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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2141

(By Mr. Speaker, Mr. Chambers, & Del. Drubb)

— ● —

Passed Feb. 23, 1991

In Effect From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2141

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE GRUBB)

[Passed February 23, 1991; in effect from passage.]

AN ACT to amend and reenact section seven, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter twenty by adding thereto a new article, designated article five-j, all relating to providing rule-making and certain enforcement authority regarding infectious medical waste to the secretary of the department of health and human resources; making legislative findings and stating purpose; providing definitions; prohibiting commercial infectious medical waste facilities, exceptions; designating department of health and human resources as the primary agency for medical waste management; providing for permitting, licensing and regulation of medical waste by the department of health and human resources; providing powers of secretary of health and human resources; requiring promulgation of rules; permitting the charging of fees; permitting inspections and right of entry onto medical waste generators premises; permitting inspection of records; permitting the issuance of subpoenas and subpoenas duces tecum; providing for enforcement orders, injunctions, civil actions, cease and desist orders; hearings; providing for the regulation of haulers of infectious medical waste by the public service

commission; and generally providing for the regulation and control of medical waste.

Be it enacted by the Legislature of West Virginia:

That section seven, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter twenty be further amended by adding thereto a new article, designated article five-j, all to read as follows:

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation
2 with the director, and avoiding inconsistencies with and
3 avoiding duplication to the maximum extent practicable
4 with legislative rules required to be promulgated
5 pursuant to this article by the director or any other rule-
6 making authority, and in accordance with the provisions
7 of chapter twenty-nine-a of this code, shall promulgate,
8 as necessary, legislative rules governing the transporta-
9 tion of hazardous wastes by vehicle upon the roads and
10 highways of this state. Such legislative rules shall be
11 consistent with applicable rules and regulations issued
12 by the federal department of transportation and
13 consistent with this article: *Provided*, That such
14 legislative rules shall apply to the interstate transpor-
15 tation of hazardous waste within the boundaries of this
16 state, as well as the intrastate transportation of such
17 waste.

18 In lieu of those enforcement and inspection powers
19 conferred upon the commissioner of highways elsewhere
20 by law with respect to the transportation of hazardous
21 waste, the commissioner of highways has the same
22 enforcement and inspection powers as those granted to
23 the chief, his authorized representative or agent, or any
24 authorized employee or agent of the department of
25 natural resources, as the case may be, under sections
26 eleven, twelve, thirteen, fourteen, fifteen, sixteen and
27 seventeen of this article. The limitations of this subsec-
28 tion shall not affect in any way the powers of the

29 department of highways with respect to weight
30 enforcement.

31 (b) The public service commission, in consultation
32 with the director, and avoiding inconsistencies with and
33 avoiding duplication to the maximum extent practicable
34 with rules and regulations required to be promulgated
35 pursuant to this article by the director or any other rule-
36 making authority, and in accordance with the provisions
37 of chapter twenty-nine-a of this code, shall promulgate,
38 as necessary, rules and regulations governing the
39 transportation of hazardous wastes by railroad in this
40 state. Such rules and regulations shall be consistent with
41 applicable rules and regulations issued by the federal
42 department of transportation and consistent with this
43 article: *Provided*, That such rules and regulations apply
44 to the interstate transportation of hazardous waste
45 within the boundaries of this state, as well as the
46 intrastate transportation of such waste.

47 In lieu of those enforcement and inspection powers
48 conferred upon the public service commission elsewhere
49 by law with respect to the transportation of hazardous
50 waste, the public service commission has the same
51 enforcement and inspection powers as those granted to
52 the chief, his authorized representative or agent or any
53 authorized employee or agent of the department of
54 natural resources, as the case may be, under sections
55 eleven, twelve, thirteen, fourteen, fifteen, sixteen and
56 seventeen of this article.

