

# WEST VIRGINIA CODE: §20-5J-6

## **§20-5J-6. Powers of secretary; authority to promulgate rules.**

(a) The secretary shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, necessary to effectuate the findings and purposes of this article. Said rules shall include, but not be limited to, the following:

- (1) A plan designed to encourage and foster reduction in the volume of infectious and noninfectious medical waste and the separation of infectious and noninfectious medical waste;
- (2) Guidelines and procedures for the development and implementation of local infectious medical waste management plans, to be followed by all generators, that set forth proper methods for the management of infectious and noninfectious medical waste;
- (3) Criteria for identifying the characteristics of infectious medical waste and identifying the characteristics of noninfectious medical waste;
- (4) Standards applicable to generators of medical waste necessary to protect public health, safety and the environment, which standards shall establish requirements respecting:
  - (A) Record-keeping practices that accurately identify the quantities of infectious medical waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such waste;
  - (B) Labeling practices for containers used in the storage, transportation or disposal of infectious medical waste which will accurately identify such waste;
  - (C) Use of appropriate containers for infectious medical waste;
  - (D) Furnishing of information regarding the general composition of infectious medical wastes to persons transporting, treating, storing or disposing of such waste;
  - (E) Use of a manifest system and other reasonable means to assure that all infectious medical waste is designated for and arrives at treatment, storage or disposal facilities for which the secretary has issued permits, other than facilities on the premises where the waste is generated; and
  - (F) The submission of reports to the secretary, at such times as the secretary deems necessary, setting out the quantity of infectious medical waste generated during a particular time period, and the disposition of such infectious medical waste;

(5) Performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of infectious medical waste necessary to protect public health and safety

and the environment, which standards shall include, but need not be limited to, requirements respecting:

(A) Maintaining records of all infectious medical waste and the manner in which such waste was treated, stored or disposed of;

(B) Reporting, monitoring and inspection of and compliance with the manifest system referred to in subdivision (4), subsection (a) of this section;

(C) Treatment, storage or disposal of all infectious medical waste received by the facility pursuant to operating methods, techniques and practices as may be satisfactory to the secretary;

(D) The location, design and construction of infectious medical waste treatment, disposal or storage facilities;

(E) Contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of infectious medical waste;

(F) The maintenance or operation of such facilities and requiring additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable: Provided, That no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing infectious medical waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of infectious medical waste; and

(G) Compliance with the requirements of this article respecting permits for treatment, storage or disposal;

(6) The terms and conditions under which the secretary shall issue, modify, suspend, revoke or deny permits required by this article. The legislative rules required by this subdivision shall be promulgated by August 1, 1991;

(7) Establishing and maintaining records; making reports; taking samples and performing tests and analyses; installing, calibrating, operating and maintaining monitoring equipment or methods; and providing any other information necessary to achieve the purposes of this article;

(8) Standards and procedures for the certification of personnel at infectious medical waste treatment, storage or disposal facilities or sites;

(9) Procedures for public participation in the implementation of this article;

(10) Procedures and requirements for the use of manifests during the transportation of

infectious medical wastes;

(11) Procedures and requirements for the submission and approval of a plan by the owners or operators of infectious medical waste storage, treatment and disposal facilities, for closure of such facilities, post-closure monitoring and maintenance, and for both sudden and nonsudden accidental occurrences; and

(12) A schedule of fees to recover the costs of processing permit applications and renewals, training, enforcement, inspections and program development.

(b) The legislative rules required by subsection (a) shall be promulgated within six months after the effective date of this article.

(c) Within twelve months after the effective date of this article, the secretary shall conduct and publish a study of infectious medical waste management in this state which shall include, but not be limited to:

(1) A description of the sources of infectious medical waste generation within the state, including the types and quantities of such waste;

(2) A description of current infectious medical waste management practices and costs, including treatment, storage and disposal within the state; and

(3) An inventory of existing infectious medical waste treatment, storage and disposal sites.

(d) Any person aggrieved or adversely affected by an order of the secretary pursuant to this article, or by the denial or issuance of a permit, or the failure or refusal of said secretary to act within a reasonable time on an application for a permit or the terms or conditions of a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to hear contested cases in accordance with the provisions of chapter twenty-nine-a of this code. The secretary shall promulgate legislative rules establishing procedures for appeal and the conduct of hearings.

(e) In addition to those enforcement and inspection powers conferred upon the secretary elsewhere by law, the secretary has the enforcement and inspection powers as provided in sections seven, eight and nine of this article.

(f) Nothing in this section diminishes or alters the authority of the director of the Division of Environmental Protection under article five, chapter twenty-two of this code.