WEST VIRGINIA CODE: §22-15-5

§22-15-5. Powers and duties; rules and rulemaking.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the director in this code and elsewhere described by law, the director is empowered as follows:

(a) The director shall promulgate rules in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, source or characteristics of the solid waste, potential for contamination of ground, surface and potable waters, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the Division of Highways, the financial capability of the applicant, soil and geological considerations, environmental and other natural resource considerations.

(b) The director, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility: Provided, That the director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility is likely to cause adverse impacts on the environment. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above-cited factor and may delete such geographical area from consideration for that type and size solid waste facility.

(c) The director may refuse to grant any permit if he or she has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or person owning a five percent or more interest, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

(1) Has demonstrated, either by his or her police record or by his or her record as a permittee under articles eleven through nineteen of this chapter or chapter twenty of this code, a lack of respect for law and order, generally, or for the laws and rules governing the disposal of solid wastes;

(2) Has misrepresented a material fact in applying to the director for a permit;

WV Legislature

(3) Has been convicted of a felony or other crime involving moral turpitude;

(4) Has exhibited a pattern of violating environmental laws in any state or the United States or combination thereof; or

(5) Has had any permit revoked under the environmental laws of any state or the United States.

(d) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter onto any approved solid waste facility, open dump or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

(e) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter any approved solid waste facility, open dump or property where solid waste is present and take samples of the waste, soils, air or water or may, upon issuance of an order, require any person to take and analyze samples of such waste, soil, air or water.

(f) The director may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated thereunder.

(g) The director or his or her authorized representative, employee or agent shall make periodic inspections at every approved solid waste facility to effectively implement and enforce the requirements of this article or its rules and may, in coordination with the commissioner of the Division of Highways, conduct at weigh stations or any other adequate site or facility inspections of solid waste in transit.

(h) The director shall require and set the amount of performance bonds for persons engaged in the practice of solid waste disposal in this state, pursuant to section twelve of this article.

(i) The director shall require: (1) That persons disposing of solid waste at commercial solid waste facilities within the state file with the operator of the commercial solid waste facility records concerning the type, amount and origin of solid waste disposed of by them; and (2) that operators of commercial solid waste facilities within the state maintain records and file them with the director concerning the type, amount and origin of solid waste accepted by them.

(j) Identification of interests. -- The director shall require an applicant for a solid waste facility permit to provide the following information:

(1) The names, addresses and telephone numbers of:

(A) The permit applicant;

(B) Any other person conducting or managing the affairs of the applicant or of the proposed

WV Legislature

permitted premises, including any contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant; and

(C) Parties related to the applicant by blood, marriage or business association, including the relationship to the applicant;

(2) The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, the proposed permit area;

(3) The names and addresses of the holders of record to a leasehold interest in surface or subsurface areas within, and contiguous to, the proposed permit area;

(4) A statement of whether the applicant is an individual, corporation, partnership, limited partnership, government agency, proprietorship, municipality, syndicate, joint venture or other entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:

(A) Names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant;

(B) For corporations, the principal shareholders;

(C) For corporations, the names, principal places of businesses and internal revenue service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations; and

(D) Names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the division, including, but not limited to, associates and agents;

(5) If the applicant or an officer, principal shareholder, general or limited partner or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(A) The name, address and tax identification number or employer identification number of the corporation or other person or municipality; and

(B) The nature of the relationship or participation with the corporation or other person or municipality;

(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) of this subdivision and to other related parties to the applicant, that are currently in effect or have

WV Legislature

been in effect in at least part of the previous ten years. This list shall include the type of permit or license, number, location, issuance date and, when applicable, the expiration date;

(7) An application shall identify the solid waste facilities in the state which the applicant or a person or municipality identified in paragraph (1) of this subdivision and other related parties to the applicant currently owns or operates, or owned or operated in the previous ten years. For each facility, the applicant shall identify the location, type of operation and state or federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

(k) Compliance information. -- An application shall contain the following information for the ten-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the division to the applicant or a related party, concerning any environmental law, rule, or order of the division, or a condition of a permit or license. In lieu of a description, the applicant may provide a copy of notices of violation;

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the division, and civil penalty actions adjudicated by the state, against the applicant or a related party concerning any environmental law, rule, or order of the division, or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions;

(3) A description of a summary, misdemeanor or felony conviction, a plea of guilty or plea of no contest that has been obtained in this state against the applicant or a related party under any environmental law or rule concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions;

(4) A description of a court proceeding concerning any environmental law or rule that was not described under paragraph (3) of this subdivision in which the applicant or a related party has been party. The description shall include the date, location, nature and disposition of the proceedings;

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or rule in which the division, other governmental agencies, the United States environmental protection agency, or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, a decree or agreement;

(6) For facilities and activities identified under paragraph (1) of this subdivision, a statement of whether the facility or activity was the subject of an administrative order, consent

WV Legislature

agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the division has denied a permit application filed by the applicant or a related party, based on compliance status;

(7) When the applicant is a corporation, a list of the principal shareholders that have also been principal shareholders of other corporations which have committed violations of any environmental law or rule. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationship between the principal shareholder and both the applicant and the other corporation;

(8) A description of a misdemeanor or felony conviction, a plea of guilty and a plea of no contest, by the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense;

(9) A description of final administrative orders, court orders, court decrees, consent decrees or adjudications, consent orders, final civil penalty adjudications, final bond forfeiture actions or settlement agreements involving the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(l) All of the information provided by the applicant pursuant to this section is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code.

WV Legislature