STATE ORGANIZATION OF ENVIRONMENTAL RESPONSIBILITY

Environmental regulation in West Virginia is divided among several major divisions and cabinet level offices. The disposal of solid waste is regulated by a multi-tiered system involving the SWMB, PSC, DEP, various state, county, municipal and regional entities.

COUNTY AND MUNICIPAL ROLE

County commissions are the primary local governmental authorities in West Virginia. They have broad governing powers within the county. County commissions play an active part in regulation of land use including planning, solid waste management, recycling, historic preservation, water and sewage. County commissions also appoint two members to the five-member SWA Board. For a regional SWA, two members are appointed by the county commission of each participating county.

Municipalities are classified by population as Class I, II, or III cities and Class IV towns and villages. Each municipal corporation with more than 2,000 citizens has the power to pass laws and ordinances relating to municipal affairs. Such regulations must not conflict with the state constitution or general laws of the state. In the case of a regional SWA, two municipal representatives are appointed by the mayor of each participating municipality within the region.

ORGANIZATION OF WEST VIRGINIA’S COURTS AND LEGISLATURE

Courts: West Virginia’s court system, as it applies to SWAs, consists of magistrate courts, circuit courts and a supreme court of appeals.

Magistrate courts oversee the application and enforcement of state laws, municipal laws, and court procedures. They have jurisdiction over civil cases when the claims amount of the dispute is less than $5,000. In solid waste matters, issues such as littering and open dumping are generally brought before the magistrate system. Each county has no fewer than two and no more than 10 magistrates.

Circuit courts are WV’s only general jurisdiction trial courts. They have jurisdiction over all criminal and civil matters. West Virginia has 31 judicial circuits, which have from one to seven judges each.

Circuit courts hear appeals from magistrate court, municipal court and administrative agencies, excluding workers’ compensation appeals. Environmental statutes specify circuit court jurisdiction over a variety of matters, including civil penalties, injunctions and appeals.

Supreme Court of Appeals is West Virginia’s highest court and the court of last resort. The Supreme Court, which consists of five judges, hears appeals of decisions over all matters decided in the circuit courts, including questions of injunctive relief. The Court’s appellate jurisdiction is entirely discretionary – it may either grant or refuse review of any case.
The West Virginia Legislature: SWA members need to keep themselves abreast of legislation that could impact SWA. A good knowledge of the legislative process and the ability to keep informed about solid waste issues pending before the WV Legislature are important for SWA members in planning and in carrying out their duties.

The WV Legislature includes a 34-member Senate and a 100-member House of Delegates. The legislature is in session for at least 60 days each year. Sessions generally take place January thru March. Interim sessions are held several times during the year.

The Legislature’s website allows bill tracking and provides abstracts and full text versions of current legislation. The website is located at www.wvlegislature.gov. The SWMB’s website, www.state.wv.us/swmb, also provides weekly updates of current legislative activity regarding solid waste issues and other related topics.

ENVIRONMENTAL QUALITY BOARD

The Board (EQB) is composed of five members who are appointed by the Governor with the advice and consent of the Senate. The EQB adjudicates environmental appeals in a fair, efficient and equitable manner for the people of West Virginia.

The EQB performs one statutorily mandated function - they hear appeals from permitting and enforcement decisions made by the DEP’s Division of Water and Waste Management. The regulated community and private citizens may file appeals with the EQB. The EQB’s website is www.wveqb.org.

LAWS GOVERNING WEST VIRGINIA AGENCIES AND PROGRAMS

Freedom of Information Act: It is the public policy of the state of West Virginia that all persons are entitled to full and complete information regarding the affairs of government. Every person has a right to inspect or copy public records of a public body, it is important for SWAs to create and maintain written records reflecting their activities.

In order for public records to be viewed, a written request should be submitted to the SWA stating with reasonable specificity the information sought. This request should be signed and dated. The SWA must, within a maximum of five business days, furnish copies of the requested information; advise the requestor of the time and place they may inspect and copy materials; or deny the request stating in writing the reasons for denial.

