WEST VIRGINIA CODE CHAPTER 20 ARTICLE 5J

WV Legislature

§20-5J-1. Short title.

This article shall be known and cited as the "West Virginia Medical Waste Act."

WV Legislature

§20-5J-2. Legislative findings and purpose.

The Legislature finds that the proper and environmentally-sound disposal of infectious and noninfectious medical waste is an important issue facing all West Virginians.

The Legislature further finds that effective controls for the management of medical waste are necessary to ensure the protection of the public health, safety and welfare, and the environment.

The Legislature further finds that regulation of the generation, handling, storage, transportation, treatment and disposal of medical waste is an important and necessary function of state government.

The Legislature further finds that toxic pollutants emitted by medical waste incinerators are an important public health hazard.

The Legislature further finds that commercial incineration of medical waste, and its transportation in the infectious state, pose a potentially serious threat to the health, safety and welfare of West Virginians.

The Legislature further finds that safe and cost-effective alternatives to the incineration of infectious and noninfectious medical waste should be encouraged.

The Legislature further finds that the public interest is best served by:

(1) Efforts to reduce the volume of medical waste generated at all levels;

(2) On-site separation and treatment of infectious medical waste;

(3) Treatment and disposal of infectious medical waste in local infectious medical waste management facilities; and

(4) Treatment and disposal in approved regional infectious waste management facilities when administrative proceedings result in a finding that on-site or local treatment of infectious medical waste is not feasible.

The Legislature further finds that local responsibility for the minimization in volume, and for the treatment and disposal of infectious and noninfectious medical waste is an important part of a sound and rational waste management program.

The Legislature further finds that small quantity generators of infectious medical waste should either render such waste noninfectious on-site, or properly label and package the waste for transportation to a local infectious waste management facility for proper treatment and disposal.

The Legislature further finds that generators of medical waste should be informed and

WV Legislature

educated in its management; that training should be provided to all workers likely to come in contact with medical waste, including in-home health care workers; and that relevant information on the potential for infection and disease related to medical waste should be made available to the general public, including in-home health care patients.

The Legislature further finds that the necessity for transporting infectious medical waste be minimized, and that any infectious medical waste transported be safely packaged and identified by source and content.

The Legislature further finds that public policy favors a reduction in the volume of infectious and noninfectious medical waste, the separation of infectious medical waste from noninfectious medical waste, and that efforts to reduce medical waste should be fostered and strongly encouraged at all levels of generation.

The Legislature further finds that noninfectious medical waste is solid waste.

The Legislature further finds that noninfectious medical waste should be handled by environmentally sound disposal technologies, and that alternative disposal technologies promoting safe recycling and limiting the need for incineration should be emphasized, developed and utilized.

Therefore, it is the policy of the State of West Virginia to prohibit commercial infectious medical waste facilities; to regulate and control the generation, handling, storage, transportation, treatment and disposal of infectious and noninfectious medical waste; to reduce the generation of infectious and noninfectious medical waste; to encourage local responsibility for the minimization, management and disposal of infectious and noninfectious medical waste; and to authorize the Department of Health to promulgate rules and regulations necessary to carry out the purposes of this article.

WV Legislature

§20-5J-3. Definitions.

As used in this article:

(1) "Commercial infectious medical waste facility" means any infectious medical waste management facility at which thirty-five percent or more by weight of the total infectious medical waste stored, treated, or disposed of by said facility in any calendar year is generated off-site.

(2) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any infectious medical waste into or on any land or water so that such waste, or any constituent thereof, may be emitted into the air, discharged into any waters, including groundwater, or otherwise enter into the environment.

(3) "Generator" means any person, by site location, whose act or process produces medical waste.

(4) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(5) "Infectious medical waste" means medical waste identified as capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. For the purposes of this article, infectious medical waste shall include the following:

(A) Cultures and stocks of microorganisms and biologicals;

(B) Blood and blood products;

(C) Pathological wastes;

(D) Sharps;

(E) Animal carcasses, body parts, bedding and related wastes;

(F) Isolation wastes;

(G) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of any infectious medical waste; and

WV Legislature

(H) Any waste contaminated by or mixed with infectious medical waste.

(6) "Medical waste" means infectious and noninfectious solid waste generated in the course of the diagnosis, treatment or immunization of human beings or animals, or in research pertaining thereto, or in the production or testing of biologicals. Such term does not include low-level radioactive waste, any hazardous waste identified or listed under Subtitle C, or any household waste as defined in the regulations promulgated pursuant to Subtitle C.

(7) "Noncommercial infectious medical waste facility" means any infectious medical waste facility at which less than thirty-five percent by weight of the total infectious medical waste stored, treated or disposed of by said facility in any calendar year is generated off-site.

(8) "Noninfectious medical waste" means any medical waste not capable of producing an infectious disease or infectious medical waste which has been rendered noninfectious. Noninfectious medical waste is considered solid waste for purposes of this code.

(9) "Off-site" means a facility or area for the collection, storage, transfer, processing, treatment or disposal of infectious medical waste that is not on the generator's site, or a facility or area that received infectious medical waste for storage or treatment that has not been generated on-site.

(10) "On-site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way controlled by said person and to which the public does not have access is also considered on-site property. Hospitals with more than one facility located in the same county shall be considered one site.

(11) "Secretary" means the secretary of the Department of Health or his or her designee.

(12) "Small quantity generator" means any generator of infectious medical waste who generates fifty pounds or less during a one-month period.

(13) "Storage" means the containment of infectious medical waste on a temporary basis. Storage shall not constitute disposal of the waste.

(14) "Subtitle C" means Subtitle C of the federal Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, as amended.

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any infectious medical waste so as to render such waste noninfectious.

WV Legislature

§20-5J-4. Commercial infectious medical waste facility prohibited.

