative Procedures Act as it relates to receiving comments in that the last day of the hearing is traditionally, and by Code, the last day for receiving written comments as well. And we would appreciate it if you would accept our supplemental written comments at this time, which I will briefly go through.

One of the prime issues here, as I see it, is the scope of the regulation as it relates to what the duties and responsibilities of the board are. And then those duties in relation to what the duties and responsibilities of the Division of Environmental Protection are as it relates to hazardous waste management in West Virginia. The board addresses siting of commercial facilities. Even the article heading itself looks to that. What that means is, not the performance or operation of a facility once it's there, but prior to construction of where would be an appropriate location to site a commercial facility in West Virginia. Commercial is simply that the person is in the business of receiving hazardous waste for treatment, storage, or disposal. One of those three activities. It's not that they have a permitted RCRA (Resource Conservation and Recovery Act) permitted area on their facility ... a regular production facility that handles their own waste that's generated out of that production process. Those are also permitted treatment, storage, and disposal activities; yet, they are not commercial. And there is a distinction there.

So I think the first thing is to really define what's the scope of the board and what's the purpose of the regulations. In that regard, we propose that Section 1.1 be modified to address that by saying that a commercial hazardous waste management facility is one designed solely for the purposes of treatment, storage, or disposal of hazardous waste. And adding in there where it speaks of facility, "a commercial hazardous waste facility"

as is defined by the statute. And that the board's role is to approve or reject location of a new commercial hazardous waste management facility. The board's role is not, as I view it, to address existing facilities and their current operations where they have currently permitted treatment storage and disposal activities for handling their own generated waste. That gets to the point of how the regulation in section 2.3.2 addresses construction as it relates to existing facility. The statute, as well as the regulation, deals with those facilities that are new facilities and those that are existing facilities.

And I submit to you that the statute as it's intended to be within the jurisdiction of the board, is intending to deal with those existing facilities that are making a change in their processes or their business organization such that they become a commercial treatment, storage, and disposal facility. That being they are engaging in a new activity. The only reason that the statute states existing facilities is such that you can't take an existing warehouse, okay, and put in there a treatment, storage, and disposal facility and argue that that is an existing facility of some type. But existing facilities that are production based, that have their own TSDs (that's short for treatment, storage, and disposal--I'll shift to that, if I may) their own TSDs on site, that happen to accept some type of waste from another facility because they're able to handle it. And that should not throw them into being a commercial facility for purposes of what the rule is. Just because they happen to exist as an otherwise production facility. So I

submit that the idea of an existing facility is such that what's contemplated by the statute is where the facility begins to engage in a new business of accepting hazardous waste for treatment, storage, and disposal. That's a new business that they're engaging in. That's the sole business of that unit, or whatever, and it doesn't address the normal operations of dealing with a non-commercial facility.

The same holds true with ... if I might go back to the statute just briefly as far as the three elements on what the existing facility part of that statute addresses. The first is alteration or expansion of an existing structure or facility to include accommodation of hazardous waste. What that means is that the facility did not previous engage in hazardous waste TSD and now it's going to engage in TSD on a commercial scale. The second part of it is expansion, more than fifty percent of the area or capacity of an existing hazardous waste facility. Now what that means is if you have five acres and you include an expansion of a new facility for the purposes of accepting hazardous waste from other generators to treat, store, or dispose on that additional three acres, that would essentially be a new operation. And that's what they're talking about in the statute as far as what an existing facility is. It's new to that existing complex, but it's a new, separate, and independent activity from the non-commercial process. As far as capacity is concerned, we're talking about increasing capacity. Say you deal with 10,000 tons per month, okay. If you increase the

capacity an additional 6,000 of commercial waste that you're taking in, then you're above the 50%, right? But if you're less than that, you're not commercial yet.

I'll give you an example of an increase if you're looking at it in terms of your increase ... what you would take from other facilities if you were a regularly permitted TSD and non-commercial. If you were just to take ten pounds from somebody, then technically, the way it's written right now, then you would have to go to the board and pay \$60,000 under the fee rule to get a site approval for that. And that is now what is contemplated by the state.

So the third manner is that we're talking about a change in design of process which will result in a substantially different type of facility. And I think the example in the regulations is going from a disposal facility to a storage facility. And I don't think that example is really what's contemplated. I think what they're talking about in the statute and the legislative intent, what that is, is you're talking again about changing the process or design such that the idea is that you're engaging in the new activity of being a commercial facility. I think that the reason the existing facility is in there is to avoid any argument to say that I'm non-commercial simply because I exist. But if you do engage in new activities which would otherwise constitute commercial facility under what's considered to be new, then you would be covered.

So we request on that ground to, in Section 2.3.2, where it says "for purposes of existing facilities," that the only conclusion I could draw, when they're talking about existing facilities, after going through all this, is that commercial should be there. It should be for existing commercial facilities. Otherwise, in any of those other things that I had talked about, technically, they're actually new processes. They're actually new.

The next major issue I have, which is very important, and it's probably a complicated area in general, but it's a very important distinction, and that is between what treatment is and what recycling is. Treatment, storage, and disposal contemplates certain activities of hazardous waste management. However, recycling, reconditioning, and reclamation of a byproduct material in order to make another product is not treatment, storage, or disposal. Those are activities where you have, more or less, an effective substitute for raw material, or you're engaging in some kind of physical process to separate out materials so you get a raw material product at the end. And were it to go to the board to get its siting for that, for an existing facility that's going to engage in an activity which is going to reduce the amount of waste that has to go to disposal, is not what is intended by the statute. We're talking about siting of new facilities here, not engaging in what would be normal processes for reducing the amount of waste that's on the end stream. So, with that in mind, it would really be counterproductive to exert jurisdiction of the board over those activities which can be

distinguishable from storage, treatment, and disposal and those activities which are creating some type of product used for raw material at the end of the process. So we suggest that Section 3 has a new exclusion in it which would state that hazardous waste facilities that are engaged in recycling, reconditioning, or reclamation of hazardous waste, including the incidental storage because you're going to have some that's going to build up before hand, shall be exempt from the requirements of this regulation.

Now if you think about the role of the Division of Environmental Protection in these activities, and that's what DEP does with their inspectors, etc. as far as the continuing processes of existing facilities and how they manage their hazardous waste.

There's another very important point that I would like to bring up from our comments that we filed before, and that is on the requirement that any person who engages in hazardous waste management, if they make a change, they have to come before the board to see whether or not the board wants to exert its jurisdiction over that to determine whether a facility or an activity, or a siting is going to be commercial or non-commercial. There's no statutory authority which requires anybody to come before the board to demonstrate that they are non-commercial. If they meet the statutory definition of a hazardous waste facility but do not meet the statutory definition of commercial, then there's no obligation to come before the board. So, we respectfully request, therefore, that those provisions that

require a demonstration, which are by statute, they're exempt from the board's jurisdiction, that those provisions be deleted from the rule.