Generally speaking, all audits, plans, maps, bylaws, reports, bid documentation, contracts, policies and procedures are public information. However, information of a personal nature, and internal memoranda or letters received or prepared by a public body are among the items exempted from disclosure. If a request for an item involves a member’s, employee’s or applicant’s right to privacy, the matter should be referred to legal counsel since privacy rights are potentially more important than withholding information.

W. Va. Code §29B-1-4 lists all 16 exemptions to the Freedom of Information Act (FOIA). Most of the exemptions do not relate to solid waste authorities. SWAs are encouraged to develop rules or procedures for the handling of FOIA Requests. Rules might include the protection of the records and/or the prevention of interference with staff’s work duties. Reasonable fees may also be established to reimburse the actual cost in making copies of the records. If the records requested exist in magnetic, electronic or computer form, the SWA shall make copies available on magnetic or electronic media, if so requested.
Authorities may create their own FOIA Request Form or use the one found as Attachment 6-A.

**Open Governmental Proceedings Act:** The West Virginia Open Governmental Proceedings Act (OGPA), sometimes referred to as the “Sunshine Law” or “Open Meeting Law” requires public agencies, including SWAs, to open their meetings to the public when those meetings require a quorum (majority of the members) in order to deliberate toward or make a decision. Committee meetings and working sessions are also included under OGPA. W. Va. Code §6-9A deals with OGPA.

Notice of all meetings must also be made in advance to the public and news media and by individually notifying each Board member. Methods of public notification are: the State Register, located on the Secretary of State’s website; the County Courthouse’s bulletin board; the local paper or radio station; the SWAs office door or some other highly visible place at the office; and on the SWAs website. SWAs bylaws should state when and where meetings are held and how public notice will be given.

**Regular meetings** - Public notice must include the date, time, and place of the meeting. The Agenda must be posted at least three business days in advance.

**Special meetings** are held when there is a need to address matters before the next regularly scheduled meeting. Public notice for special meetings must include the date, time, place and purpose of the meeting. The Agenda must be posted at least two business days in advance of the meeting.

**Emergency Meetings** means any meeting called for the purpose of addressing an unexpected event, which requires immediate attention because it poses:

1. A threat to public health or safety.
2. A threat of damage to public or personal property.
3. A potential material financial loss or other potential substantial harm to a public agency.

Public notification must be given as soon as practicable prior to the meeting and include the date, time, place and emergency. Meetings may be held by telephone conference or other electronic means, only if all Board members can hear and be heard by each other and by the media or the public present at the meeting.

**Agendas** - Agendas must include every issue that will be discussed and especially any matter requiring official action. The Agenda may be amended up to two business days before the meeting and then reposted. A sample Agenda may be found in Chapter One, Attachment 1-C.

**Minutes** - W. Va. Code §6-9A-5 requires written minutes be taken of all SWA meetings. Minutes must include the date, time and place of the meeting; the name of each board member and whether they are present or absent; all motions, proposals, etc., the person proposing the action and their disposition; and the results of all votes.

Most Authorities record their meetings then transcribe the minutes. According to Robert’s Rules of Order, minutes need to be signed by the Secretary before they are official. Minutes don’t have to be typed, but must be legible. Minutes should use proper grammar and punctuation. Your minutes are an official document permanently representing your SWA. An example of proper minutes is found in Chapter One, Attachment 1-D.
Executive Sessions - SWAs may hold an executive session (closed meeting) during a regular, special, or emergency meeting, only after an affirmative vote of the majority of the members present. The reason for the executive session must be one of the identified exceptions in W. Va. Code §6-9A-4 and stated prior to the vote. The matter under discussion must appear on the meeting’s agenda. Executive sessions are only for discussion, no action can be taken. Any decision must be made after returning to the Open Session. Minutes of Executive Sessions are not required.