57 (c) The rules and regulations required to be promul-
58 gated pursuant to subsections (a) and (b) of this section
59 shall apply equally to those persons transporting
60 hazardous wastes generated by others and to those
61 transporting hazardous wastes they have generated
62 themselves or combinations thereof. Such rules and
63 regulations shall establish such standards, applicable to
64 transporters of hazardous waste identified or listed
65 under this article, as may be necessary to protect public
66 health, safety and the environment. Such standards
67 shall include, but need not be limited to, requirements
68 respecting (A) record keeping concerning such hazard-
69 ous waste transported, and its source and destination,

70 (B) transportation of such waste only if properly labeled,
71 (C) compliance with the manifest system referred to in
72 subdivision (3), subsection (a), section six of this article;
73 and (D) transportation of all such hazardous waste only
74 to the hazardous waste treatment, storage or disposal
75 facilities which the shipper designates on the manifest
76 form to be a facility holding a permit issued under: (1)
77 This article or any rule and regulation required by this
78 article to be promulgated; (2) Subtitle C; (3) the laws of
79 any other state which has an authorized hazardous
80 waste program pursuant to section 3006 of the Resource
81 Conservation and Recovery Act; or (4) Title I of the
82 Federal Marine Protection, Research and Sanctuaries
83 Act.

84 (d) The secretary of the department of health and
85 human resources, in consultation with the director of the
86 division of natural resources, and avoiding inconsisten-
87 cies with and avoiding duplication to the maximum
88 extent practicable with legislative rules required to be
89 promulgated pursuant to this article by the director of
90 the division of natural resources or any other rule-
91 making authority, shall promulgate rules pursuant to
92 article five-j of this chapter. The secretary of the
93 department of health and human resources shall have
94 the same enforcement and inspection powers as those
95 granted to the chief, his authorized representative or
96 agent or any authorized employee or agent of the
97 division of natural resources, as the case may be, under
98 sections eleven, twelve, thirteen, fourteen, fifteen,
99 sixteen and seventeen of this article, and in addition
100 thereto, the department of health and human resources
101 shall have those inspection and enforcement powers with
102 respect to hazardous waste with infectious characteris-
103 tics as provided for in article five-j of this chapter.

104 (e) The air pollution control commission, in consulta-
105 tion with the director, and avoiding inconsistencies with
106 and avoiding duplication to the maximum extent
107 practicable with rules and regulations required to be
108 promulgated pursuant to this article by the director or
109 any other rule-making authority, and in accordance
110 with the provisions of article twenty, chapter sixteen

111 and chapter twenty-nine-a of this code, shall promulgate
112 such legislative rules establishing air pollution perfor-
113 mance standards and permit requirements and proce-
114 dures as may be necessary to comply with the require-
115 ments of this article. Such permits shall be in addition
116 to those permits required by section eight of this article.
117 All legislative rules promulgated pursuant to this
118 subsection shall be consistent with this article.

119 The commission shall adopt regulations for the
120 monitoring and control of air emissions at hazardous
121 waste treatment storage and disposal facilities, includ-
122 ing but not limited to, open tanks, surface impound-
123 ments and landfills, as may be necessary to protect
124 human health and the environment.

125 The commission shall promulgate legislative rules
126 establishing standards applicable to the owners and
127 operators of facilities which burn, for purposes of energy
128 recovery, any fuel produced from any hazardous waste
129 identified or listed pursuant to subdivision (2), subsec-
130 tion (a), section six of this article or which is produced
131 from any hazardous waste identified or listed pursuant
132 to subdivision (2), subsection (a), section six of this
133 article and any other material, as may be necessary to
134 protect human health and the environment: *Provided,*
135 That such legislative rules shall be consistent with
136 Subtitle C.

137 With respect to this article, and any legislative rules
138 or regulations promulgated pursuant thereto, the
139 director of the air pollution control commission has the
140 same enforcement and inspection powers as those of the
141 chief under sections eleven, twelve, thirteen, fourteen,
142 fifteen, sixteen and seventeen of this article: *Provided,*
143 That no action for penalties may be initiated by the
144 director of the air pollution control commission without
145 the approval of that commission. Any person aggrieved
146 or adversely affected by an order of the director of the
147 air pollution control commission made and entered in
148 accordance with the provisions of this article, or by the
149 failure or refusal of said director to act within a
150 reasonable time on an application for a permit or by the
151 issuance or denial of or by the terms and conditions of

152 a permit granted under the provisions of this article,
153 may appeal to the air pollution control commission in
154 accordance with the procedure set forth in section six,
155 article twenty, chapter sixteen of this code, and orders
156 made and entered by said commission shall be subject
157 to judicial review in accordance with the procedures set
158 forth in section seven, article twenty, chapter sixteen of
159 this code, except that as to cases involving an order
160 granting or denying an application for a permit,
161 revoking or suspending a permit or approving or
162 modifying the terms and conditions of a permit or the
163 failure to act within a reasonable time on an application
164 for a permit, the petition for judicial review shall be
165 filed in the circuit court of Kanawha County.