I'll make one last comment in closing, and that is that the other problem with trying to cover such a broad umbrella over all hazardous waste activities in West Virginia, in addition to duplicating the current statutory requirements and responsibilities of the Division of Environmental Protection, is that it also creates a ... I want to say, it's a restriction on the ability to manage hazardous waste where the reduction is as much as possible. It reduces the flexibility that the current facilities have to deal with waste, they're generating within West Virginia among the existing facilities that are here, if every time anything that's going to be a benefit in reduction to the amount of hazardous waste that actually is disposed of or sent out of state, then we defeat the purpose of what the board is supposed to be doing. And that is, in my opinion, to look at the location standards for new commercial facilities. I thank you very much, I'd be happy to answer any questions.

DAVIDSON: Thanks a lot for your comments. Do any of you have questions for Mike?

UNIDENTIFIED: I'll need to look back over all this stuff.

UNIDENTIFIED: Mr. Farley has some questions.

DALE FARLEY: I just had a couple minor questions, and a couple real minor suggestions ... [inaudible] what is the nature of the information that is required ... 47 series 35 in paragraph section. What all would that entail?

UNIDENTIFIED: I'm trying to find where you are. Dale, you've lost us. Where are you?

FARLEY: I'm on page 3, section 4.3 [inaudible].

UNIDENTIFIED: This is a general question that I assume that's a lot of comprehensive information under the hazardous waste permitting rules, is that what that is? The whole permitting requirement?

[INAUDIBLE]

FARLEY: Well, a couple things I would note in here just because of the way things are set up now. I'm not sure that's the right section, reference, or what the reaction would be. There may be other regs, too, if you're talking about information development, I guess it's relevant to the board. There is a air quality, or APCC reg. 45 CSR 25 that gets into the permitting of the air-related sources as well, that presumably would be information in a couple sections here that are referenced, that would be presented to the board. Or would be relevant to the board's decision. And I don't know whether just by mentioning this that's it's assumed it will be incorporated by request or submission from another office.

UNIDENTIFIED: Dale, I think what the series 35 means ... [inaudible; not speaking into microphone].

FARLEY: Well, I don't know. Maybe that's the way it will work. I didn't know because I've just seen these for about 30 minutes here.

MARTHA BARKER: [Not using microphone--much of this was inaudible.] ... Yes, I

think that ... however, we can't write regulations assuming that at all. At this point, you're going to be going through the legislative process at the same time we are, and we can only rely on what we have right now. But eventually ...

UNIDENTIFIED: There's also tentatively provisos that should be copied if the regs were to stand. At the suggestion of the Manufacturers Association, additionally points out that there may be other applicable state and/or federal regulations which supersede local [inaudible]. That's in the ... 57-1-7.

UNIDENTIFIED: It doesn't make it as explicit as you'd like, but it does cover ...

FARLEY: Well, I was wondering, just in interface, what is here in relation to regs and several issues come up about air quality, and I didn't know what would be intended or how that would be set up in terms of what would be brought in at the air quality related permits ending here that had differing information if you're dealing with an incinerator.

UNIDENTIFIED: Right, that's important. We'll make a note of that out of the tape and get back to you on that some time tomorrow.

FARLEY: And the same thing over under ... just a sort of related matter over under 4.6.3, page 4. That's sort of the same thing. Under the set-up as it is now, there is at least an air quality reg. I'm not sure whether there's any others that, when you say list of all permits and construction approvals procedure pending. There again, I don't know whether you think that cite 27 series 35 would automatically include a listing of anything that the company was

applying for under 45 CSR 25 at the air quality office. So I suggest that it be included if not. I don't whether it's also intended under that section that you would ... or maybe add a desirable thing or something you could do legally or appropriately to require listing of others pending approvals that might, maybe bear on this. For example, I don't know about water permits or other types of air permits or things like that.

UNIDENTIFIED: This is a request for listing existing permits. I'd have to look back to see if it also covers pending.

FARLEY: Right, but for example, you give the major facility a very large incinerator. There maybe not hazardous waste permits per se, but major source construction permits for air quality. There may be [inaudible] whether they ought to be listed or whether they're relevant here, but that's just the [inaudible]. One thing up under another point, where you talk about the content of a map, or the plot plan, or whatever, considering that you're asking for an air quality ... some kind of a report on analysis of air quality impacts or effects. I guess I had a question, and I assume that's something you will just see what happens when it comes up in terms of review, whether there's any kind of criteria of what that kind of analysis would be, or is that going to be determined by ... use this as reference for review.

UNIDENTIFIED: That's one way to do it.

FARLEY: Well, well, it's not just air quality. Any kind of groundwater or anything

else, obviously there's provisions out there for some of these analyses,
but...

UNIDENTIFIED: Are you talking about 4.6.5.0?

FARLEY: Right. Well, the whole laundry list of the predictable ... they're talking about having to show predictable adverse impacts on wetlands, farmlands, surface water, etc. I would assume that you're relying on maybe some procedures or rules or something that exists under all those various programs to set criteria ... what that analysis ... how that analysis would be done.

UNIDENTIFIED: Right. There would be ... each application would be referenced to ... well, first it would be in the *State Register* and then it will be referenced to what the board thinks are the appropriate agencies that may want to comment or participate in the review.

FARLEY: Okay. What that would mean is if someone prepared something and were in the process of preparing it, before they did so, there would be a referral to the right office somewhere to tell them how to maybe prepare that.

UNIDENTIFIED: We have a standard reference list of permitting, and we would make that available to the board or maybe even add some other potential respondents to that list.

FARLEY: I guess what I was getting at is in terms of the criteria for preparing those things, it's not stated here, but each office may have its own angle

about wetlands analysis, or whatever.

UNIDENTIFIED: And that's the angle that should be pertinent.

FARLEY: Yeah. And presumably before you would want to see that preparation done or something put together like that, you would presumably want to have some process to make sure that whoever's doing the applications for the putting these things together, would meet some criteria of those offices or programs. And I don't know what was intended there. For example, in air quality analysis, that can be an incredible undertaking. It depends upon what you're demanding [inaudible].

UNIDENTIFIED: I think at this point, it would be left to the judgment of the responding agency how little or how much is necessary.

FARLEY: Right. But the presumption would be that a process would be created or something to have initial check-off before someone wastes a lot of time maybe doing an analysis that a particular office would say was not adequate for ... [inaudible].

UNIDENTIFIED: Right. This process ... what encourages applicants to contact the agencies prior to the preparation of the application itself.

FARLEY: As per some directive?

UNIDENTIFIED: Right.

