WEST VIRGINIA CODE: §22-15-20

§22-15-20. Sewage sludge management.

(a) Within the limits imposed by section eight, article fifteen of this chapter, the division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate emergency rules and propose legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:

(1) That entities which generate, process, dispose or otherwise manage sewage sludge in the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

(ii) The amount of sewage sludge actually generated, treated, stored, processed, composted, disposed or placed;

(iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and

(iv) Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and periodic monitoring of all sewage sludge-related activities and to monitor data supplied by sewage sludge producers, processors or transporters to ensure compliance with state and federal regulations;

(3) That representatives of the division have the ability to enter onto any land application site for the purposes of inspecting and analyzing the effects of sewage sludge application on that site;

(4) That no permit for the processing or disposal of sewage sludge will be issued until there is an accurate finding that it has been adequately tested and shown not to contain heavy metals, pathogens, toxins or vectors in excess of regulatory standards;

(5) That the director may require a surety bond, deposit or similar instrument in an amount

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sufficient to cover the costs of future environmental remediation from producers and importers of sewage sludge;

(6) That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc;

(7) That no person be allowed to land apply so much sewage sludge as to exceed the agronomic rate for that land or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land;

(8) That information relating to the disposal, treatment, storage, processing, composting, dumping, placing or land applying of sewage sludge is available to affected communities and other persons who may request the information in conformity with article one, chapter twenty-nine-b of this code;

(9) That all sewage sludge processing facilities contain sufficient design specifications to protect ground, surface and potable waters, air quality, existing and potential land-use planning and public health and safety;

(10) That regulation of composting facilities varies according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer, processor or transporter be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of section ten, article eleven of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

(c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to a water pollution control permit, including a West Virginia national pollutant discharge elimination system (WV/NPDES) permit required under article eleven of this chapter, a sewage sludge processing permit shall be a part of the permit and shall include a sewage sludge management plan approved by the director. Upon approval by the director, POTWs may accept sewage sludge from other POTWs on a cost-sharing or nonprofit basis under its NPDES permit without being considered a commercial solid waste facility.

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(d) On and after April 10, one thousand nine hundred ninety-three, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the rule provided for in subsection (b) of this section is effective.

(e) All sewage sludge placed in, or used in a landfill disposal cell by a solid waste facility shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility's total tonnage, subject to the limitations established in this article and the provisions of article four, chapter twenty-two-c of this code: Provided, That no land within a solid waste facility but outside a landfill disposal cell, shall accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less.

(f) Sewage sludge shall not be used as daily cover by a landfill.

(g) Any solid waste facility currently operating under a permit from the director as a Class A solid waste facility and sewage sludge processing facility may receive, for the purpose of composting, up to a maximum of twelve thousand five hundred tons of sewage sludge per month, as weighed at the time of receipt at the facility. No Class A facility operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than one hundred twenty-five thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(h) Any solid waste facility currently operating under a permit from the director as a Class B solid waste facility and sewage sludge processing facility may receive, for the purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No Class B facility operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(i) Any POTW currently operating or holding a WV/NPDES permit to operate a sewage sludge processing facility for the purpose of composting sewage sludge may receive, for the purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No POTW operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(j) No person seeking to operate a sewage sludge processing facility, commercial composting facility or noncommercial composting facility may receive, for the purpose of composting, up to a maximum of two thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No person operating a sewage processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than

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twenty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(k) No sewage sludge processing facility may be located within a forty mile radius of another sewage sludge processing facility.

(l) Any facility under a consent agreement with the director or chief of the office of water resources as of the effective date of this article, regarding sewage sludge stored, retained or stockpiled at that facility, shall dispose of all accumulated sewage sludge in accordance with the consent agreement. Such sewage sludge is not subject to the limitations on storage, retention and stockpiling set forth above unless the facility violates the terms and conditions of its consent agreement.

(m) No person shall knowingly transport or deliver sewage sludge, or any intermediate or final material or product derived wholly or partially from sewage sludge in violation of this section.

(n) Any solid waste facility which composts sewage sludge shall have an annual output of finished or mature compost removed from the facility balanced to the annual input of sewage sludge relative to the nature of the sewage sludge taken in.

(o) A person or facility that temporarily or permanently, stores, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, shall maintain accurate operational records on site that are sufficiently detailed to clearly and convincingly demonstrate to the director that sewage sludge is being stored consistent with the provisions of this section. The records shall be made available to the director upon request.

(p) The director shall presume that a person or facility which temporarily or permanently, stores, treats, handles, processes, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, contrary to the provisions of this section is subject to all penalties available to the director under this chapter.

(q) All persons operating a sewage sludge processing facility shall provide off-site odor monitoring or testing mechanisms approved by the director. The director shall promulgate emergency rules and propose legislative rules for legislative promulgation, rules specifying the nature and type of odor monitoring or testing which will be approved or how to obtain approval for proposed odor monitoring or testing; the areas where the monitoring or testing should occur; the frequency of monitoring or testing which shall be no less than semiannually or as otherwise ordered by the director and any other conditions necessary to effectuate the purposes of this subsection.

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