

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: The Commercial Hazardous Waste Management Facility Siting Board TITLE NUMBER: Title 57

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 1

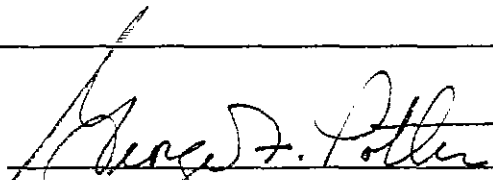
TITLE OF RULE BEING PROPOSED: "Commercial Hazardous Waste Management Facility Siting Board Certification Requirements"

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 159

SECTION 64-9-39, PASSED ON March 12, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 19, 1994


Authorized Signature
Chairman

5.80

LEGISLATIVE HISTORY ABSTRACT

Commercial Hazardous Waste Management Facility Siting Board
Certification Requirements

57 CSR 1

Division of Environmental Protection
Office of Waste Management
Hazardous Waste Permitting Section
Rulemaking Coordinator - Dale Moncer 558-5393

Jul 06, 1993 Initial Filing With Secretary of State

Aug 10, 1993 Public Hearing Date;
Close of Public Comment Period

Aug 16, 1993 Agency Approved Rule filed with Secretary of State

Aug 16, 1993 Agency Approved Rule filed with Legislative
Rulemaking Review Committee

Jan 09, 1994 Passed by Legislative Rulemaking Review Committee
 X With Amendments Without Amendments

Jan 21, 1994 Modified Rule filed with Secretary of State

1994 REGULAR LEGISLATIVE SESSION

Jan 31, 1994 Introduced in the House of Delegates as HB 4242;
Referred to the Committee on Health and Human
Resources, then Judiciary

Jan 31, 1994 Introduced in the Senate as SB 157; Referred to the
Committee on Health and Human Resources, then Judiciary

Feb 15, 1994 Reported do pass, sent to Senate Judiciary

Mar 03, 1994 Reported do pass

Mar 04, 1994 All Rules promulgated by Boards amended into SB 159,
§64-9-39, and passed by Senate; ordered to House

Mar 05, 1994 To Judiciary

Mar 09, 1994 Reported do pass; placed on Special Calendar

Mar 12, 1994 Passed House on voice vote; communicated to Senate

Mar 12, 1994	Completed Legislative Action
Mar 13, 1994	Sent to Governor
Mar 30, 1994	Approved by Governor
May 19, 1994	Final filed with Secretary of State
May 19, 1994	Effective date

TITLE 57
LEGISLATIVE RULES
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD

SERIES 1
CERTIFICATION REQUIREMENTS

§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.

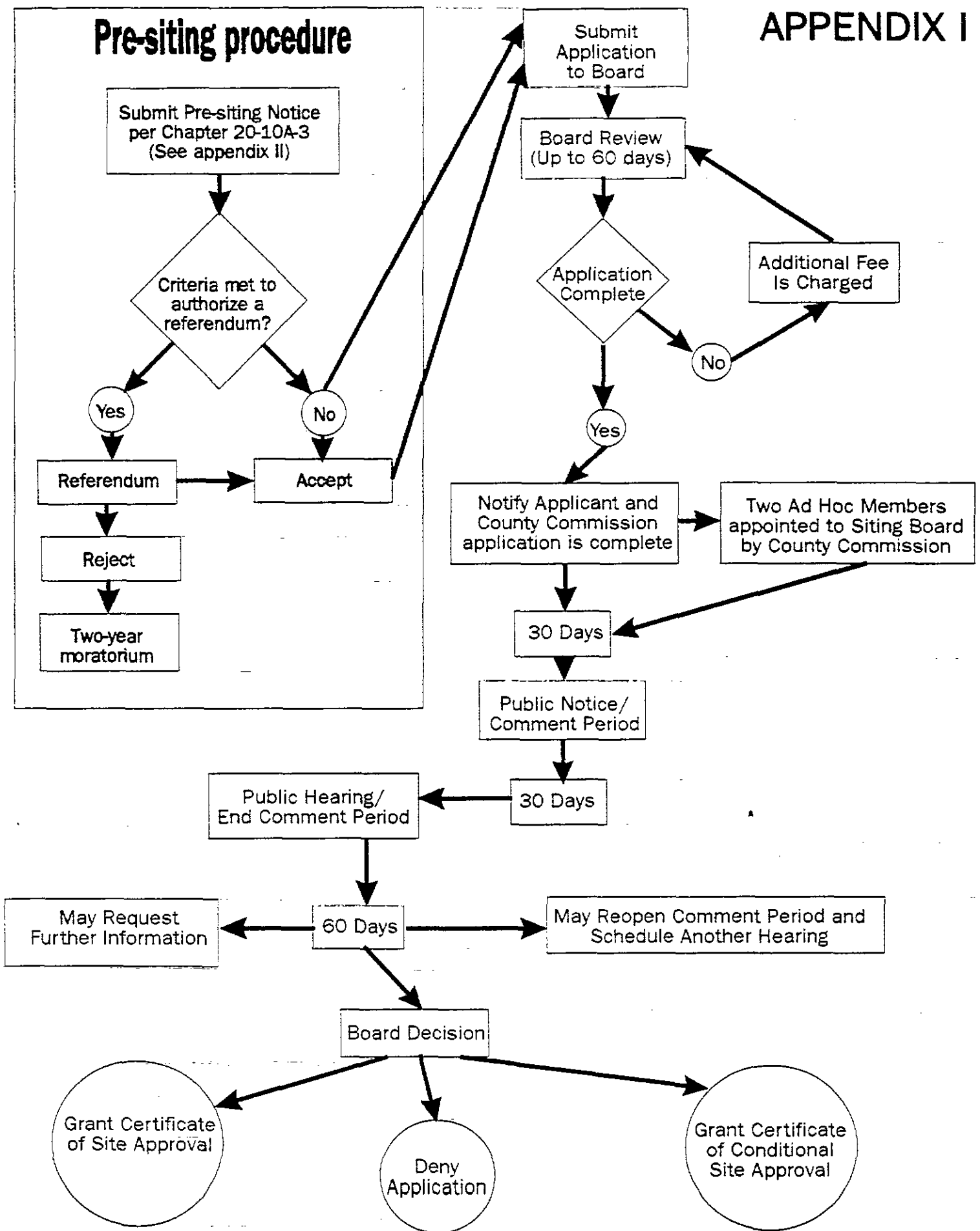
§57-1-7. Effect of Certification.