FARLEY: Just as a matter ... one minor point that I would suggest in that regard when you're talking about the [inaudible] ... I was trying to get to that a minute ago. You're talking about a [inaudible] and that kind of thing. I

add to that in case this would be, say an incineration facility or a large air pollutant emitting facility, that if there's any epidemiological or any air quality monitoring stations on the site, or on the scale of a map, they should be shown. And the only other question I had was just in the section where you talked about the impact area and how it would be ... where the analysis would be. Is there a particular reason why four miles was chosen? Is that in a reg somewhere?

UNIDENTIFIED: Yes ... that's. Do you have that there handy? In the response ... in the response I prepared for ... the Manufacturers Association had that comment also. And these are only proposed responses, so they have not been okayed by the people I work for. Okay, the four mile radius for the impact study is the standard adopted and circled for remedial and site investigation guidance. So we assume that the four mile radius is pretty much a standard for risk assessment and epidemiological studies for comparative ... to compare. I also noted that for surface waters, a 15-mile radius is used. So the 4-mile ... we thought not asking too much nor too little.

FARLEY: Was it the manufacturers' comment that that was too small or too large?

UNIDENTIFIED: [inaudible] Justification. Pretty much the same comments you made. Where did we get the number. And that's where we got the number.

FARLEY: Well, I don't know if there's anything wrong with it. I mean, air quality

guess that's sort of standard language people use. I also suggest that you add to that in case this would be, say an incineration facility or a large air pollutant emitting facility, that if there's any epidemiological or any air quality monitoring stations on the site, or on the scale of a map, they should be shown. And the only other question I had was just in the section where you talked about the impact area and how it would be ... where the analysis would be. Is there a particular reason why four miles was chosen? Is that in a reg somewhere?

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UNIDENTIFIED: [inaudible] Justification. Pretty much the same comments you made. Where did we get the number. And that's where we got the number.

FARLEY: Well, I don't know if there's anything wrong with it. I mean, air quality analyses differ. Methodology used and the size of the source and a lot of things like that.

UNIDENTIFIED: Well, this would be from Office of Waste Management to inspect it. And, like you said, we may have to look further into developing a standard from other ... the participation of other agencies.

FARLEY: That's all I've questioned.

UNIDENTIFIED: Any of you may have some ideas on what Dale said, to pass along to us as well?

UNIDENTIFIED: I have nothing else.

UNIDENTIFIED: Did you want to ask any questions or make any comments.

[Inaudible--Speaker not using microphone.]

UNIDENTIFIED: No, the next step would be to file an agency-approved rule with the Secretary of State that would be published in the *State Register*. It would go to the legislative rule making rule committee. If we make it by the deadline, which is August 13, then it's guaranteed to be taken up in the next session of the legislature. And prior to that, our agency needs to respond to what we consider a significant or substantive comment from this association or any other party that sent comments in or attended the meeting. We can give you a three- or four-page outline of the entire rule making process if you give us a call.

DAVIDSON: Well, folks, if there are no further questions or comments, this public

Sign - In Sheet

Commercial Hazardous Waste Management Facility

Proposed Rules Public Hearing

August 10, 1993, 7 p.m.

Office of Air Quality Conference Room

**I WOULD LIKE TO
MAKE COMMENTS**

| NAME | ADDRESS | I WOULD LIKE TO MAKE COMMENTS |
|--------------------------|--|-------------------------------------|
| 1 BOB FOSTER | 1517 COVENTRY LANE | <input checked="" type="checkbox"/> |
| 2 Mike McIlhenny | PO Box 1791 Chas. Robinson + McElroy as needed | <input checked="" type="checkbox"/> |
| 3 Dale Mancan | DEP/OWM | <input type="checkbox"/> |
| 4 Kandy Tidwell | DEP/OWM | <input type="checkbox"/> |
| 5 Martha E. Barber | DEP/OWM | <input type="checkbox"/> |
| 6 George F. Potter | Board / Chair | <input type="checkbox"/> |
| 7 DAVE FARLEY | DEP/OAQ EX-OFF-BO MEMBER | <input checked="" type="checkbox"/> |
| 8 | | <input type="checkbox"/> |
| 9 | | <input type="checkbox"/> |
| 10 | | <input type="checkbox"/> |
| 11 | | <input type="checkbox"/> |
| 12 | | <input type="checkbox"/> |
| 13 | | <input type="checkbox"/> |
| 14 | | <input type="checkbox"/> |
| 15 | | <input type="checkbox"/> |

The Board received written comments concerning the proposed rule from the West Virginia Manufacturers Association during the thirty-day comment period. The following are the comments submitted, and the responses thereto:

Proposed Rule 57 C.S.R. 1

Comment/Page 1: "The filing of the regulations is contrary to the Administrative Procedures Act..."

Response: In the footnote, a reference is made to §29A-3-6 concerning the cut-off date for written comments. You probably intended to cite §29A-3-5, but the point is this--notice of a 30 day written comment period was published in the State Register. Also published was a notice for a public hearing at which both written and oral comments will be accepted. Written comments received at OWM after 8:30 am on August 5, 1993 will not be acknowledged. However, additional comments may be submitted at the hearing on August 10.

Comment/Page 2-A: "Specific reference to "incinerator" is not included within the statutory definition."

Response: Use of the term is redundant, and has been deleted from the proposed rule.

Comment/Page 3-B: "Construction Ambiguity."

Response: 57 C.S.R. 1 Section 2.3. begins, "Construction, as used in these regulations..." Since these regulations are for the Commercial Hazardous Waste Management Facility Siting Board, would this not preclude their application to non-commercial facilities? Nevertheless, the Board has inserted the word "commercial" where you have suggested in Sections 2.3.1. and 2.3.2. . The Board also agrees to designate the comment following 2.3.2. to Section 2.3.3. .

Comment/Page 4-C: "Demonstration by Non-Commercial Facilities."

Response: If a new facility (or an expansion to an existing one) was not considered to be commercial by the applicant/operator, the Board would not receive an application for a Certificate of Site Approval in the first place. The addition of §20-10-3(d) in the format you have suggested on page six (Section 3.2.) seems appropriate.

Comment/Page 7: "Section 4.1."

The revised language you have suggested for Section 4.1 has better clarity with respect to the apparent intent of §20-10-3 (page seven). The Board is uncertain as to the intent of §20-10A-3(a), but do not agree that changing Section 4.1 will prevent or resolve conflicts in these two statutes. The Board believes that §20-10A must be amended to conform with the intent of §20-10 (ie. the certification of the location of commercial hazardous waste TSD facilities).

Comment/Page 7: "Completeness."

