

OPEN MEETINGS ADVISORY OPINION NO. 2013-03
(Original and updated bylaws attached)
Issued On October 3, 2013 By The

WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Nicholas County Solid Waste Authority asks that its bylaws be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Nicholas County Solid Waste Authority (NCSWA) recently adopted amended bylaws. The Executive Director now asks if any part of the newly-adopted bylaws violates the Open Meetings Act (the Act). The Open Meetings Committee has reviewed the proposed bylaws in their entirety.

The Act does not require this Committee to recite each provision of the bylaws in rendering an opinion as to whether they comply with the Act. Nevertheless, this Committee elects to provide comment in regard to the provisions listed below.

A complete copy of the NCSWA bylaws is attached to this advisory opinion.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-3 provides in relevant part:

Except as expressly and specifically otherwise provided by law . . . [and] except as provided in section four of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules for attendance when there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: *Provided*, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

W. Va. Code § 6-9A-5 explains:

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances, and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

ADVISORY OPINION

The Open Meetings Act generally requires governing bodies of public agencies to promulgate rules setting forth the notice and agenda requirements for regular and special meetings. W. Va. Code § 6-9A-3. In addition to those requirements, governing bodies may elect to adopt other rules governing meeting procedures so long as the provisions are not in conflict with the Act.

Consistent with its legislative mandate to determine whether any proposed course of action would violate any provision in the Act, this Committee will review such additional provisions. Nevertheless, the Committee's opinion, and any immunity which flows from this opinion, will be limited to whether any provision in the proposed bylaws is inconsistent with the Act.

The Committee finds that the majority of the bylaws comply with the Open Meeting Act, but most would benefit from modification or clarification in order to clearly satisfy the Act. The analysis will be limited to the subsection labeled "Article VI" and will proceed by paragraph and subject matter.

Introduction

The statement in paragraph one (1) reads:

All meetings of the Nicholas County Solid Waste Authority, a public agency, shall be held in accordance with WV Code 6-9A, the Open Governmental Proceedings Act.

This Committee finds that the words, "and any committees or subcommittees thereof," should be inserted after "Authority" and before "a public agency." This statement tracks

language later in the bylaws and reinforces the idea that all NCSWA meetings, not just regular meetings, must conform to the requirements of the Act.

Notice of Regular Meetings

The statement in paragraph three (3) reads:

Notice of regular meetings shall be given to each Board member at least five days prior to the meeting. Public notice of all regular meetings shall include the date, time, and place and be posted or published three days in advance of the regularly scheduled meeting. Agendas for such meetings will be available to the public three days in advance at the Landfill office. WV Code 6-9A-3[.]

This statement is not quite symmetrical with the Open Meetings Act. Although it indicates where agendas are available, it does not say where notices will be posted. Further, it fails to specify that the agendas must be made available three **business** days in advance of any meeting.

In order to ensure strict compliance with the Act, this Committee recommends redrafting the second sentence of the paragraph to read, "Public notice of all regular meetings shall include the date, time, and place, and shall be posted at the Landfill office three business days in advance of the regularly scheduled meeting."

Notice of Special/Emergency Meetings

Paragraph four (4) states:

Notice of special meetings shall be given to each Board member two days prior to the meeting. Public notice of the special meeting shall include the date, time, place, and purpose and be posted or published two days in advance of the meeting.

This Committee recommends replacing the second sentence of paragraph four (4) with, "Public notice of the special meeting shall include the date, time, place and purpose of the meeting, and shall be posted at the Landfill office two business days in advance."

Paragraph five (5) reads:

In the event of an emergency requiring immediate official action, an emergency meeting may be held with notice given as soon as possible prior to the meeting and delivered to each member of the Board.