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.

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 57, 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 57, 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 57, 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 57, 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	
- 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 57, 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 57, 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 57, 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:
 - 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 57, Series 1)
- C-1. Indicate whether this is a new or revised application: 4.4 (Title 57, 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 57, Series 1).
- D. SIGNATORIES TO THE APPLICATION: 4.8 (Title 57, Series 1)
- D-1. The required signature shall accompany the certification statement of Section 4.8 of Title 57, Series 1.
- D-2. The application must be signed in accordance with Sections 4.8.1 and 4.9 of Title 57, 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 57, 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 57, 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 57, 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 57, 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. _____

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H. B. 4242

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on the Judiciary)

A BILL to amend article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six, relating to authorizing the commercial hazardous waste management facility siting board to promulgate legislative rules relating to certification requirements.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-six, to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-36. Commercial hazardous waste management facility siting board.

4242

1 The legislative rules filed in the state register on the
2 sixteenth day of August, one thousand nine hundred ninety-three,
3 modified by the commercial hazardous waste management facility
4 siting board to meet the objections of the legislative rule-
5 making review committee and refiled in the state register on the
6 twenty-first day of January, one thousand nine hundred ninety-
7 four, relating to the commercial hazardous waste management
8 facility siting board (commercial hazardous waste management
9 facility siting board certification requirements), are
10 authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 Commercial Hazardous Waste Management Facility Siting Board to
14 promulgate legislative rules relating to certification
15 requirements.

16

17 This section is new; therefore, strike-throughs and
18 underscoring have been omitted.

1 ~~Strike-throughs~~ indicate language that would be stricken from
2 the present law, and underscoring indicates new language that
3 would be added.

SENATE BILL NO. 157

1 (By Senators Anderson, Grubb, Macnaughtan and
2 Minard)

3 [Introduced January 31, 1994; referred to the
4 Committee on

5] NATURAL RESOURCES
6]

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Judiciary

10 A BILL to amend article nine, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section, designated section
13 thirty-six, relating to authorizing the commercial hazardous
14 waste management facility siting board to promulgate
15 legislative rules relating to certification requirements.

16 Be it enacted by the Legislature of West Virginia:

17 That article nine, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 thirty-six, to read as follows:

21 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS**
22 **TO PROMULGATE LEGISLATIVE RULES.**

23 **§64-9-36. Commercial hazardous waste management facility siting**
24 **board.**

1 The legislative rules filed in the state register on the
2 sixteenth day of August, one thousand nine hundred ninety-three,
3 modified by the commercial hazardous waste management facility
4 siting board to meet the objections of the legislative rule-
5 making review committee and refiled in the state register on the
6 twenty-first day of January, one thousand nine hundred ninety-
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14 promulgate legislative rules relating to certification
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18 underscoring have been omitted.



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

May 19, 1994

MEMORANDUM

To: Judy Cooper
Director, Administrative Law Division
Office of Secretary of State

From: Dale Moncer *DM*
Office of Solid Waste

Re: Final Filing

This package is the final filing of the "Commercial Hazardous Waste Management Facility Siting Board Certification Requirements" (Title 57, Series 1).

The diskette contains the following files:

57-1 The regulatory text (WP51)

APDXI.CDR Appendix I--A flow chart done in CORELDRAW that I was unable to import into WP51

APDXII Appendix II--The Pre-Siting Outline (WP51)

APDXIII Appendix III--The Siting Application Outline (WP51)

History The Historical Abstract

If you have any questions or if I have made mistakes, please call me at 558-5393.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 15, 1994

Dale Moncer
Commercial Hazardous Waste Mngt
1356 Hansford St.
Charleston, WV 25301

SB 159 authorizing, **Title 57, Series 1, Commercial Hazardous Waste Management Facility Siting Board Certification Requirements**, passed the Legislature on **March 12, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 159, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 159** section **64-9-39**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division