Public Comment - SWAs are encouraged to develop rules and procedures for allowing the public the opportunity to address the board during public meetings. Citizens may request to be put on the board’s agenda as part of the regular meeting.

The Ethics Commission has ruled that although public bodies are not required to allow a “public comment period” as a part of their public meetings they are encouraged to do so. SWAs may decide to include public comment as part of their agenda. Limits may be placed on the length of time an individual is allowed to speak. A public response from the SWA is not required. All comments should be documented in the meetings minutes.

The Ethics Act - W. Va. Code §6B-1, applies to all public servants including SWA Board members and staff. The Ethics Act prohibits any misuse of public resources. The basic underlying principle is that those in public service should use their positions for the public’s benefit and not for their own private gain or the private gain of another. Some of the issues overseen by the Ethics Commission are: private gain and interest; gifts; voting and conflict of interest; financial disclosure; moonlighting and dual compensation; lobbying; and nepotism. If in doubt regarding an issue, contact the Ethics Commission at 304-558-0664 or 866-558-0664.

A Guide to the West Virginia Open Governmental Proceedings Act as well as the Ethics Act are Attachments 6-B and Attachment 6-C. Further information can be found at www.ethics.wv.gov.

SOLID WASTE MANAGEMENT IN WEST VIRGINIA

The Solid Waste Management Act (SWMA) W. Va. Code §22-15-1, gives jurisdiction to the DEP over the management of solid waste, under the direction of the Secretary of the DEP and the Director of the Division of Water and Waste Management. The Commissioner of the Bureau of Public Health may enforce the public health laws when solid waste management presents an imminent and substantial danger to public health.

The SWMA was amended in 2005, transferring responsibility for litter control and recycling programs from WV DNR to the DEP. The DEP was also given responsibility for remediation of illegal tire piles.

Some of the topics addressed in the SWMA are:

Establishment of a limit of 30,000 tons per month of waste lawfully handled at any commercial solid waste facility. Permits to construct a new facility or expand an existing facility may not be issued unless the PSC has granted a Certificate of Need.

Prohibition of municipal solid waste incineration and “backhauling”. Backhauling is using the same container used to transport solid waste to transport any substance or material used as food by humans, animals raised for human consumption or reusable items which may be refilled with any substance or material used as food by humans.
Prohibition of solid waste facilities where there is a reasonable probability that there will be a significant adverse impact on wetlands, endangered species, surface water or groundwater quality, certain explosive hazards or excessive air contaminant emissions. Landfills are prohibited, absent express approval, in specified locations, including perennial streams, flood plains, mining areas, and within certain distances of certain structures, highways, airports, water sources and geological features.

Permit applications must include disclosures of ownership and affected interests and compliance histories, along with detailed disclosures of site descriptive and technical information including geologic and hydrologic data, land use and environmental assessment and design information.

The Secretary of the DEP has the authority under the SWMA to deny permits based on adverse impacts on the environment. The Secretary may also refuse to grant a permit where the applicant or certain of the applicant’s officers, directors, shareholders owning more than 20% of its stock or other management has previously engaged in specified unlawful conduct.

Additional topics in the SWMA include wood waste, Free Day, open dumps, solid waste assessment fees, performance bonding, notice of violations to this article, sewage sludge and waste tire management.

REGIONAL PLANNING AND DEVELOPMENT COUNCIL

As planning agencies, SWAs have both local and regional impact. Because of this, SWAs must submit copies of their SWMB grant requests to their respective regional intergovernmental councils for review. The regional councils review SWMB grant applications in accordance to W. Va. Code §8-25-9 in order to avoid unnecessary duplication of ideas, equipment, services or imprudent use of grant funds. A listing of regional councils is provided in Attachment 5-B.

SOLID WASTE MANAGEMENT BOARD

The SWMB maintains a website designed to assist SWAs and other interested parties in business assistance, recycling market development, and other waste management issues. Access the website at www.state.wv.us/swmb.