This Committee recognizes the NCSWA's attempt to track the Open Meetings Act's definition of "emergency." Unfortunately, this definition is no longer correct. The

Legislature recently amended the Open Governmental Meetings Act to contain a statutory definition of “emergency,” codified at W. Va. Code § 6-9A-2(2). It reads:

(2) “Emergency meeting” means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

(A) An imminent threat to public health or safety;

(B) An imminent threat of damage to public or private property; or

(C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

Accordingly, the bylaws should reflect this new definition. This Committee recommends changing the first sentence of paragraph five (5) to the following phrase: “In the event of an emergency as defined in W. Va. Code § 6-9A-2(2), an emergency meeting may be held. The NCSWA shall post public notice at the Landfill office as soon as practicable prior to the meeting. Notice must also be delivered to each member of the board.”

Subcommittees

Paragraph seven (7) states:

All committees (sic) meetings shall provide public notice and be open to the public in the same manner as regular meetings and minutes shall be kept.

For clarity’s sake, this Committee recommends changing paragraph seven (7) to “All committee and subcommittee meetings shall provide public notice and be open to the public, in the same manner as regular Nicholas County Solid Waste Authority meetings as described above. Minutes shall also be kept at committee and subcommittee meetings, in compliance with the Open Meetings Act.”

Quorum

Paragraph eight (8) reads:

The presence of a majority of the Board shall constitute a quorum.

The paragraph also cites to W. Va. Code § 6-9A-2(7). The actual language of that code section is:

“Quorum” means the gathering of a simple majority of the constituent membership of a governing body . . .”

While not in violation of the Act, the citation is somewhat misleading. The statute refers to a “simple majority,” which can, in some political contexts, be different from a

“majority.” Some other types are “two-thirds majority,” “supermajority,” and “double majority,” all of which fall under the blanket descriptor “majority.” The Committee recommends replacing “majority” with “simple majority,” accordingly.

Manner of Voting

Paragraph nine (9) states:

The voting on all motions at Board meetings shall be by a roll call vote. The result of the vote will be recorded in the minutes. Any member abstaining from a vote must note for the record the reason for the abstention. In the event that a quorum is not present, members shall either be allowed to participate and vote via telephone or other telecommunication systems or those present may adjourn the meeting to a later date.

This paragraph cites W. Va. Code § 6-9A-5 and § 22C-4-23(4). The reference to the Open Meetings Act authority is incorrect. (This Committee is not authorized to rule on the citation to W. Va. Code § 22C-4-23(4), but that provision does not appear to address the voting procedure prevented either.) Although the substantive language of that provision of the bylaws complies with the Ethics Act, the Requester should remove the erroneous citations. Additionally, the phrase, “other telecommunications systems” should be removed. Members are permitted to vote in person or by telephone. Fax or text voting, for example, is prohibited. See Open Meetings Act Opinions 1991-08, 2001-36, and 2009-08.

Meeting Procedures

Paragraph ten (10) reads:

Robert’s Rules of Order shall control the transactions of all business conducted at all board meetings.

While seemingly innocuous, Open Meetings Act Opinion 2010-12 gives guidance on the formal adoption of Robert’s Rules of Order. It states:

There is nothing in the Open Meetings Act which requires a governing body to adopt a particular rule of parliamentary procedure. . . . To avoid any potential for conflict between [Robert’s Rules] and other applicable rules . . . the Committee finds that [the Requester should adopt] a provision similar in substance as to that adopted by the City of Glendale which reads:

Except as otherwise provided in the Constitution of the United States and the State of West Virginia, the laws of the State of West Virginia or the Charter of the City of Glen Dale,

all questions of order, the methods of organization and the conduct of business of the municipal council shall be governed by Robert's Rules of Order in all cases to which they are applicable, and in which they are not inconsistent with the governing rules of council.

Accordingly, the Committee recommends that the NCSWA adopt a similar provision instead of the current blanket adoption of Robert's Rules of Order. For example, "[t]o the extent that there is a conflict between Robert's Rules of Order and the Open Meetings Act, the latter prevails," would meet the requirements of the Act.