166 (f) The director of the department of natural resour-
167 ces has exclusive responsibility for carrying out any
168 requirement of this article with respect to coal mining
169 wastes or overburden for which a permit is issued under
170 the surface coal mining and reclamation act of 1980,
171 article six of this chapter.

172 (g) To the extent that this article relates to activities
173 with respect to oil and gas wells, liquid injection wells
174 and waste disposal wells now regulated by articles four,
175 four-b and seven, chapter twenty-two of this code, the
176 administrator of the office of oil and gas and the shallow
177 gas-well review board has the jurisdiction with respect
178 to the regulation of such activities and shall promulgate
179 such rules and regulations as may be necessary to
180 comply with the requirements of this article: *Provided,*
181 That nothing in this subsection may be construed to
182 diminish or alter the authority and responsibility of the
183 chief or the water resources board under articles five
184 and five-a, chapter twenty of this code.

185 In lieu of those enforcement and inspection powers
186 conferred upon the administrator of the office of oil and
187 gas and the shallow gas-well review board elsewhere by
188 law, with respect to hazardous wastes, the administrator
189 of the office of oil and gas and the shallow gas-well
190 review board have the same enforcement and inspection
191 powers as those granted to the chief, his authorized
192 representative or agent or any authorized employee or

193 agent of the department of natural resources, as the case
194 may be, under sections eleven, twelve, thirteen, fourteen,
195 fifteen, sixteen and seventeen of this article.

196 (h) The water resources board, in consultation with
197 the director, and avoiding inconsistency with and
198 avoiding duplication to the maximum extent practicable
199 with rules and regulations required to be promulgated
200 pursuant to this article by the director or any other rule-
201 making authority, and in accordance with the provisions
202 of chapter twenty-nine-a of this code, shall, as necessary,
203 promulgate legislative rules governing discharges into
204 the waters of this state of hazardous waste resulting
205 from the treatment, storage or disposal of hazardous
206 waste as may be required by this article. Such legisla-
207 tive rules shall be consistent with this article.

208 (i) All legislative rules promulgated pursuant to this
209 section shall be consistent with rules and regulations
210 promulgated by the federal environmental protection
211 agency pursuant to the Resource Conservation and
212 Recovery Act.

213 (j) The director shall submit his written comments to
214 the legislative rule-making review committee regarding
215 all legislative rules promulgated pursuant to this article.

ARTICLE 5J. MEDICAL WASTE ACT.

§20-5J-1. Short title.

1 This article shall be known and cited as the “West
2 Virginia Medical Waste Act.”

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

1 The Legislature finds that the proper and environ-
2 mentally-sound disposal of infectious and non-infectious
3 medical waste is an important issue facing all West
4 Virginians.

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

9 The Legislature further finds that regulation of the

10 generation, handling, storage, transportation, treatment
11 and disposal of medical waste is an important and
12 necessary function of state government.

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

16 The Legislature further finds that commercial incin-
17 eration of medical waste, and its transportation in the
18 infectious state, pose a potentially serious threat to the
19 health, safety and welfare of West Virginians.

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

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

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

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

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

32 (4) Treatment and disposal in approved regional
33 infectious waste management facilities when adminis-
34 trative proceedings result in a finding that on-site or
35 local treatment of infectious medical waste is not
36 feasible.

37 The Legislature further finds that local responsibility
38 for the minimization in volume, and for the treatment
39 and disposal of infectious and non-infectious medical
40 waste is an important part of a sound and rational waste
41 management program.

