

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

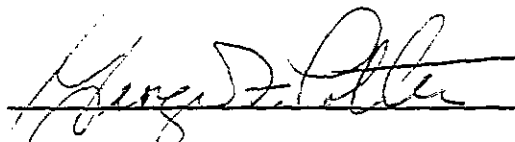
The Commercial Hazardous Waste Management
AGENCY: Facility Siting Board TITLE NUMBER: Title 57CITE AUTHORITY West Virginia Code §20-10-3(j)AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1TITLE OF RULE BEING PROPOSED: "Commercial Hazardous Waste Management
Facility Siting Board Certification Requirements"

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



Chairman, CHWMF Siting Board

TITLE 57
LEGISLATIVE RULES
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD
SERIES 1
CERTIFICATION REQUIREMENTS

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\$57-1-1. General.

1.1. Scope and Purpose. -- This rule establishes the procedures for obtaining a Certificate of Site Approval prior to the construction of a commercial hazardous waste management facility. By no means does this rule permit the operation of a commercial hazardous waste management facility, it provides solely for the approval or rejection of 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 the "Hazardous Waste Management 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 West Virginia Code §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 have the meaning prescribed in the "Hazardous Waste Management 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, is exempt from these regulations if:

3.1.1. 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, nonprofit basis;

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

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 rule, 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 the West Virginia Code, §20-10A-3 and hold a public information hearing in the proposed host community. Then the referendum process will proceed. See the Siting Flow Chart (Appendix I) and Pre-Siting Notice (Appendix II) of this rule.

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 are in favor of the facility, any person wanting to construct or operate a commercial hazardous waste management facility must obtain an application outline from the Board. The Board will consider applications that do not explicitly follow the outline incomplete. See the Completeness Outline (Appendix III) of this rule.

4.3. Any person wanting to construct or operate a commercial hazardous waste management facility must submit to the Board, the information required under the "Hazardous Waste Management Regulations" (Sections 11.5.1.1 through 11.5.1.m.) of 47 C.S.R. 35.

4.4. That person must indicate whether the application is new or revised.

4.5. That person 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 this rule, 47 C.S.R. 35, 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. Owners or operators of existing facilities must provide photographs of the facilities;

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 (ie. five foot contour intervals if relief is greater than twenty feet; or two foot contour intervals if relief is less than twenty 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. The map's scale and date;
 - 4.6.2.b. The 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. The orientation of the map (north arrow);
 - 4.6.2.g. The 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 and 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. The location of operational units within the commercial hazardous waste management facility site, where hazardous waste is or will be treated, stored, or disposed (including equipment clean-up areas); and
- 4.6.3. A listing of all permits or construction approvals received or pending as required under Section 11.4.1.j of 47 C.S.R. 35;
- 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 including, 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; and

4.6.5.a.11. Counties or communities adjacent to the proposed host community; and

4.6.5.b. An evaluation of and a plan for measures that will mitigate those impacts. If there is a potential for adverse impacts beyond the host community, the Board shall notify the respective County Commission and publish a Class I-O legal advertisement identifying those impacts in a newspaper published in those counties.

4.6.6. The information required under Section 11.2.9 (exposure information) of 47 C.S.R. 35, except that this information is required of all commercial hazardous waste management facilities regardless of the type of management practice employed. The 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 in a quantitative manner, to the extent possible; and

4.6.6.d. Each pathway identified pursuant to Section 11.2.9.a.1 of 47 C.S.R. 35.

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; and

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. The following statement must precede 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 Section 2 of 47 C.S.R. 35;

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 from 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 47 C.S.R. 35A. When the application has been determined to be complete, the Board will 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 after 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 Board will hold the public hearing 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 of the hearing, transcribed at the applicant's expense, shall be kept by the Board (i.e., cassette recording, stenographer);

5.1.1.d. The close of the hearing also ends 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 this rule;

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; provide written notice to the Chief Executive Officer of each affected community in which the proposed commercial facility is to be located; and 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 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. A qualified daily or weekly newspaper meets 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 this rule, and the West Virginia 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:

6.3.1. Grant a Certificate of Site Approval;

6.3.2. Grant a Conditional Certificate of Site Approval; or

6.3.3. Deny a Certificate of Site Approval.

6.4. The Board shall immediately send a written decision to the applicant. The written decision shall enumerate the Board's 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 of the decision 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. The certification process is outlined in Appendix I of this rule.

§57-1-7. Effect of Certification.

7.1. The approval and conditions thereto of the Certificate of Site Approval 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 this rule affects 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. There may be state or federal laws which pre-exempt 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.



West Virginia Legislature
Legislative Rule-Making Review Committee

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

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SECRETARY OF STATE

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

January 9, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Dale Moncer
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Commercial Hazardous Waste Management Facility
Siting Board Certification Requirements

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

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

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