Public Attendance

Paragraph eleven (11) reads:

The Authority may make and enforce reasonable rules for public attendance at its meetings. The Authority may remove from the meeting any member of the public who is disrupting the meeting

This statement appears to be designed to track W. Va. Code § 6-9A-3, which reads in relevant part:

Any governing body may make and enforce reasonable rules for attendance when there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised

The notable difference between the statute and these bylaws is that under W. Va. Code § 6-9A-3, the governing body may only make and enforce rules for attendance *when there is not room enough for all members of the public who wish to attend*. Nothing in the Act indicates that the governing body has the power to make "reasonable" rules for public attendance outside this specific situation. Of course, members of the public who are disrupting the meeting may be removed under the Open Meetings Act, whether or not it is in an entity's bylaws.

In fact, since W. Va. Code § 6-9A-3 indicates that it does not prohibit removal of excessively disruptive persons, it must then prohibit removal of non-disruptive people except in cases of overcrowding. This is the legal principle of *expressio unius est exclusio alterius*, or, the expression of one thing is the exclusion of the other. Accordingly, the Committee recommends inserting the language "where there is not room enough for all members of the public who wish to attend" at the end of the first sentence. Paragraph eleven (11) of the bylaws, as currently written, creates an improper rule and should be removed.

Minutes

Finally, the entirety of Paragraph 13 reads:

Minutes of all regular, special and emergency meetings of the Board shall be recorded by mechanical means and transcribed.

W. Va. Code § 6-9A-5 reads:

[M]inutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances, and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

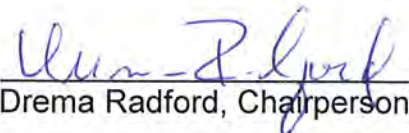
The Committee recommends tracking the language of the statute and including the statutory requirements for recorded minutes. The NCSWA's compliance with W. Va. Code § 6-9A-5 at every meeting is mandatory. Incorporating the statute into the bylaws in this way creates explicit guidelines within the document for the board to follow.

CONCLUSION

The Committee commends the NCSWA for submitting its bylaws for review. Some caution, however, is necessary in the future regarding citing statutory provisions as authority for bylaw provisions; incorrect citations can be equally or more problematic than omitting citations altogether.

Consistent with its limited authority, this Committee finds that none of the provisions contained in the current bylaws, other than those addressed above, are inconsistent with the Open Meetings Act. In regard to the changes which must be made for purposes of complying with this ruling, the Committee directs the NCSWA to submit the amended bylaws to the Executive Director of the West Virginia Ethics Commission for approval. If the Executive Director finds that the revised bylaws comply with this opinion, then she shall append the revised bylaws and her letter approving the same to this opinion. If necessary, the Executive Director or Commission may submit the revised bylaws to the Open Meetings Committee for further review.

This advisory opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6-9A-11, a governing body or member thereof that acts in good faith reliance on this advisory opinion has an absolute defense to any civil suit or criminal prosecution for any action taken based upon this opinion, so long as the underlying facts and circumstances surrounding the action are the same or substantially the same as those being addressed in this opinion, unless and until it is amended or revoked.


Drema Radford, Chairperson

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**NICHOLAS COUNTY SOLID
WASTE AUTHORITY**

BYLAWS

LAST AMMENDED MARCH 26, 2013

BY-LAWS
OF
NICHOLAS COUNTY SOLID WASTE AUTHORITY

ARTICLE I

The official name of the organization shall be the Nicholas County Solid Waste Authority. It was created by West Virginia Legislature on January 1, 1989, as a public agency in accordance with ***WV Code 22C-4-3***.

The Authority will be located at 120 Baughman Road, Calvin, WV 26660, Nicholas County, West Virginia. The present mailing address is P.O. Box 59; Calvin WV 26660, phone number 304-742-3518, email is nclf1@dish.net. All communication with NCSWA must be directed to these addresses only, and the use of other addresses may result in the return to sender of unopened mail.

ARTICLE II
Purpose

The purpose of the Nicholas County Solid Waste Authority (Authority) is to protect the public health and welfare by ensuring a comprehensive program of solid waste collection, processing, recycling and disposal. Further, the Authority exists to establish programs based on source reduction, recycling, reuse, material recover and land filling. ***WV Code 22C-4-1***

ARTICLE III
Board of Directors

WV Code 22C-4-7 (a) the management and control of the authority, its property, operations and affairs of any nature is vested in and governed by the board of directors.