42 The Legislature further finds that small quantity
43 generators of infectious medical waste should either
44 render such waste non-infectious on-site, or properly
45 label and package the waste for transportation to a local
46 infectious waste management facility for proper treat-
47 ment and disposal.

48 The Legislature further finds that generators of
49 medical waste should be informed and educated in its
50 management; that training should be provided to all
51 workers likely to come in contact with medical waste,
52 including in-home health care workers; and that
53 relevant information on the potential for infection and
54 disease related to medical waste should be made
55 available to the general public, including in-home health
56 care patients.

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

61 The Legislature further finds that public policy favors
62 a reduction in the volume of infectious and non-
63 infectious medical waste, the separation of infectious
64 medical waste from non-infectious medical waste, and
65 that efforts to reduce medical waste should be fostered
66 and strongly encouraged at all levels of generation.

67 The Legislature further finds that non-infectious
68 medical waste is solid waste.

69 The Legislature further finds that non-infectious
70 medical waste should be handled by environmentally-
71 sound disposal technologies, and that alternative
72 disposal technologies promoting safe recycling and
73 limiting the need for incineration should be emphasized,
74 developed and utilized.

75 Therefore, it is the policy of the State of West Virginia
76 to prohibit commercial infectious medical waste facili-
77 ties; to regulate and control the generation, handling,
78 storage, transportation, treatment and disposal of
79 infectious and non-infectious medical waste; to reduce
80 the generation of infectious and non-infectious medical
81 waste; to encourage local responsibility for the minimi-
82 zation, management and disposal of infectious and non-
83 infectious medical waste; and to authorize the depart-
84 ment of health and human resources to promulgate rules
85 and regulations necessary to carry out the purposes of
86 this article.

§20-5J-3. Definitions.

1 As used in this article:

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

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

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

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

24 (5) "Infectious medical waste" means medical waste
25 identified as capable of producing an infectious disease.
26 Medical waste shall be considered capable of producing
27 an infectious disease if it has been, or is likely to have
28 been, contaminated by an organism likely to be patho-
29 genic to healthy humans, if such organism is not
30 routinely and freely available in the community, and
31 such organism has a significant probability of being
32 present in sufficient quantities and with sufficient
33 virulence to transmit disease. For the purposes of this
34 article, infectious medical waste shall include the
35 following:

36 (A) Cultures and stocks of microorganisms and
37 biologicals,

- 38 (B) Blood and blood products,
39 (C) Pathological wastes,
40 (D) Sharps,
41 (E) Animal carcasses, body parts, bedding and
42 related wastes,
43 (F) Isolation wastes,
44 (G) Any residue or contaminated soil, water or other
45 debris resulting from the clean-up of a spill of any
46 infectious medical waste, and
47 (H) Any waste contaminated by or mixed with
48 infectious medical waste.
- 49 (6) "Medical waste" means infectious and non-infec-
50 tious solid waste generated in the course of the diagno-
51 sis, treatment or immunization of human beings or
52 animals, or in research pertaining thereto, or in the
53 production or testing of biologicals. Such term does not
54 include low-level radioactive waste, any hazardous
55 waste identified or listed under Subtitle C, or any
56 household waste as defined in the regulations promul-
57 gated pursuant to Subtitle C.
- 58 (7) "Non-commercial infectious medical waste facil-
59 ity" means any infectious medical waste facility at
60 which less than thirty-five per cent by weight of the
61 total infectious medical waste stored, treated or disposed
62 of by said facility in any calendar year is generated off-
63 site.
- 64 (8) "Non-infectious medical waste" means any medical
65 waste not capable of producing an infectious disease or
66 infectious medical waste which has been rendered non-
67 infectious. Non-infectious medical waste is considered
68 solid waste for purposes of this code.
- 69 (9) "Off-site" means a facility or area for the collec-
70 tion, storage, transfer, processing, treatment or disposal
71 of infectious medical waste that is not on the generator's
72 site, or a facility or area that received infectious medical
73 waste for storage or treatment that has not been
74 generated on-site.

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

86 (11) "Secretary" means the secretary of the depart-
87 ment of health and human resource or his or her
88 designee.