Response: The outline presented in Appendix III requires no information that is not asked for in the text of the proposed rule. The Board is committed to a fairly ambitious turn-around time for processing these applications (as little as 180 days), and the completeness review is one step in the process which can be quickly accomplished when the information absolutely follows a prescribed format. Otherwise, weeks can be squandered ensuring that the application is complete--this time can be better spent on the technical review. The Board believes that the outline provides a good check list for the applicant to follow. In the matter of additional fees, consider this: when permit applications are incomplete or deficient, the DEP Office of Waste Management staff must devote many hours and resources, at taxpayer expense, to provide what amounts to free consultation for an applicant. This practice has rewarded those who do not make an effort to "do it right". In this context, 'complete' means that all of the sections of the application are submitted in the order specified by Appendix III. If deficiencies are found during the technical review, additional or revised information will be requested. This has nothing to do with completeness and portends no additional fee.

Comment/Page 8-E: "Section 4.6.4 -- Types of Waste."

Response: The SIC Codes requested in Section 4.6.4. are of a general nature and are intended to inform the public as to the types of businesses that will be served by the proposed facility. Moreover, this type of information is crucial to assessing the need for the facility.

Comment/Page 8-F: "Section 4.6.6 --Exposure Information"

Response: The exposure information required under Section 4.6.6. is authorized under §20-10-3(e)(1), "...including, but not limited to...". The integrity of the environment and the health of its inhabitants is not an illogical consideration for the Board. Some of the information is indeed, speculative, but rather than perceiving the exercise as a barrier to responsible waste management, industry should seize upon this opportunity to demonstrate that the fears or misconceptions of the public are unfounded. The four mile radius for the impact study is the standard adopted in CERCLA Pre-remedial and Site Investigation Guidance (for surface waters, a fifteen mile radius is used).

Comment/Page 9-G: "Section 5.1 -- Administrative Costs."

Response: The Code uses the same type of language ("...at the expense of the applicant..." [§20-10-3(g)]). The inclusion of such language only serves to point out that these activities may be legitimately charged against the application fee, not public funds. Until some historical perspective is available, the costs for processing these applications can only be estimated--eventually the fees may need to be adjusted up or down. It would not be appropriate for the public to subsidize the start-up costs for these facilities.

Comment/Page 10-H: "Section 6.1 --Approval Criteria."

Response: The Board concurs that the language in Section 6.1 must be modified to reflect §20-10-3(i).

Comment/Page 14-I: "Conflict of Laws Proviso."

Response: The Board has no problem with adding the conflict of laws proviso.

Comment/Page 14-J: "Facility References."

Response: The Board has changed these to 'commercial facility'.

Comment/Page 14-K: "Cross-reference to HWM Regulations."

Response: In the matter of adopting federal regulations by reference, the Board suggests that nothing can be done (other than preparing for the eventuality) until it becomes a reality. We know of no mechanism with which to reference proposed regulations.



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

SUITE 503
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

August 4, 1993

Mr. Buddy Davidson, PIO
WV DEP/Office of Waste Management
1356 Hansford Street
Charleston, West Virginia 25301

Re: Commercial Hazardous Waste Management
Facility Siting Board - 57 C.S.R. 1

Dear Mr. Davidson:

Enclosed please find an original and three copies of The West Virginia Manufacturers Association's Comments Regarding Commercial Hazardous Waste Management Facility Siting Fees 47 C.S.R. 35A.

Very truly yours,

Robert L. Foster

RLF:cdl
Enclosure

WEST VIRGINIA
MANUFACTURERS ASSOCIATION

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RECEIVED

**COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED
COMMERCIAL HAZARDOUS WASTE MANAGEMENT
FACILITY SITING BOARD
CERTIFICATION REQUIREMENTS
57 C.S.R. 1**

Prepared By:

Environmental, Safety & Health Committee
West Virginia Manufacturers Association

and

Robinson & McElwee
600 United Center
Post Office Box 1791
Charleston, West Virginia 25326

Counsel for
West Virginia Manufacturers Association

August 4, 1993

COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED
COMMERCIAL HAZARDOUS WASTE MANAGEMENT
FACILITY SITING BOARD
CERTIFICATION REQUIREMENTS
57 C.S.R. 1

August 4, 1993

I. INTRODUCTION

On July 6, 1993, the Commercial Hazardous Waste Management Facility Siting Board ("Board") filed with the Secretary of State proposed Regulation 1, "Certification Requirements" of Title 57 of the West Virginia Code of State Regulations. Accompanying the proposed rule was a notice inviting written comment until August 5, 1993 at 8:30 a.m. and a public hearing to be held August 10, 1993 at the Office of Air Quality in Charleston, West Virginia.¹ Pursuant to this notice, the West Virginia Manufacturers Association ("WVMA") files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout West Virginia. The WVMA has traditionally commented upon various environmental rules proposed in West Virginia. Because this proposed rule

¹ In the first instance, the filing of the regulations is contrary to the Administrative Procedures Act set forth in W. Va. Code § 29A-3-1 et seq. The notice accompanying the rule sets August 5, 1993 as the deadline for filing written comments on the rule but the public hearing will be held five days later on August 10, 1993. West Virginia Code § 29A-3-6 states that the last day for submitting comments is the day of the hearing unless the agency allows an extension to file comments beyond the day of the hearing in accordance with W. Va. Code § 29A-3-7.

requires a demonstration by applicants of non-commercial facilities, in particular, and because WVMA members are potentially affected by the rule, the WVMA is compelled to comment on the proposed rules. These comments represent a continuation of the active and supportive role the WVMA has played in the development of a reasonable hazardous waste management program for West Virginia.

The comments that follow address the various concerns with respect to both the scope and application of the rule as well as specific concerns on proposed individual sections of the rule. Unless otherwise noted, all references to federal regulations are to Title 40 of the Code of Federal Regulations ("C.F.R."), while all references to state regulations are to Title 47 of the Code of State Regulations ("C.S.R.").

II. COMMENTS

A. Section 2.2 -- Definition of "Commercial Facility"

The definition of "commercial hazardous waste management facility" is specifically defined by statute. W. Va. Code § 20-10-2. Specific reference to "incinerator" is not included within the statutory definition. If a proposed incinerator also constituted a "commercial facility" it would be covered by the regulation. However, the authority of the Board does not extend to regulating the siting of incinerators that are not "commercial". Therefore, to avoid any stretch of interpretation, and to prevent confusion, the term "incinerator" should be deleted from the definition.

