

**TITLE 54
LEGISLATIVE RULE
SOLID WASTE MANAGEMENT BOARD**

**SERIES 4
COMMERCIAL SOLID WASTE FACILITY SITING PLANS**

§54-4-1. General.

1.1. Scope. -- The purpose of this rule is to establish minimum standards and requirements for the content, format, amendment, review, approval, and public participation process involved in county and regional solid waste facility siting plans, as required by W. Va. Code §22C-4-24. Such minimum standards and requirements are designed to protect the public health, safety, and environment throughout the state of West Virginia, and to ensure the fair and equitable evaluation of all sites proposed for use as solid waste facilities.

1.2. Authority. -- W. Va. Code §§22C-3-6 and 22C-4-24.

1.3. Filing Date. -- May 21, 2001.

1.4. Effective Date. -- May 21, 2001.

§54-4-2. Definitions.

The following words and terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under W. Va. Code §22-15-1 et seq.

2.2. "Authority" means any solid waste authority of any county or region in West Virginia, established by W. Va. Code §§22C-4-3 and 22C-4-4; or the county commission of any county which elected not to establish an authority, as allowed by W. Va. Code §22C-4-6.

2.3. "Board" means the West Virginia Solid Waste Management Board, as established by W. Va. Code §22C-3-4, or its authorized representatives.

2.4. "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand (10,000-30,000) tons of solid waste per month. "Class A facility" includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine (9,999) tons of solid waste per month.

2.5. "Class B facility" means a commercial solid waste facility which receives, or is expected to receive, an average daily quantity of mixed solid waste equal to or exceeding one hundred (100) tons each working day; or serves, or is expected to serve, a population equal to or exceeding forty thousand (40,000) persons, but which does not receive solid waste exceeding an aggregate of ten thousand (10,000) tons per month. "Class B facility" does not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of W. Va. Code §29A-1-1 et seq.

2.6. "Class C facility" means a commercial solid waste facility which receives, or is expected to receive, an average daily quantity of mixed solid waste of less than one hundred (100) tons each working day; and serves, or is expected to serve, a population of less than forty thousand (40,000) persons. "Class C facility" does not include construction/demolition facilities.

2.7. "Class D facility" means any commercial solid waste facility for the disposal of only construction/demolition waste, and does not include the legitimate beneficial reuse of clean waste concrete/masonry substances for the purpose of structural fill or road base material.

2.8. "Commercial recycler" means any person, corporation, or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent (70%) by weight of the materials coming into the commercial recycling facility.

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

2.10. "Compliance order" means an administrative order issued pursuant to W. Va. Code §22-15-10, authorizing a solid waste facility to operate without a solid waste permit.

2.11. "Commercial composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a composting facility owned and operated by a person for the sole purpose of compositing waste created by that person or such person and other persons on a cost-sharing or non-profit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

2.12. "Construction/demolition waste" means waste building materials, packaging, and grubbing waste resulting from construction, remodeling, repair, and demolition operations on houses, commercial and industrial buildings, and other structures and pavements, including, but not limited to: wood, plaster, metals, asphaltic substances, bricks, blocks and concrete, other masonry materials, trees, brush, stumps, and other vegetative materials, but shall not include asbestos waste.

2.13. "Endangered or threatened species" means any endangered or threatened species, as defined in 50CFR17, of animal or plant, and includes those species listed as endangered or threatened in 50CFR17.

2.14. "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity, or any other use not specified herein.

2.15. "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation; or any other method by which solid waste is incinerated.

2.16. "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

2.17. "Karst region" means a type of topography which is formed over limestone or dolomite by dissolution of the formation, and is characterized by sinkholes, caves, and similar features.

2.18. "Landfill" means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for the purpose of this rule, in the county where the majority of the spatial area of such facility is located.

2.19. "Materials recovery facility" means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

2.20. "Open dump" means any solid waste disposal which does not have a permit under W. Va. Code §22-15-1 et seq., or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

2.21. "Person" or "persons" means any industrial user, public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

2.22. "Plan" or "Siting plan" means the commercial solid waste facility siting plan required under W. Va. Code §22C-4-24.

