ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2141
(By Mr. Speaker, Mr. Chambers, and Delegate Grubb)

[Passed February 2, 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.

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such legislative rules shall apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the commissioner of highways elsewhere by law with respect to the transportation of hazardous waste, the commissioner of highways has the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent, or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article. The limitations of this subsection shall not affect in any way the powers of the
department of highways with respect to weight
enforcement.

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

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

(c) The rules and regulations required to be promul-
gated pursuant to subsections (a) and (b) of this section
shall apply equally to those persons transporting
hazardous wastes generated by others and to those
transporting hazardous wastes they have generated
themselves or combinations thereof. Such rules and
regulations shall establish such standards, applicable to
transporters of hazardous waste identified or listed
under this article, as may be necessary to protect public
health, safety and the environment. Such standards
shall include, but need not be limited to, requirements
respecting (A) record keeping concerning such hazard-
ous waste transported, and its source and destination,
(B) transportation of such waste only if properly labeled,
(C) compliance with the manifest system referred to in
subdivision (3), subsection (a), section six of this article;
and (D) transportation of all such hazardous waste only
to the hazardous waste treatment, storage or disposal
facilities which the shipper designates on the manifest
form to be a facility holding a permit issued under: (1)
This article or any rule and regulation required by this
article to be promulgated; (2) Subtitle C; (3) the laws of
any other state which has an authorized hazardous
waste program pursuant to section 3006 of the Resource
Conservation and Recovery Act; or (4) Title I of the
Federal Marine Protection, Research and Sanctuaries
Act.

(d) The secretary of the department of health and
human resources, in consultation with the director of the
division of natural resources, and avoiding inconsistenc-
ies with and avoiding duplication to the maximum
extent practicable with legislative rules required to be
promulgated pursuant to this article by the director of
the division of natural resources or any other rule-
making authority, shall promulgate rules pursuant to
article five-j of this chapter. The secretary of the
department of health and human resources shall have
the same enforcement and inspection powers as those
granted to the chief, his authorized representative or
agent or any authorized employee or agent of the
division of natural resources, as the case may be, under
sections eleven, twelve, thirteen, fourteen, fifteen,
sixteen and seventeen of this article, and in addition
thereto, the department of health and human resources
shall have those inspection and enforcement powers with
respect to hazardous waste with infectious characte-
risics as provided for in article five-j of this chapter.

(e) The air pollution control commission, in consulta-
tion with the director, and avoiding inconsistencies with
and avoiding duplication to the maximum extent
practicable with rules and regulations required to be
promulgated pursuant to this article by the director or
any other rule-making authority, and in accordance
with the provisions of article twenty, chapter sixteen
and chapter twenty-nine-a of this code, shall promulgate such legislative rules establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article. Such permits shall be in addition to those permits required by section eight of this article. All legislative rules promulgated pursuant to this subsection shall be consistent with this article.

The commission shall adopt regulations for the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment.

The commission shall promulgate legislative rules establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article or which is produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article and any other material, as may be necessary to protect human health and the environment: Provided, That such legislative rules shall be consistent with Subtitle C.

With respect to this article, and any legislative rules or regulations promulgated pursuant thereto, the director of the air pollution control commission has the same enforcement and inspection powers as those of the chief under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article: Provided, That no action for penalties may be initiated by the director of the air pollution control commission without the approval of that commission. Any person aggrieved or adversely affected by an order of the director of the air pollution control commission made and entered in accordance with the provisions of this article, or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of
a permit granted under the provisions of this article, may appeal to the air pollution control commission in accordance with the procedure set forth in section six, article twenty, chapter sixteen of this code, and orders made and entered by said commission shall be subject to judicial review in accordance with the procedures set forth in section seven, article twenty, chapter sixteen of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

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

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

In lieu of those enforcement and inspection powers conferred upon the administrator of the office of oil and gas and the shallow gas-well review board elsewhere by law, with respect to hazardous wastes, the administrator of the office of oil and gas and the shallow gas-well review board have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or
agent of the department of natural resources, as the case
may be, under sections eleven, twelve, thirteen, fourteen,
fifteen, sixteen and seventeen of this article.

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

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

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

ARTICLE 5J. MEDICAL WASTE ACT.


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

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

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

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

The Legislature further finds that regulation of the
generation, handling, storage, transportation, treatment
and disposal of medical waste is an important and
necessary function of state government.

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

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

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

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

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

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

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

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

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

The Legislature further finds that small quantity
generators of infectious medical waste should either
render such waste non-infectious on-site, or properly
label and package the waste for transportation to a local
infectious waste management facility for proper treat-
ment and disposal.
The Legislature further finds that generators of medical waste should be informed and educated in its management; that training should be provided to all workers likely to come in contact with medical waste, including in-home health care workers; and that relevant information on the potential for infection and disease related to medical waste should be made available to the general public, including in-home health care patients.

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

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

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

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

Therefore, it is the policy of the State of West Virginia to prohibit commercial infectious medical waste facilities; to regulate and control the generation, handling, storage, transportation, treatment and disposal of infectious and non-infectious medical waste; to reduce the generation of infectious and non-infectious medical waste; to encourage local responsibility for the minimization, management and disposal of infectious and non-infectious medical waste; and to authorize the department of health and human resources to promulgate rules and regulations necessary to carry out the purposes of this article.

