WEST VIRGINIA CODE: §24-2-1C

§24-2-1c. Certificates of need required for solid waste facilities.

(a) Any person applying for a permit to construct, operate or expand a commercial solid waste facility as defined in section two, article fifteen, chapter twenty-two of this code, or any person seeking a major permit modification for a commercial solid waste facility from the Division of Environmental Protection first shall obtain a certificate of need from the Public Service Commission. Application for such certificate shall be submitted on forms prescribed by the commission. The commission shall grant or deny a certificate of need, in accordance with provisions set forth in this chapter. If the commission grants a certificate of need, the commission may include conditions not inconsistent with the criteria set forth in this section.

(b) For purposes of subsection (a) of this section, a complete application consists of the following and notwithstanding any other provision of this chapter to the contrary, such information contained in the application provided by the applicant is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code:

(1) The names of the owners or operators of the facility including any officer, director, manager, person owning five percent or more interest or other person conducting or managing the affairs of the applicant as to the proposed facility;

(2) The location of the facility;

(3) A description of the geographic area to be served by the facility;

(4) The anticipated total number of citizens to be served by the facility;

(5) The average monthly tonnage of solid waste anticipated to be disposed of by the facility;

(6) The total monthly tonnage of solid waste for which the facility is seeking a permit from the Division of Environmental Protection;

(7) The anticipated life span and closure date of the facility; and

(8) Any other information requested on the forms prescribed by the commission.

(c) In considering whether to grant a certificate of need the commission shall consider, but is not limited to considering, the following factors:

(1) The total tonnage of solid waste, regardless of geographic origin, that is likely to be delivered each month to the facility if the certificate is granted;

(2) The current capacity and life-span of other solid waste facilities that are likely to compete

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with the applicant's facility;

(3) The life span of the proposed or existing facility;

(4) The cost of transporting solid waste from the points of generation to the disposal facility;

(5) The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste management plan; and

(6) Any other criteria which the commission regularly utilizes in making such determinations.

(d) The Public Service Commission shall deny a certificate of need upon one or more of the following findings:

(1) The proposed capacity is unreasonable in light of the total tonnage of solid waste that is likely to be delivered each month to the facility if the certificate is granted;

(2) The location of the facility is inconsistent with the statewide solid waste management plan;

(3) The location of the facility is inconsistent with any applicable county or regional solid waste management plan;

(4) The proposed facility is not reasonably cost effective in light of alternative disposal sites;

(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or

(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.

(e) An application for a certificate of need shall be submitted prior to submitting an application for certificate of site approval in accordance with section twenty-four, article four, chapter twenty-two-c of this code. Upon the decision of the commission to grant or deny a certificate of need, the commission shall immediately notify the solid waste management board and the Division of Environmental Protection.

(f) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.

(g) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission pursuant to the provisions of section twelve, article two of this chapter.

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(h) The commission shall promulgate rules relating to the types of commercial solid waste facility modification or construction that require certificates of need.

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