2.23. "Recycle" or "Recycling" means the process by which recovered products are transformed into new products, and includes the collection, separation, recovery and sale or reuse of metals, glass, paper, tires, lead-acid batteries and other materials.

2.24. "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs; Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered to be reusing or recycling solid waste within the meaning of W. Va. Code §§20-11-1 et seq., 22-15-1 et seq and 22C-4-1 et seq.

2.25. "Resource recovery facility" means any solid waste facility at which solid wastes are mechanically, biologically, chemically, or thermally transformed for the purpose of separating, removing, or creating any material or energy for reuse or sale, and at which land disposal of solid waste does not occur. "Resource recovery facility" includes composting facilities, environmentally acceptable incinerators, materials recovery facilities, energy recovery facilities and other such solid waste facilities not herein specified.

2.26. "Sludge" means any solid, semisolid, residue, or precipitate separated from or created by a municipal, commercial, or industrial waste treatment plant, water supply treatment plant, or air pollution control facility; or any other such waste having similar origin.

2.27. "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; other discarded material, including offensive or unsightly matter, solid, liquid, semisolid, or contained liquid or gaseous material resulting from industrial, commercial, mining, or community activities, but does not include solid or dissolved material in sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code §22-11-1 et seq., or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under W. Va. Code §22-18-1 et seq., or refuse, slurry,

overburden, or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage, and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under W. Va. Code §§22-2-1 et seq., 22-3-1 et seq., 22-4-1 et seq., 22-6-1 et seq., 22-7-1 et seq., 22-8-1 et seq., 22-9-1 et seq., 22-10-1 et seq., or 22A-1-1 et seq., so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters.

2.28. "Solid waste disposal" means the practice of disposing of solid waste, including placing, depositing, dumping, or throwing, or causing to be placed, deposited, dumped, or thrown any solid waste.

2.29. "Solid waste disposal shed" means the geographical area which the Solid Waste Management Board designates and files in the state register pursuant to W. Va. Code §22C-3-9.

2.30. "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with W. Va. Code §22-15-20 (b). Such facilities shall be deemed to be situated, for the purposes of this rule in the county where the majority of the spatial area of such facility is located. Provided, that a salvage yard licensed and regulated pursuant to the terms of W. Va. Code §17-23, is not a solid waste facility.

2.31. "Transfer station" means a combination of structures, machinery, or devices at a place, or facility where solid waste is taken from collection vehicles and placed in other transportation units (such as a "walking floor," or other method of transfer as determined by the director) for movement to another solid waste management facility. Provided, when the initial generator of solid waste disposes of said waste into a container such as a roll-off, greenbox or bin which is temporarily positioned (not more than five days) at a specific location for transport by a transportation unit, such container shall not be considered a transfer station. Under any circumstances, leachate, litter and windblown materials must be properly managed.

2.32. "Wetlands" means those naturally occurring areas, as defined under 40CFR232.2(r), that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. "Wetlands" generally include swamps, marshes, bogs, and similar areas.

2.33. "100-year flood" means a flood that has a one percent or greater chance of recurring in any given year, or a flood of a magnitude equaled or exceeded once in one hundred (100) years on the average, over a significantly long period of time.

§54-4-3. Procedure for Plan Development and Approval.

3.1. Submission to the Board. -- A commercial solid waste facility siting plan is to be submitted to the Board. The plan shall be updated and submitted every five years after any new or updated plan is approved by the Board or within ninety (90) days of the formation of a new authority.

3.2. Administrative Completeness Review.

3.2.a. If the Board finds the draft plan to be incomplete, ie., to not contain all of the information required by this rule, it shall return the plan to the Authority along with a written statement explaining how the plan is incomplete.

3.2.b. The authority shall have thirty (30) days to amend the plan by providing the remaining

required information, and to submit the amended plan to the Board. No plan will be reviewed for technical merit until it is administratively complete.

3.3. Technical Review.

3.3.a. When a plan is determined to be administratively complete it will be subjected to a technical review of its contents, procedures, and processes.

3.3.b. The Board shall approve the final plan in writing if the Board determines that the plan complies with the purposes and requirements of applicable state and applicable federal law, if any, and the rules promulgated in this series.

3.3.c. If the Board determines that the plan should be rejected, it shall return the plan to the authority with a written statement of the insufficiencies in the plan.

