WEST VIRGINIA CODE: §22C-4-24

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by Solid Waste Management Board; effect on facility siting; public hearings; rules.

(a) On or before July 1, 1991, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the Solid Waste Management Board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available, the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall

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complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other public participation in the preparation of the siting plan as required by the rules promulgated by the Solid Waste Management Board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the Solid Waste Management Board.

(d) The siting plan takes effect upon approval by the Solid Waste Management Board pursuant to the rules promulgated for this purpose. Upon approval of the plan, the Solid Waste Management Board shall transmit a copy thereof to the Secretary of the Department of Environmental Protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the Solid Waste Management Board, it is unlawful for any person to establish, construct, install or operate a commercial solid waste facility at a site not authorized by the siting plan: Provided, That an existing commercial solid waste facility which, on April 8, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the Division of Natural Resources pursuant to the former provisions of article five-f, chapter twenty of this code may continue to operate, but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules promulgated by the Solid Waste Management Board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a presiting notice pursuant to section thirteen, article fifteen, chapter twenty-two of this code, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The Solid Waste Management Board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The Solid Waste Management Board shall prepare and adopt a siting plan for any county

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or regional solid waste authority which does not complete and file with the said state authority a siting plan in compliance with the provisions of this section and the rules promulgated thereunder. Any siting plan adopted by the Solid Waste Management Board pursuant to this subsection shall comply with the provisions of this section, and the rules promulgated thereunder, and has the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the Solid Waste Management Board.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the Solid Waste Management Board pursuant to section eight of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste facility capacity.

(j) The Solid Waste Management Board is authorized and directed to promulgate rules specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

(k) To the extent that current solid waste plans approved by the board are approved as provided for in this section, and in place on the effective date of this article, provisions which limit approval for new or expanded solid waste facilities based solely on local solid waste disposal needs without consideration for national waste disposal needs are disallowed as being in conflict with the public policy of this article: Provided, That all other portions of the solid waste management plans as established in the litter and solid waste control plan as provided for in this section and the comprehensive recycling plan as provided for in section seventeen, article fifteen-a, chapter twenty-two of this code are continued in full force and effect to the extent that those provisions do not conflict with the provisions of this article.

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