B. Section 2.3 -- "Construction" Ambiguity

One underlying concern of the regulations is the application of the regulation to non-commercial construction activities. 57 C.S.R. 1, § 2.3. W. Va. Code, § 20-10-3(c) states that no person shall construct or commence construction of a commercial hazardous waste management facility without first obtaining a Certificate of Site Approval issued by the Board in a manner prescribed therein. In particular, the statute provides:

(c) After the effective date of this article [April 8, 1989], no person shall construct or commence construction of a commercial hazardous waste management facility without first obtaining a certificate of site approval issued by the board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" shall mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to include accommodation of hazardous waste, or expansion of more than fifty percent the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

W. Va. Code § 20-10-3(c) (emphasis supplied). "For the purposes of this Section, 'construct' and 'construction' shall mean" is limited specifically to commercial facilities. However, in the regulation, "construction" is set out separately in its own definition and does not specify that the activities are related to commercial hazardous waste management facilities in particular. Instead, Section 2.3.1 states "for new

facilities" and Section 2.3.2 states "for existing facilities." Standing alone, these provisions could be taken out of context and applied to non-commercial hazardous waste management facilities. Thus, the WVMA requests the rule be modified to clarify that "construction" is limited to commercial facilities. The WVMA suggests either repeating the statutory definition verbatim, or amending Sections 2.3.1 and 2.3.2 of the rule to read, in pertinent part, as follows:

2.3.1 For new commercial facilities, . . .

2.3.2 For existing commercial facilities, . . .

This language would remove any ambiguity as it relates to the application of the rule on non-commercial facilities and restrict the term "construction" to commercial facilities.

In addition, to further clarify the definition and the statutory intent, the comment suggesting that construction does not include preliminary engineering, etc. should be given the same weight as Sections 2.3.1 and 2.3.2. Therefore, the WVMA requests the Board modify its rule to insert a new section designated Section 2.3.3 that includes the language which is now set forth in the Comment. The WVMA believes this change will more accurately reflect the statutory meaning of "construction."

C. Section 3 -- Demonstration by Non-Commercial Facilities

Section 3 of the proposed rule specifically excludes from regulation a commercial facility which can demonstrate to the Board that it is owned and operated by a person solely for the treatment, storage, disposal, or recycling of hazardous

waste generated by that person or that person and others on a cost-sharing, non-profit basis. This requires non-commercial hazardous waste facilities to prove that they are not commercial facilities, when the burden should be on the Board to show that a facility which seeks classification as a non-commercial facility is in fact a commercial facility. Non-commercial facilities are exempt by definition from the purview of the rule and the Board must establish its jurisdiction before it can assert authority over a facility. In addition, facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels on site and facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned treatment works ("POTW") are not considered hazardous waste management facilities by statute and therefore are not within the jurisdiction of the Board. Clearly, the Board lacks authority to require a non-commercial facility to demonstrate that it is not commercial. Therefore, the WVMA suggests clarification on the intent of the Board and offers its suggestion to make the scope and intent precise in the following fashion:

3.1. Hazardous waste management facilities that are not commercial hazardous waste management facilities are exempt from the provisions of this rule.

This change will make the regulation comport with the statutory requirements as well as limit the authority exerted by the Board to that explicitly authorized by statute.

Furthermore, the rule does not make exception as found in the W. Va. Code § 20-10-3(d), which provides, as follows:

(d) Upon receiving a written request from the owner or operator of the facility, the board may allow, without going through the procedures of this article, any changes in the facilities which are designed (1) to prevent

a threat to human health or the environment because of an emergency situation; (2) to comply with federal or state laws and regulations; or (3) to result in demonstrably safer or environmentally more acceptable processes.

The WVMA suggests the a similar provision be added to Section 3 exempting changes meeting the statutory criteria and, accordingly, suggests the following:

3.2 The owner or operator of a commercial facility that submits written notification to, and obtains approval from, the Board, may make changes without going through the procedures of this regulation if the changes in the facilities are designed:

3.2.1 To prevent a threat to human health or the environment because of an emergency situation;

3.2.2 To comply with federal or state laws and regulations; or

3.2.3 To result in demonstrably safer or environmentally more acceptable processes.

This change more accurately reflects the statutory provisions. Thus, the WVMA urges the Board adopt these suggested changes.

D. Section 4 -- Applying for Site Approval

In Section 4 of the Regulation, the term "the applicant" is used in a manner which could signal confusion between an applicant for commercial hazardous waste management facility and a non-commercial hazardous waste management facility. This is true especially in light of the reference to W. Va. Code § 20-10A-3, which requires all hazardous waste management facilities that dispose of greater than ten thousand tons per annum to obtain site approval from the Board. This possibility of confusion could arise where the term "construction" describes an alteration or

expansion that increases the capacity of the facility to accept 50% more hazardous waste. This suggests that even non-commercial facilities which undergo "construction" must meet certification requirements. While it may not be the intent to capture non-commercial facilities, the WVMA suggest the Board amend its rule to clarify that submission of an application only be required of commercial facilities. In particular, the WVMA submits that the rule needs to be precise in applying only to commercial facilities and should not unintentionally capture non-commercial hazardous waste facilities which dispose of greater than ten thousand tons per year or are subject to the referendum provisions.

The WVMA suggests the following language change to Section 4.1:

4.1 Prior to submitting a siting application to the Board, ~~the applicant~~ an applicant for a commercial facility shall file pre-siting notices, publish legal notices as prescribed in Chapter 20, Article 10A, Section 3 of the West Virginia Code, and hold a public information hearing in the proposed host community.

This language will preclude any interpretation which would conflict with or allow circumvention of the requirements of W. Va. Code § 20-10A-3.

Furthermore, applications are generally complete if they are "substantially" or "administratively" complete. Because application requirements are usually broad, there is often some disagreement or confusion as to the meaning of a requirement and the desired response. The Completeness Outline (Appendix III) includes six pages of the application calling for very detailed information. The applicant supplies the best information available at the time of submission, but it is unlikely that the information submitted will be complete to all readers. Therefore, the

WVMA suggests the language of Section 4.2 be modified by deleting the word "explicitly" when referring to completeness of an application. This is especially true in light of the proposed fee rule, 47 C.S.R. 35A, which solicits an extra \$2,500 for each application submittal which is deemed incomplete. Therefore, the WVMA suggests completeness be termed "substantial" or "administrative" and the regulation should reflect the an applicants good faith effort to provide a complete application.

E. Section 4.6.4. -- Types of Waste

Section 4.6.4 requires that the application provide the Standard Industrial Classification ("SIC") codes that reflect the types of hazardous waste generators to be served by the facility. This requirement is speculative unless the facility is being designed and operated for one particular generator or type of generator. Otherwise, a commercial facility would normally take waste from whatever source it is derived without regard to the type of facility that generates the waste. The critical concern should be the type of waste generated, not the type of industry which generates the waste. The likely underlying intent of this provision is to solicit information regarding the type of waste the facility intends to handle; that is, particular characteristic wastes or particular listed wastes. Accordingly, the regulation already requires a list of hazardous waste, including the EPA hazardous waste codes, that will be received by the facility, the annual volume and the type of treatment, storage or disposal.