3.3.d. Within ninety (90) days of receipt of a letter disapproving the plan, the authority shall revise the plan to eliminate the insufficiencies and submit the amended plan to the Board.

3.4. Final Submission to the Board. -- No later than sixty (60) days after approval, each county authority shall submit to the Board four (4) copies of its final plan. Each regional authority must submit one additional copy of the plan for each county within that region. Each authority shall transmit one copy of its plan to each appropriate regional planning and development council, county planning commission and to the office of each appropriate county clerk, who shall file the plan in the appropriate manner and make it available for public inspection.

3.5. Plans Developed by the Board. -- The Board shall develop a plan for any authority which fails to submit an update and for any new authority that fails to submit a plan within ninety (90) days of the due date under subdivision 3.2.a, provided that in preparing such plans, the Board may determine whether to prepare a regional- or county-based plan for those authorities which fail to complete such an update or for those new authorities that fail to complete a plan.

§54-4-4. Required Format of Commercial Siting Plan.

4.1. Required Format. -- In addition to the information required in section 5 of this rule, each plan submitted shall include:

4.1.a. A cover sheet which includes the name of the authority, the title of the plan, and the signature of the chairman of the authority;

4.1.b. A forward or preface which includes the purpose of the plan;

4.1.c. A table of contents indicating the major subdivisions of the plan;

4.1.d. A brief summary of the plan and its procedures, its methodology, and its conclusions;

4.1.e. The solid waste facility zones;

4.1.f. The rationale for establishing these zones;

4.1.g. The published announcement of all public hearings;

4.1.h. A brief summary of public comments and a statement describing how the authority responded

to the public comments; and

4.1.i. Appropriate highway and topographical maps.

§54-4-5. Required Content of Commercial Siting Plan.

5.1. General Information. -- The plan shall include the following general information:

5.1.a. A description of the purposes and objectives to be met by the plan within a period of twenty (20) years.

5.1.b. The provisions of the comprehensive litter and solid waste control plan, as submitted to the Board pursuant to W. Va. Code §22C-4-8, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

5.2. Solid Waste Facility Zones.

5.2.a. Each plan shall contain a narrative description and appropriate topographical maps which delineate the zones in which:

5.2.a.1. Class A facilities (over 10,000 tons per month);

5.2.a.2. Class B and C facilities (under 10,000 tons per month);

5.2.a.3. Class D facilities (construction/demolition only);

5.2.a.4. Solid waste transfer stations;

5.2.a.5. Recycling facilities;

5.2.a.6. Energy recovery facilities, and environmentally acceptable incinerators,

5.2.a.7. Materials recovery facilities, and

5.2.a.8. Composting facilities are "authorized," "tentatively prohibited," or "prohibited." Unless the readily available information clearly establishes that an area is suitable for the location of a commercial solid waste facility, or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited.

5.2.b. Each type of facility listed in subdivision 5.2.a shall be addressed separately in the narrative, along with the rationale for establishing the zone in accordance with subsection 5.3 of this rule. The separate zones may be displayed on a single topographical map or a series of topographical maps, as desired by the authority. All existing facilities listed in subsection 5.2.a will be listed in the plan and depicted on the map regardless of location in or out of an authorized zone. When a facility is located in more than one county, each affected county shall depict the facility on the map.

5.3. Rationale for Establishing Siting Zones. -- The rationale for establishing these zones shall be included in the narrative. This rationale shall consider the following criteria:

5.3.a. The efficient disposal of solid waste, including, but not limited to, all solid waste generated within the county or region, regardless of its origin. - Describe how the zones established by the plan will

ensure the efficient collection, transfer, and disposal of solid waste.

5.3.b. Economic development. -- Describe how the zones established by the plan will have a positive or negative impact on the county or regional economy. Detail the specific impact and give reasoning behind the impact.

5.3.c. Transportation infrastructure. -- Describe how the transportation network will allow or prohibit the efficient transportation of solid waste into or through the established zones. Address all transportation routes, i.e., roads, river, and rail.

5.3.d. Property values. -- Describe how the zones established will have a positive or negative impact on property values.

5.3.e. Groundwater and surface waters -- Describe how the established zones will protect groundwater and surface waters in the area.