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

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

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

98 (15) "Treatment" means any method, technique or
99 process, including neutralization, designed to change the
100 physical, chemical or biological character or composi-
101 tion of any infectious medical waste so as to render such
102 waste non-infectious.

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

1 It shall be unlawful to construct or operate a commer-
2 cial infectious medical waste facility in the state of West
3 Virginia: *Provided*, That the secretary may authorize an
4 exception to this prohibition solely for facilities not
5 utilizing incineration technology in any form, including
6 the manufacture or burning of refuse derived fuel:
7 *Provided, however*, That such an exception may be
8 granted only following: (1) the promulgation of legisla-
9 tive rules, in accordance with the provisions of chapter

10 twenty-nine-a of this code containing guidelines for such
11 an exception that are being fully consistent with the
12 findings and purposes contained in section two of this
13 article; (2) a public hearing on the record in the region
14 affected by the proposed facility; (3) an investigation of
15 the infectious medical waste stream in the region
16 affected by the proposed facility; and (4) a determination
17 that programs to minimize and reduce the infectious
18 medical waste stream have been implemented.

§20-5J-5. Designation of secretary of the department of health and human resources as the state infectious medical waste management primary agency; prohibitions; requiring permits.

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

11 (b) On or after the first day of October, one thousand
12 nine hundred ninety-one, no person may own, construct,
13 modify, operate or close any facility or site for the
14 treatment, storage or disposal of infectious medical
15 waste, nor shall any person store, treat or dispose of any
16 such infectious medical waste without first obtaining a
17 permit from the secretary, unless specifically excluded
18 or exempted by rules promulgated by the secretary.

§20-5J-6. Powers of secretary; authority to promulgate rules.

1 (a) The secretary shall promulgate legislative rules, in
2 accordance with the provisions of chapter twenty-nine-
3 a of this code, necessary to effectuate the findings and
4 purposes of this article. Said rules shall include, but not
5 be limited to, the following:

6 (1) A plan designed to encourage a foster reduction in

7 the volume of infectious and non-infectious medical
8 waste and the separation of infectious and non-infectious
9 medical waste;

10 (2) Guidelines and procedures for the development
11 and implementation of local infectious medical waste
12 management plans, to be followed by all generators, that
13 set forth proper methods for the management of
14 infectious and non-infectious medical waste;

15 (3) Criteria for identifying the characteristics of
16 infectious medical waste and identifying the character-
17 istics of infectious medical waste;

18 (4) Standards applicable to generators of medical
19 waste necessary to protect public health, safety and the
20 environment, which standards shall establish require-
21 ments respecting:

22 (A) Record keeping practices that accurately identify
23 the quantities of infectious medical waste generated, the
24 constituents thereof which are significant in quantity or
25 in potential harm to human health or the environment,
26 and the disposition of such waste;

27 (B) Labeling practices for containers used in the
28 storage, transportation or disposal of infectious medical
29 waste which will accurately identify such waste;

30 (C) Use of appropriate containers for infectious
31 medical waste;

32 (D) Furnishing of information regarding the general
33 composition of infectious medical wastes to persons
34 transporting, treating, storing or disposing of such
35 waste;

36 (E) Use of a manifest system and other reasonable
37 means to assure that all infectious medical waste is
38 designated for and arrives at treatment, storage or
39 disposal facilities for which the secretary has issued
40 permits, other than facilities on the premises where the
41 waste is generated; and

42 (F) The submission of reports to the secretary, at such
43 times as the secretary deems necessary, setting out the
44 quantity of infectious medical waste generated during

45 a particular time period, and the disposition of such
46 infectious medical waste;

47 (5) Performance standards applicable to owners and
48 operators of facilities for the treatment, storage or
49 disposal of infectious medical waste necessary to protect
50 public health and safety and the environment, which
51 standards shall include, but need not be limited to,
52 requirements respecting:

53 (A) Maintaining records of all infectious medical
54 waste and the manner in which such waste was treated,
55 stored or disposed of;

56 (B) Reporting, monitoring and inspection of and
57 compliance with the manifest system referred to in
58 subdivision (4) of subsection (a) of this section;