1. As used in this article:

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

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

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

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

6. (5) "Infectious medical waste" means medical waste identified as capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. For the purposes of this article, infectious medical waste shall include the following:

7. (A) Cultures and stocks of microorganisms and biologicals,
(B) Blood and blood products,
(C) Pathological wastes,
(D) Sharps,
(E) Animal carcasses, body parts, bedding and related wastes,
(F) Isolation wastes,
(G) Any residue or contaminated soil, water or other debris resulting from the clean-up of a spill of any infectious medical waste, and
(H) Any waste contaminated by or mixed with infectious medical waste.

(6) "Medical waste" means infectious and non-infectious solid waste generated in the course of the diagnosis, treatment or immunization of human beings or animals, or in research pertaining thereto, or in the production or testing of biologicals. Such term does not include low-level radioactive waste, any hazardous waste identified or listed under Subtitle C, or any household waste as defined in the regulations promulgated pursuant to Subtitle C.

(7) "Non-commercial infectious medical waste facility" means any infectious medical waste facility at which less than thirty-five per cent by weight of the total infectious medical waste stored, treated or disposed of by said facility in any calendar year is generated off-site.

(8) "Non-infectious medical waste" means any medical waste not capable of producing an infectious disease or infectious medical waste which has been rendered non-infectious. Non-infectious medical waste is considered solid waste for purposes of this code.

(9) "Off-site" means a facility or area for the collection, storage, transfer, processing, treatment or disposal of infectious medical waste that is not on the generator's site, or a facility or area that received infectious medical waste for storage or treatment that has not been generated on-site.
(10) “On-site” means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way controlled by said person and to which the public does not have access, is also considered on-site property. Hospitals with more than one facility located in the same county shall be considered one site.

(11) “Secretary” means the secretary of the department of health and human resource or his or her designee.

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

(13) “Storage” means the containment of infectious medical waste on a temporary basis. Storage shall not constitute disposal of the waste.


(15) “Treatment” means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any infectious medical waste so as to render such waste non-infectious.


It shall be unlawful to construct or operate a commercial infectious medical waste facility in the state of West Virginia: Provided, That the secretary may authorize an exception to this prohibition solely for facilities not utilizing incineration technology in any form, including the manufacture or burning of refuse derived fuel: Provided, however, That such an exception may be granted only following: (1) the promulgation of legislative rules, in accordance with the provisions of chapter
§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.

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

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

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

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

(1) A plan designed to encourage a foster reduction in
the volume of infectious and non-infectious medical waste and the separation of infectious and non-infectious medical waste;

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

(3) Criteria for identifying the characteristics of infectious medical waste and identifying the characteristics of infectious medical waste;

(4) Standards applicable to generators of medical waste necessary to protect public health, safety and the environment, which standards shall establish requirements respecting:

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

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

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

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

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

(F) The submission of reports to the secretary, at such times as the secretary deems necessary, setting out the quantity of infectious medical waste generated during
(5) Performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of infectious medical waste necessary to protect public health and safety and the environment, which standards shall include, but need not be limited to, requirements respecting:

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

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

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

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

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

(F) The maintenance of operation of such facilities and requiring additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desir-able: Provided, That no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing infectious medical waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of infectious medical waste; and

(G) Compliance with the requirements of this article respecting permits for treatment, storage or disposal;
(6) The terms and conditions under which the secretary shall issue, modify, suspend, revoke or deny permits required by this article. The legislative rules required by this subdivision shall be promulgated by the first day of August, one thousand nine hundred ninety-one.

(7) Establishing and maintaining records; making reports; taking samples and performing tests and analyses; installing, calibrating, operating and maintaining monitoring equipment or methods; and providing any other information necessary to achieve the purposes of this article;

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

(9) Procedures for public participation in the implementation of this article;

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

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

(12) A schedule of fees to recover the costs of processing permit applications and renewals, training, enforcement, inspections and program development;

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

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

(1) A description of the sources of infectious medical waste generation within the state, including the types and quantities of such waste;
(2) A description of current infectious medical waste management practices and costs, including treatment, storage and disposal within the state; and

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

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

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

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

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

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

(b) The secretary shall make periodic inspections of every permitted facility as necessary to effectively implement and enforce the requirements of this article 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, manif-
53 ests and other physical evidence pertinent to such

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

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

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

(3) Institute a civil action in accordance with subsection (a) of section nine of this article.

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


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

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

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

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

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

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

(b) The commission shall provide a separate and
distinct category of special certificates of convenience
and necessity for infectious medical waste collectors,
haulers and transporters regulated by this section:
Provided, That within six months of the effective date
of this act, the commission may issue such special
certificates to existing common carriers of solid waste who are presently transporting infectious medical waste and who demonstrate that they are in compliance with the provisions of this article: Provided, however, that such common carriers need not make any additional demonstration of public convenience and necessity. Regulation of collectors, haulers and transporters of medical waste shall be separate and distinct from the regulation of solid waste collectors, haulers and transporters provided for in section twenty-three, article twenty-six, chapter sixteen of this code.

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

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of , 1991.

Governor
PRESENTED TO THE
GOVERNOR
Date 2/21/91
Time 4:45 pm