5.3.e.1. An authority shall establish a zone in which solid waste facilities are prohibited where the readily available information clearly establishes that the facilities will cause:

5.3.e.1.A. A significant adverse impact upon wetlands;

5.3.e.1.B. A significant adverse impact upon any surface water;

5.3.e.1.C. A significant adverse impact upon groundwater quality; or

5.3.e.1.D. A violation of surface water quality standards found in 47CSR3.

5.3.e.2. An authority shall establish a zone in which landfills are prohibited in the following areas, unless the readily available information clearly establishes that landfills may be located within the zone and not cause a significant adverse impact upon ground or surface water quality:

5.3.e.2.A. Within three hundred (300) feet of any surface water (facility drainage or sedimentation control structures are exempt from this distance calculation);

5.3.e.2.B. Within three hundred (300) feet of any wetlands (facility drainage or sedimentation control structures are exempt from this distance calculation);

5.3.e.2.C. Within a perennial stream;

5.3.e.2.D. Within a 100-year flood plain; and

5.3.e.2.E. Within twelve hundred (1,200) feet of any public or private water supply well in existence at the time the zone is established.

5.3.f. Geological and Hydrological Conditions. -- Describe what geological and hydrological conditions prohibit or enable a zone to be suitable for siting a solid waste facility. Some of the factors which the authority shall consider are the existence of any known faults within two hundred (200) feet of the area, or other extreme hydrological or geological conditions, e.g., karst regions, solution cavities, extensive sandstone aquifers, shales, consolidated formations, aquitards, and the existence of any mining in the area. If the readily available information clearly establishes that any such conditions will cause a significant adverse impact on ground or surface water quality, the authority shall designate the area as prohibited for landfills.

5.3.f.1. For the purposes of this subsection, the term “mining” means the extraction of non-replenishable materials from the earth’s crust, e.g., oil, gas, coal, minerals, sand, gravel, limestone, and other substances of a similar nature.

5.3.f.2. For the purposes of this subsection, the term “known fault” means a fault that has had displacement in Holocene time (i.e., during the last eleven thousand (11,000) years).

5.3.g. Aesthetic and Environmental Quality. -- Describe the positive or negative impacts the established zones will have on existing aesthetic and environmental conditions. For example, siting a recycling center at a former open dump might enable the reclamation of an unsanitary dump. Factors to be considered are the presence of public parks and recreation areas, state and national forests, and endangered or threatened species. An authority shall establish a zone in which landfills are prohibited in the following areas:

5.3.g.1. Within one thousand (1,000) feet of the nearest edge of the right-of-way of any state trunk highway, interstate, or federal aid primary highway, or the boundary of any public park, unless the facility is screened by natural objects, plantings, fences, or other appropriate means so that it is not readily visible from the highway or park; and

5.3.g.2. Within ten thousand (10,000) feet of any airport runway used or planned for use by turbojet aircraft, or within five thousand (5,000) feet of any airport runway used only by piston type aircraft, or within other areas where a substantial bird hazard to aircraft would be created.

5.3.h. Historic and Cultural Resources. -- Describe any effect the zones will have on specific historic and cultural sites. A description of each historic or cultural site, including its size and location, should be listed in the plan.

5.3.i. The present or potential land uses for residential, commercial, recreational, environmental conservation, or industrial purposes. -- Provide the present land uses for the different zones, and realistic potential land uses for the zones. Describe how siting a facility in a particular zone will affect the existing and potential land uses. Zones in which landfills are authorized shall not be established within five hundred (500) feet of a dwelling occupied at the time a zone is established unless written permission is obtained from the owner of the dwelling.

5.3.j. The Public Health, Welfare, and Convenience. -- Describe how the established zones will protect the public health, welfare, and convenience, and still allow for the proper collection, transportation, and disposal of solid waste.

5.4. An authority may base its decision to prohibit solid waste facilities in a particular zone upon one or more of the criteria listed in subsection 5.3 of this rule. However, a decision to authorize solid waste facilities in a particular zone shall be made only after consideration of all of the criteria listed in subsection 5.3 of this rule.

5.5. The zones shall be established based upon readily available information.

5.5.a. “Readily available information” means relevant information which currently exists and can be obtained by the authority upon request of the appropriate agency or other entity.