59 (C) Treatment, storage or disposal of all infectious
60 medical waste received by the facility pursuant to
61 operating methods, techniques and practices as may be
62 satisfactory to the secretary;

63 (D) The location, design and construction of infectious
64 medical waste treatment, disposal or storage facilities;

65 (E) Contingency plans for effective action to minimize
66 unanticipated damage from any treatment, storage or
67 disposal of infectious medical waste;

68 (F) The maintenance of operation of such facilities
69 and requiring additional qualifications as to ownership,
70 continuity of operation, training for personnel and
71 financial responsibility as may be necessary or desira-
72 ble: *Provided*, That no private entity may be precluded
73 by reason of criteria established under this subsection
74 from the ownership or operation of facilities providing
75 infectious medical waste treatment, storage or disposal
76 services where such entity can provide assurances of
77 financial responsibility and continuity of operation
78 consistent with the degree and duration of risks
79 associated with the treatment, storage or disposal of
80 infectious medical waste; and

81 (G) Compliance with the requirements of this article
82 respecting permits for treatment, storage or disposal;

83 (6) The terms and conditions under which the secre-
84 tary shall issue, modify, suspend, revoke or deny permits
85 required by this article. The legislative rules required
86 by this subdivision shall be promulgated by the first day
87 of August, one thousand nine hundred ninety-one.

88 (7) Establishing and maintaining records; making
89 reports; taking samples and performing tests and
90 analyses; installing, calibrating, operating and main-
91 taining monitoring equipment or methods; and provid-
92 ing any other information necessary to achieve the
93 purposes of this article;

94 (8) Standards and procedures for the certification of
95 personnel at infectious medical waste treatment, storage
96 or disposal facilities or sites;

97 (9) Procedures for public participation in the imple-
98 mentation of this article;

99 (10) Procedures and requirements for the use of
100 manifests during the transportation of infectious
101 medical wastes;

102 (11) Procedures and requirements for the submission
103 and approval of a plan by the owners or operators of
104 infectious medical waste storage, treatment and disposal
105 facilities, for closure of such facilities, post-closure
106 monitoring and maintenance, and for both sudden and
107 nonsudden accidental occurrences;

108 (12) A schedule of fees to recover the costs of process-
109 ing permit applications and renewals, training, enforce-
110 ment, inspections and program development;

111 (b) The legislative rules required by subsection (a)
112 shall be promulgated within six months after the
113 effective date of this article.

114 (c) Within twelve months after the effective date of
115 this article, the secretary shall conduct and publish a
116 study of infectious medical waste management in this
117 state which shall include, but not be limited to:

118 (1) A description of the sources of infectious medical
119 waste generation within the state, including the types
120 and quantities of such waste;

121 (2) A description of current infectious medical waste
122 management practices and costs, including treatment,
123 storage and disposal within the state; and

124 (3) An inventory of existing infectious medical waste
125 treatment, storage and disposal sites.

126 (d) Any person aggrieved or adversely affected by an
127 order of the secretary pursuant to this article, or by the
128 denial or issuance of a permit, or the failure or refusal
129 of said secretary to act within a reasonable time on an
130 application for a permit or the terms or conditions of
131 a permit granted under the provisions of this article,
132 may appeal to a special hearing examiner appointed to
133 hear contested cases in accordance with the provisions
134 of chapter twenty-nine-a of this code. The secretary shall
135 promulgate legislative rules establishing procedures for
136 appeal and the conduct of hearings.

137 (e) In addition to those enforcement and inspection
138 powers conferred upon the secretary elsewhere by law,
139 the secretary shall have the enforcement and inspection
140 powers as provided in sections seven, eight and nine of
141 this article.

142 (f) Nothing in this section shall be construed to
143 diminish or alter the authority of the air pollution
144 control commission or its director under article twenty,
145 chapter sixteen of this code.

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

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

9 (b) The secretary shall make periodic inspections of
10 every permitted facility as necessary to effectively
11 implement and enforce the requirements of this article
12 or the legislative rules promulgated by or permits issued

13 by the secretary. After an inspection is made, a report
14 shall be prepared and filed with the secretary. A copy
15 of such inspection report shall be promptly furnished to
16 the person in charge of such building, property,
17 premises, place, vehicle or facility. All inspection
18 reports shall be available to the public in accordance
19 with the provisions of article one, chapter twenty-nine-
20 b of this code.