§ 4.6.10. Thus, the WVMA suggests Section 4.6.4 be deleted and the remaining subsections renumbered.

F. Section 4.6.6 -- Exposure Information

The Board requires information on the degree of health risk to human health populations within a four mile radius of the proposed facility. The regulation goes on to describe what the assessment is to entail, including chronic and acute exposure scenarios and carcinogenic, teratogenic, systemic or other health risks. Moreover, the rule requires identification of each pathway of exposure as part of the risk assessment. A cursory review of the authorizing statute in Chapter 20 does not reveal a requirement for a health risk assessment nor authorization for a four mile radius for mandatory risk assessment. The Board exceeds its authority granted by the statute in requiring an applicant to engage in these expensive and time consuming studies not authorized or required by the statute. In addition, such a requirement lacks any logical basis, is speculative and constitutes a barrier, by expense and time consumption, to the federal requirement to assure adequate capacity to hazardous waste generated in West Virginia.

While the WVMA acknowledges that federal and state regulations require exposure information (47 C.S.R. 35, § 11.2.9), a risk assessment is an additional requirement which would entail substantial resources without much environmental or human health benefit. In addition, the four mile radius requirement is an arbitrary measure without any known basis. Therefore, the WVMA requests Section 4.6.6 be rewritten to mirror the state's Hazardous Waste Management Regulations, 47 C.S.R. 35, §11.2.9, or its federal counterpart, 40 C.F.R. § 270.10(j).

G. Section 5.1 -- Administrative Costs

In addition to the \$60,000 fee submitted with the application (See proposed rule 47 C.S.R. 35A and WVMA comments), the proposed rule also requires the applicant to pay the administrative costs of providing notice in the State Register, transcribe the hearing, and publish legal advertisements. Cognizant of the statutory requirement to pay these costs, the WVMA submits that regardless of the fee provisions eventually adopted, the applicant should be obligated only to pay those costs which are expected, i.e. required by statute. Other costs should be paid from the application fee, because the intent of imposing the fee is to offset part of the costs of the program. In order to accomplish this objective, the WVMA offers the following language and requests the Board to amend the rule accordingly:

5.1 Within thirty (30) calendar days upon the Board's determination that the application is complete, the Board shall, ~~at the expense of the applicant,~~ do the following:

This language would permit the applicant to pay the required fees and expenses without a wholesale inclusion of all of Section 5.1. For specific costs, such as found in Section 5.1.1.c., requiring transcription of the record, and publish legal advertisements. See W. Va. Code § 20-10-3. Similarly, Section 5.1.1., regarding costs of publication in the State Register, should be amended accordingly.

H. Section 6.1 -- Approval Criteria

Although the WVMA commends the Board for setting forth all the information which is required to be submitted for certification, it did not set forth an objective criteria for obtaining approval. Instead, the Board "shall render a decision based upon written and oral comments received concerning the application." § 6.1.

The statute specifically states the Board is to render a decision based upon the application and the record, and based upon the nature of probable environmental and economic impacts. W. Va. Code § 20-10-3(i). Nothing would be more unfair than to require an applicant to submit a detailed, technical application for a well conceived project, and have certification denied because a majority of public commentators opposed it for reasons unrelated to the merits of the project.

The decision of the Board must contain findings and conclusions. The Regulation on the other hand only requires the Board to send written notification to the applicant. The regulation does not specifically set forth the requirement for findings and conclusions, and it should do so.

In particular, Section 6.1 of the regulation states that "the Board shall render a decision based upon written and oral comments received concerning the application." The statute requires the Board to render a decision based upon the application and the record -- "the Board shall base its decision upon the factors set forth in subsection (e)." W. Va. Code § 20-10-3(i). The WVMA urges the rule be changed to mirror the statutory standard of decision-making.

Furthermore, the provisions of W. Va. Code § 20-10-3(e) should be inserted in the regulation verbatim or specifically referenced. It is by these criteria that the Board's decision must be evaluated. West Virginia Code § 20-10-3(e), provides:

(e) An application for certificate of site approval shall consist of a copy of all hazardous waste permits, if any, and permit applications, if any, issued by or filed with any state permit-issuing authority pursuant to article five-e

[§ 20-5E-1 et seq.] of this chapter and a detailed written analysis with supporting documentation of the following factors:

(1) The nature of the probable environmental and economic impacts, including, but not limited to, specification of the predictable adverse effects on quality of natural environment, public health and safety, scenic, historic, cultural and recreational values, water and air quality, wildlife, property values, transportation networks, and an evaluation of measures to mitigate such adverse effects;

(2) The nature of the environmental benefits likely to be derived from such facility, including the resultant decrease in reliance upon existing waste disposal facilities which do not comply with applicable laws and regulations, and a reduction in fuel consumption and vehicle emissions related to long-distance transportation of hazardous waste; and

(3) The economic benefits likely to be derived from such facility, including, but not limited to, a reduction in existing costs for the disposal of hazardous waste, improvement to the state's ability to retain and attract business and industry due to predictable and stable waste disposal costs, and any economic benefits which may accrue to the municipality or county in which the facility is to be located.

Because the statutory criteria are so specific, the rule should not give short shrift to the importance of its mandate. Therefore, the WVMA urges Section 6 be redrafted to reflect the statutory mandates.

Moreover, the statute requires a written decision of the Board containing its findings and conclusions. The rule simply mandates a written decision. However, "findings and conclusions" is a significant phrase that imports legal consequence. Specifically, the Board is required to make "findings of fact" and based upon those

findings make "conclusions of law." Thus, the rule should be modified to accurately state the statutory mandates, and if unavoidable, be inserted verbatim.

The following represents the WVMA's suggested redraft to Section 6 of the rule.

6.1 Upon completion of the public hearing, the Board shall render a decision based upon the application and the record of written and oral comments received. The decision shall be based upon the following factors:

6.1.1 The nature of the probable environmental and economic impacts, including, but not limited to, specification of the predictable adverse effects on quality of natural environment, public health and safety, scenic, historic, cultural and recreational values, water and air quality, wildlife, property values, transportation networks, and an evaluation of measures to mitigate such adverse effects;

6.1.2 The nature of the environmental benefits likely to be derived from such facility, including the resultant decrease in reliance upon existing waste disposal facilities which do not comply with applicable laws and regulations, and a reduction in fuel consumption and vehicle emissions related to long-distance transportation of hazardous waste; and

6.1.3 The economic benefits likely to be derived from such facility, including, but not limited to, a reduction in existing costs for the disposal of hazardous waste, improvement to the state's ability to retain and attract business and industry due to predictable and stable waste disposal costs, and any economic benefits which may accrue to the municipality or county in which the facility is to be located.