5.5.b. Examples of potential readily available information or sources of such information include, but are not limited to:

5.5.b.1. County highway maps;

5.5.b.2. United States Geological Survey maps;

- 5.5.b.3. West Virginia Geological and Economical Survey;
- 5.5.b.4. West Virginia Bureau of Environment;
- 5.5.b.5. County and regional planning commissions;
- 5.5.b.6. West Virginia Development Office;
- 5.5.b.7. Local libraries;
- 5.5.b.8. West Virginia Department of Culture and History;
- 5.5.b.9. Local chambers of commerce;
- 5.5.b.10. County tax assessor's office;
- 5.5.b.11. Existing solid waste facilities, to the extent such information is relevant; and
- 5.5.b.12. Local solid waste haulers in the area.

5.6. An authority shall “authorize” or “prohibit” solid waste facilities in a given zone only when the readily available information clearly establishes that the facility should be authorized or prohibited in that zone. Otherwise, the authority shall “tentatively prohibit” facilities in the zone.

5.7. The establishment of zones pursuant to this rule shall be consistent with the comprehensive plan prepared by the county planning commission, if such plan exists.

§54-4-6. Review and Amendment Process.

6.1. Each authority shall review the plan for its county or region every five (5) years. A public hearing on any amendments must be held in the same manner as outlined in section 7 of this rule. Any changes or amendments necessary shall be submitted to the Board for approval.

6.2. At the time of the five-year review, the authority shall, in addition to any other amendments considered necessary, extend the period of time covered by the plan to include the next twenty (20) years following the five-year review date.

6.3. The plan may be amended at any time by the county or regional authority which originated the plan. Amendments must meet all requirements of the original plan, including that of holding a public hearing as detailed in section 7 of this rule. No amendments may become effective until approved by the Board in the same manner as the original plan.

6.4. Upon application from any person or group, the authority may amend the siting plan by redesignating a zone or any portion of a zone.

6.4.a. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on all of the criteria set forth in subsection 5.3 of this rule, that the requested redesignation is appropriate and proper, and that any solid waste facility sited at such location could be appropriately

operated in the public interest.

6.4.b. In order to make such demonstration, the person seeking the change shall make whatever examination is necessary and submit specific detailed information to the authority relating to the criteria in subsection 5.3 of this rule.

§54-4-7. Public Participation Process.

7.1. Public Notice and Hearing.

7.1.a. After submission of the draft plan to the Board, the authority shall publish notice and conduct at least one public hearing in each county affected to solicit ideas, opinions, and comments concerning the plan from the general public.

7.1.b. The authority shall publish notice of the hearing at least thirty (30) days in advance of the hearing as a Class I legal advertisement published in a qualified newspaper, as defined in W. Va. Code §59-3-1, serving the county or counties, as appropriate, and by posting the public notice at the appropriate county courthouse or courthouses.

7.1.c. A copy of the public notice of the hearing shall be mailed to those persons requesting to be placed on a mailing list to be maintained by the authority.

7.1.d. The public notice shall include the date, time, and place scheduled for the public hearing; an invitation for written and oral comments; an address to which comments may be mailed; and, the locations in the area where a copy of the draft plan is available for public review.

7.1.e. The authority shall consider the public comments received at the public hearing, and shall record the proceedings of the hearing by mechanical means, and such recording and a copy of all written comments received and a written summary of the proceedings shall be retained by the authority for a period of three (3) years from the date of the public hearing.

7.1.f. At the public hearing, reasonable limits may be set upon the time allowed for oral statements. The submission of written comments shall be extended to ten (10) days after the public hearing date.

7.2. Public Review of the Plan. -- At least thirty (30) days prior to any public hearing on the plan, the authority shall place a copy of the draft plan for public review at the county clerk's office or offices, and at all public libraries and branch libraries in the county or counties.

7.3. Consideration of Public Comments.

7.3.a. The authority shall consider all public comments received, written and oral, in the development of the final plan.

7.3.b. The authority shall prepare a written summary of the public comments received, and a statement explaining how it responded to the public comments in the development of the final plan. Such written summary and statement shall be submitted to the Board with the final plan.

7.3.c. If requested by the Board, the authority shall submit all or any part of the public comment record to the Board for its review.