It shall be unlawful to construct or operate a commercial infectious medical waste facility in the State of West Virginia: Provided, That the secretary may authorize an exception to this prohibition solely for facilities not utilizing incineration technology in any form, including the manufacture or burning of refuse derived fuel: Provided, however, That such an exception may be granted only following: (1) The promulgation of legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, containing guidelines for such an exception that are being fully consistent with the findings and purposes contained in section two of this article; (2) a public hearing on the record in the region affected by the proposed facility; (3) an investigation of the infectious medical waste stream in the region affected by the proposed facility; and (4) a determination that programs to minimize and reduce the infectious medical waste stream have been implemented.

WV Legislature

§20-5J-5. Designation of Secretary of the Department of Health as the state infectious medical waste management primary agency; prohibitions; requiring permits.

(a) The secretary is designated as the infectious medical waste management primary agency for this state and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of this legislation pertaining to infectious medical waste. In carrying out the purposes of this article, the secretary is hereby authorized to cooperate with agencies of the federal government, this state and other states, and other interested persons, in all matters relating to medical waste management.

(b) No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of infectious medical waste, nor shall any person store, treat or dispose of any such infectious medical waste without first obtaining a permit from the secretary, unless specifically excluded or exempted by rules promulgated by the secretary.

WV Legislature

§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:

WV Legislature

(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

WV Legislature

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.

WV Legislature

§20-5J-7. Inspections; right of entry; sampling; reports and analyses; subpoenas.

(a) The secretary, upon the presentation of proper credentials and at reasonable times, may enter any building, property, premises, place, vehicle or permitted facility where infectious medical wastes are or have been generated, treated, stored, transported or disposed of for the purpose of promptly investigating any person's compliance with the provisions of this article, legislative rules or permits issued by the secretary.

(b) The secretary shall make periodic inspections of every permitted facility as necessary to effectively implement and enforce the requirements of this article or the legislative rules promulgated by or permits issued by the secretary. After an inspection is made, a report shall be prepared and filed with the secretary. A copy of such inspection report shall be promptly furnished to the person in charge of such building, property, premises, place, vehicle or facility. All inspection reports shall be available to the public in accordance with the provisions of article one, chapter twenty-nine-b of this code.

(c) Whenever the secretary has cause to believe that any person is in violation of any provision of this article, any condition of a permit issued by the secretary, any order or any legislative rule promulgated by the secretary under this article, he shall immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

(d) Upon presentation of proper credentials and at reasonable times, the secretary may enter any establishment, building, property, premises, vehicle or other place maintained by any person where infectious medical waste is being or has been generated, transported, stored, treated or disposed of to inspect and take samples of waste and the contents of any containers. The division shall promptly provide a copy of any analysis to the owner, operator or agent in charge.

(e) Upon presentation of proper credentials and at reasonable times, the secretary shall be given access to all records relating to the generation, transportation, storage, treatment or disposal of infectious medical waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste. The secretary shall be furnished with copies of all such records or given the records for the purpose of making copies. If the secretary, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.

www.Legislature

§20-5J-8. Enforcement orders; hearings.

(a) If the secretary, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or legislative rules promulgated hereunder, he may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order issued under this section may suspend, revoke or modify permits, require a person to take remedial action, or require a person to cease and desist activities which violate the provisions of this article;

(2) Seek an injunction in accordance with subsection (b) of section nine of this article; or

(3) Institute a civil action in accordance with subsection (a) of section nine of this article.

(b) Any person who is subject to a cease and desist order may file a notice of request for reconsideration with the secretary within seven days of the issuance of the order. Within ten days of filing of the notice of a request for reconsideration, said person shall have a hearing before the secretary at which he may contest the terms and conditions of the cease and desist order. The filing of a notice of request for reconsideration shall not stay or suspend execution or enforcement of such cease and desist order.

WV Legislature

§20-5J-9. Civil actions and injunctive relief.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article shall be subject to a civil penalty not to exceed $25,000 for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court of the county wherein the violation occurs or in the circuit court of Kanawha County.

(b) The secretary may seek an injunction, or may institute a civil action against any person who violates any provision of this article or any permit, legislative rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable harm will occur if the injunction is not issued or that there is no adequate remedy at law. A petition for an injunction filed pursuant to this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(c) At the request of the secretary, the Attorney General, or the prosecuting attorney of the county in which the violation occurs, shall assist the secretary in any civil action under this section.

(d) In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

WV Legislature

§20-5J-10. Regulation of infectious medical waste collectors and haulers by the Public Service Commission; limitation of regulation.

(a) On and after July 1, 1991, collectors, haulers and transporters of infectious medical waste who are "common carriers by motor vehicle," as defined in section two, article one, chapter twenty-four-a of this code, shall be regulated by the Public Service Commission in accordance with the provisions of chapter twenty-four-a and rules promulgated thereunder. The rules of the Public Service Commission shall not conflict nor take precedence over the rules promulgated by the secretary.

(b) The commission shall provide a separate and distinct category of special certificates of convenience and necessity for infectious medical waste collectors, haulers and transporters regulated by this section: Provided, That within six months of the effective date of this article, the commission may issue such special certificates to existing common carriers of solid waste who are presently transporting infectious medical waste and who demonstrate that they are in compliance with the provisions of this article: Provided, however, That such common carriers need not make any additional demonstration of public convenience and necessity. Regulation of collectors, haulers and transporters of medical waste shall be separate and distinct from the regulation of solid waste collectors, haulers and transporters provided for in section twenty-three, article three, chapter twenty-two-c of this code.

(c) At any hearing conducted by the Public Service Commission pertaining to infectious medical waste collectors, haulers and transporters, the secretary may appear before the commission and present evidence.

WV Legislature