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

29 (d) Upon presentation of proper credentials and at
30 reasonable times, the secretary may enter any establish-
31 ment, building, property, premises, vehicle or other
32 place maintained by any person where infectious
33 medical waste is being or has been generated, trans-
34 ported, stored, treated or disposed of to inspect and take
35 samples of waste and the contents of any containers. The
36 division shall promptly provide a copy of any analysis
37 to the owner, operator or agent in charge.

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

54 investigation or inspection.

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

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

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

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

15 (3) Institute a civil action in accordance with subsec-
16 tion (a) of section nine of this article.

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

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

1 (a) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article shall be subject to a civil penalty not to
4 exceed twenty-five thousand dollars for each day of such
5 violation, which penalty shall be recovered in a civil
6 action either in the circuit court of the county wherein
7 the violation occurs or in the circuit court of Kanawha
8 County.

9 (b) The secretary may seek an injunction, or may

10 institute a civil action against any person who violates
11 any provision of this article or any permit, legislative
12 rule or order issued pursuant to this article. In seeking
13 an injunction, it is not necessary for the secretary to post
14 bond nor to allege or prove at any stage of the proceed-
15 ing that irreparable harm will occur if the injunction
16 is not issued or that there is no adequate remedy at law.
17 A petition for an injunction filed pursuant to this section
18 may be filed and relief granted notwithstanding the fact
19 that all administrative remedies provided for in this
20 article have not been exhausted or invoked against the
21 person or persons against whom such relief is sought.

22 (c) At the request of the secretary, the attorney
23 general, or the prosecuting attorney of the county in
24 which the violation occurs, shall assist the secretary in
25 any civil action under this section.

26 (d) In any action brought pursuant to the provisions
27 of this section, the state, or any agency of the state which
28 prevails, may be awarded costs and reasonable attor-
29 ney's fees.

**§20-5J-10. Regulation of infectious medical waste collec-
tors and haulers by the public service
commission; limitation of regulation.**

1 (a) On and after the first day of July, one thousand
2 nine hundred ninety-one, collectors, haulers and trans-
3 porters of infectious medical waste who are "common
4 carriers by motor vehicle," as defined in section two,
5 article one, chapter twenty-four-a of this code, shall be
6 regulated by the public service commission in accord-
7 dance with the provisions of chapter twenty-four-a and
8 rules and regulations promulgated thereunder. The
9 rules of the public service commission shall not conflict
10 nor take precedence over the rules promulgated by the
11 secretary.

12 (b) The commission shall provide a separate and
13 distinct category of special certificates of convenience
14 and necessity for infectious medical waste collectors,
15 haulers and transporters regulated by this section:
16 *Provided*, That within six months of the effective date
17 of this act, the commission may issue such special

18 certificates to existing common carriers of solid waste
19 who are presently transporting infectious medical waste
20 and who demonstrate that they are in compliance with
21 the provisions of this article: *Provided, however,* that
22 such common carriers need not make any additional
23 demonstration of public convenience and necessity.
24 Regulation of collectors, haulers and transporters of
25 medical waste shall be separate and distinct from the
26 regulation of solid waste collectors, haulers and trans-
27 porters provided for in section twenty-three, article
28 twenty-six, chapter sixteen of this code.

29 (c) At any hearing conducted by the public service
30 commission pertaining to infectious medical waste
31 collectors, haulers and transporters, the secretary may
32 appear before the commission and present evidence.

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Tomer Seck
Chairman Senate Committee

Ernest C Moore
Chairman House Committee

Originating in the House.

In effect from passage.

Samuel E. McInnis
Clerk of the Senate

Donald J. Fogg
Clerk of the House of Delegates

Keith Byrdette
President of the Senate

W. A. C. ...
Speaker of the House of Delegates

The within *is approved* this the *5th*
day of *March*, 1991.

Gaston Caperton
Governor

PRESENTED TO THE
GOVERNOR

Date 2/21/91

Time 1:45pm