* * * * *

6.4 Immediately upon the decision of the Board, the Board shall send the written decision to the applicant. The written decision shall contain the Board's finding of

fact and conclusions of law. The decision shall be sent to the applicant by certified mail and be available to the public upon request.

Although it may seem redundant, using the specific statutory language is consistent with legislative wishes instructive to all who use the rule. The identical language assures, in this instance, that there is no discrepancy between the statute and the rule as to the exact wording. Thus, WVMA urges the Board to incorporate these statutory requisites.

I. Section 7.2 -- Conflict of Laws Proviso

The WVMA suggests adding a proviso attached to the end of this section which would acknowledge that there may be additional state or federal laws which pre-empt or supersede, or otherwise preclude or restrict, the enforcement of local regulations or ordinances in addition to the determinations of the Board.

J. References to "Facility"

The rule defines "commercial hazardous waste management facility" and "commercial facility" but the rule often uses the term "facility" without a modifier. In order to assure accurate interpretation, the WVMA suggests that in all instances, the term "commercial facility" should be replaced for "facility" throughout the rule.

K. Cross-reference to Hazardous Waste Management Regulations.

These regulations establish procedures for obtaining a Certificate of Site Approval from the Commercial Hazardous Waste Management Facility Siting Board. Many of the criteria set forth in the rule refer to the Hazardous Waste Management Regulations, 47 C.S.R. 35. Proposed changes to that rule will incorporate the federal

regulations by reference and may be approved by the Legislature in 1994, causing the references contained in the Certification Requirements rule to be obsolete. Thus, the WVMA suggests the rule cross-reference the Code of Federal Regulations concerning location standards for hazardous waste management facilities. In particular, 40 C.F.R. Part 270 should be referred to.

III. CONCLUSION

The WVMA appreciates the opportunity to comment on the proposed rule and continues to offer our assistance in developing reasonable regulatory programs. Any questions concerning the comments should be directed to Robert L. Foster, Chairman, Environmental, Safety and Health Committee of the West Virginia Manufacturers Association at (304) 342-0161.

The CHWMF Siting Board received these comments at the public hearing for the proposed rule 57 C.S.R. 1 on August 10, 1993. The following are the comments received and the responses thereto.

The WV Manufacturers Association, represented by Bob Foster and Mike McThomas (both of whom were at the hearing), met with Board and OWM representatives on August 11, 1993.

The purpose of this meeting was to attempt to modify the language of the proposed rule in a manner which would be satisfactory for the Board, OWM and the Association. A consensus was reached and minor changes in language were agreed upon for the final version of the proposed rule.

**SUPPLEMENTAL
COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED
COMMERCIAL HAZARDOUS WASTE MANAGEMENT
FACILITY SITING BOARD
CERTIFICATION REQUIREMENTS
57 C.S.R. 1**

Prepared By:

Environmental, Safety & Health Committee
West Virginia Manufacturers Association

and

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Counsel for
West Virginia Manufacturers Association

August 10, 1993

SUPPLEMENTAL
COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED
COMMERCIAL HAZARDOUS WASTE MANAGEMENT
FACILITY SITING BOARD
CERTIFICATION REQUIREMENTS
57 C.S.R. 1

August 10, 1993

I. Introduction

The purpose of these supplemental comments of the West Virginia Manufacturers Association ("WVMA") is to address the scope and purpose of the Commercial Hazardous Waste Management Facility Siting Board ("Board") and the extent to which the proposed regulations apply to existing hazardous waste facilities currently permitted under the federal Resource Conservation and Recovery Act ("RCRA"). Clearly, the intent of the article and the creation of the Board is to address the siting of new commercial hazardous waste management facilities; hazardous waste management facilities which accept waste from hazardous waste generators, other than hazardous waste generated by the facility itself, and whose sole purpose is to engage in the business of hazardous waste treatment, storage, or disposal. The intent of the article is not to address those facilities which generate hazardous waste as a byproduct of an industrial process but are also permitted under RCRA to treat, store and dispose of the wastes which the facility may generate. These supplemental

comments are intended to urge changes to the rule which would more accurately reflect the statutory intent and the purpose of the Board.

II. Scope and Purpose

The first area addressing the application of the rule to permitted hazardous waste management facilities is in Section 1.1 of the rule. Section 1.1 sets forth the scope and purpose of the rule. This section should be rewritten to clarify the nature and types of the facilities for which the Board would be engaged in granting a Certificate of Site Approval. The scope and purpose should make it clear that the regulation only applies to the siting of commercial facilities and does not apply to the treatment, storage and disposal of hazardous waste at currently permitted non-commercial facilities. The regulation is intended to address siting, approval or rejection of the location of new commercial facilities, and is not intended to be a duplicate regulatory body overlapping the authority and responsibilities of the Division of Environmental Protection. Thus, the following language should remedy these concerns:

1.1. Scope and Purpose.-- These regulations establish the procedures for obtaining a Certificate Of Site Approval prior to the construction of a commercial hazardous waste management facility designed solely for the purposes of treatment, storage or disposal of hazardous waste. By no means do these regulations permit the operation of a commercial hazardous waste management facility, they may only approve or reject the proposed location of a new commercial hazardous waste management facility.

It is the intent of the Legislature as well as a reasonable interpretation of the limited purpose of the Board, that the Board limit its oversight to the siting of

those operations which contemplate engaging in the business of treating, storing or disposing of hazardous waste on a commercial basis. This category of a facility does not, and should not, include production operations, or those businesses engaged in producing a product, who are permitted to treat, store or dispose of hazardous waste as an incidental part of the ultimate reason for the business; that is, production of a useful product. In other words, the statute does not authorize the Board to pass judgement on existing facilities that accept hazardous waste from other operations to make a finished product.

III. "Construction" and "Existing Facilities"

It is equally important to change the provisions of Section 2.3.2. This section is derived from W. Va. Code § 20-10-3(c), which addresses construction of a commercial hazardous waste management facility. It is clear that the role of the Board is to address the siting of new or existing commercial hazardous waste facilities and expansion of spacial area or a change in operations for such facilities. For analysis, this section of the Code needs to be broken down into its individual elements. First, the statute addresses construction or commencing construction of commercial facilities as "the alteration or expansion of existing structures or facilities to include accommodation of hazardous waste." Id. The first element presupposes that an existing facility did not formerly accept hazardous waste nor did it generate or otherwise engage in hazardous waste management. The siting of this type of existing facility would include, for example, an old warehouse where no activities were taking place and the site was transformed or modified to be a commercial

hazardous waste management facility. This provision, or element, is not intended to address those facilities that currently are permitted as treatment, storage or disposal facilities.

The next element of construction or commencing construction of a commercial facility includes "expansion of more than fifty percent [of] the area or capacity of an existing hazardous waste facility." Id. For example, this provision would allow for the Board's assertion of jurisdiction if a five acre facility which included an expansion of three acres for the purposes of constructing a hazardous waste treatment, storage or disposal facility that engaged in the business of accepting hazardous waste from third parties. This is an example of expanding the spacial area for purposes of initiating a commercial hazardous waste management facility. The second example relative to capacity is illustrated as follows. An existing hazardous waste management facility with a capacity of 10,000 tons per month would be required to submit an application to the Board if it were to increase its capacity an additional 6,000 tons per month of hazardous waste accepted from other generators. It does not include the situation where an existing permitted treatment, storage and disposal facility accepts 10 pounds of hazardous waste generated by another person. In that case, that 10 pounds would be 100% increase over the previous amount of materials it took from other generators. It is readily apparent that an absurd result is reached where there is an incorrect interpretation of the purpose of including provisions seemingly to address existing facilities. The increase is limited to the percentage in capacity over and above the amount the facility is capable of handling

regardless of the waste origin. There would be no need for the Board to approve or disapprove the siting of a facility that currently exists and is currently permitted to handle a specified volume of hazardous waste. Thus, the idea of covering existing facilities is restricted to existing business operations that seek to change to or add the new business of accepting hazardous waste from third parties for the purpose of treatment, storage or disposal. In essence, the "change" contemplated is of the magnitude of a "new" commercial facility.

The third statutory manner in which an existing facility may be subject to the decisions of the Board is where there is "any change in design or process of a hazardous waste facility that will result in a substantially different type of facility." Id. To suggest that an existing noncommercial hazardous waste facility which seeks and obtains approval for a modification of their current RCRA permit to go from disposal facility to a storage facility as being covered by either the intent of the Legislature in enacting Article 10 or in the practical application of the statute by the Board, is beyond any reasonable extension of the intent or purpose of the statute. Yet, the definition of "construction," if read literally, would require any treatment, storage or disposal facility to seek approval of the Board for any change in the facility's operations related to hazardous waste management. The requirements of the rule must be limited by commercial transactions and the expansion of the facility to engage in the business of hazardous waste treatment, storage or disposal; in other words, a new activity.

All in all, the requirements of W. Va. Code § 20-10-3(c) lead to the conclusion that the existing facilities contemplated by the statute are existing commercial facilities and not existing hazardous waste facilities. The WVMA submits that the statute intends to address essentially "new" commercial hazardous waste activities in a new location or in a magnitude that siting approval is justified. It does not, however, intend to capture existing operations that are currently sited and permitted to engage hazardous waste management notwithstanding the facility accepts waste from other generators. Therefore, it is imperative for both a realistic application as well as a reasonable interpretation of the statute, to amend Section 2.3.2 to state "for existing commercial facilities." In short, this is the only logical and realistic interpretation which can be derived from both the language of the statute and the overall intent and jurisdiction of the Board.

IV. Treatment v. Recycling

Furthermore, it is essential to make a distinction between the treatment, storage, and disposal of hazardous waste as an end result and the use, reuse, recycling, reconditioning or reclamation of hazardous waste to make a product. Whereas, under federal law, 40 C.F.R. § 261.2 and 4, a recycling material may be considered a hazardous waste from the point of generation to the point where it is transformed into a product and another waste stream, the fact that it is classified as a hazardous waste for that temporary time, those who are engaged in creating a product should not be burdened by additional regulation of the Board. It is entirely counter productive to require a business entity to obtain siting approval from the

Board for making a product out of a potential hazardous waste that would otherwise be going to a treatment, storage, or disposal facility. Treatment is readily distinguishable from reconditioning, reclamation or recycling. Treatment contemplates engaging in some neutralizing activity prior to disposal of a waste product. Treatment may include, for example, introduction of alkaline materials to an acidic waste to neutralize the waste to remove or reduce the characteristic of corrosivity. However, reconditioning spent sulfuric acid to produce raw material sulfuric acid is reclamation or recycling and not treatment for disposal. Thus, we propose a new subsection of Section 3 which states as follows:

Hazardous waste facilities that are engaged in the recycling, reconditioning or reclamation of hazardous waste, including incidental storage prior to processing, shall be exempt from these regulations.

Because the Board's jurisdiction is limited to addressing commercial hazardous waste treatment, storage, or disposal facilities, facilities which manage hazardous waste as incidental to production of a finished product or intermediate product or accept hazardous waste from other sources for the purpose of making a product, are not be subject to the Board's regulations. In addition, we do not believe that the Legislature intended or contemplated to include production activities within the jurisdiction of the Board. Moreover, the statute is limited to siting a facility and there is no reasonable justification for requiring additional fees (\$60,000) or siting studies or additional information as required by the rule for those facilities which currently exist and are permitted by the Division of Environmental Protection.

V. Conclusion

The WVMA appreciates the opportunity to file subsequent comments for the Board's consideration. Indeed, to circumscribe the scope of the proposed rule and to avoid misunderstanding and misinterpretation, the WVMA urges the Board to adopt the suggested changes. Moreover, the regulation as written may contribute to a restriction on current facilities to deal with the waste that is generated within West Virginia by removing the flexibility to manage hazardous waste among the existing companies. Any questions concerning the comments should be directed to Robert L. Foster, Chairman, Environmental, Safety and Health Committee of the West Virginia Manufacturers Association at (304) 342-0161.

Submitted August 10, 1993.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1356 Hansford Street
Charleston, WV 25301-1401

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

August 13, 1993

MEMORANDUM

To: Secretary of State & LRMRC

From: Dale Moncer *DM*
Office of Waste Management

Re: Section 6B/Rule-Making Process
57 C.S.R. 1

This attachment is to satisfy the conditions in Section 6B of the memorandum authored by Judy Cooper concerning the rule-making process.

- 1) The public hearing attendance is listed in a separate attachment.
- 2) The comments and responses are in separate attachments.
- 3) All amendments/revisions to the proposed rule are denoted by strike-throughs or underlined text.
- 4) All amendments/revisions were made in response to comments received during the 30-day comment period.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 6, 1993

David C. Callaghan
Director
Division of Environmental Protection
#10 McJunkin Road
Nitro, West Virginia 25143-2506

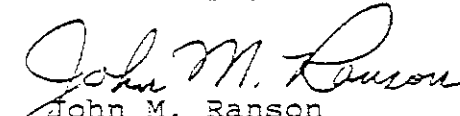
Re: Title 57, Series 1 - "Commercial Hazardous Waste
Management Facility Siting Board Certification
Requirements"

Dear Director Callaghan:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,


John M. Ranson
Cabinet Secretary

JMR/lab
cc: Ken Ellison

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