The Board of Directors shall consist of a five member board and shall be selected, appointed and serve terms according to ***WV Code 22C-4-3***.

No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.
WV Code 22C-4-3(b)

If a director resigns or for other reasons his or her membership terminates during his or her term in office, a successor shall be appointed by the entity who initially appointed such Director, in accordance with ***WV Code 22C-4-3***.

The resignation of a member of the Board of Directors shall take effect upon receipt of a letter of resignation delivered to the Chairperson and the member's appointing entity.

WV Code 22C-4-23 (3) (4) (5)

The members of the Board shall receive no compensation for their services thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties.

WV Code 22C-4-3(b)

Newly appointed members must sign the conflict of interest policy and take the oath of office before participating in discussion and voting on matters before the Board. **WV Code 6-1-3 and WV Code 6-1-5 WV Code 6-1-7**

A Chairperson and Vice Chairperson shall be elected annually at the regular July meeting, from among the members of the Board and shall hold the office for a one-year term or until successors is elected. The Board of Directors shall also appoint annually, at the July meeting, a Secretary-Treasurer, who need not be a member of the Board of Directors.

WV Code 22C-4-7 (d)

Attendance at all meetings of the Board is mandatory. Any absences by a Director must be excused by the Chairperson, or in the case of absence of the Chairperson, the Vice-Chairperson. If any Board of Director is absent three (3) consecutive meetings, without approval of the Chairperson, upon majority vote by the Board, a letter shall be sent to that member and their appointing agency informing both of them of their appointee's non-attendance. The Authority may request that the appointing agency replace the non-attending Board member at the end of their term. **WV Code 22C-4-23 (3) (4) (5)**

Directors may participate in a meeting of the Board via phone or similar electronic communications equipment by means of which all persons participating in the meeting can hear each other. **WV Code 22C-4-23 (3) (4) (5)**

Meetings may be held via conference call; provided that appropriate notice is given to the public in accordance with **WV Code 6-9A (4)** and provisions are made whereby the public can listen.

ARTICLE IV Duties of Officers

The Chairperson shall preside at all meetings of the Board. The Chair shall appoint all committees and may serve as ex-officio member of such. The Chair shall, together with the Secretary sign the minutes of all Board meetings at which he or she shall preside. The Chair shall execute, or if necessary appoint the Executive Director to, acknowledge for recording any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Authority. The Chair shall

distribute, receive and review any Conflict of Interest Statements of Directors each year at the annual meeting. **WV Code 22C-4-23 (3) (4) (5)**

If the Chairperson is absent or is unable to discharge the duties thereof, the same shall be discharged by any of the Board Members or the Executive Director as appointed for such duty by the Chairman. **WV Code 22C-4-23(3) (4) (17)**

The duties of the Secretary-Treasurer shall include, but are not limited to , preparing agendas under the direction of the Chairperson, notifying all members of meetings, preparing legal notices of meetings/hearings, and preparing/maintaining the minutes of all Board meetings. The Secretary-Treasurer shall have general charge of funds and record management of the Authority, and be custodian of deeds and other important writings and papers of the Authority. The Secretary-Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit reports and statements of the financial condition of the Authority at each regular meeting. He shall perform such other duties as may devolve upon him under the law or as may be conferred upon him by the members. The Secretary-Treasurer shall give bond in accordance with **WV Code 22C-4-7(d)**.

ARTICLE V POWERS AND DUTIES

The Authority may exercise all powers necessary or appropriate to carry out the purpose and duties as provided in **WV Code 22C-4-23**.

The Board of Directors may employ and/or appoint an individual that shall be titled "Manager", or "Executive Director" or other title as determined by the Board. He or she shall be its direct representative in the management of the corporation. The Executive Director shall be given the necessary authority and responsibility to operate the corporation and all its activities and departments and shall have such other duties and responsibilities as determined by the Board and as set forth in the Executive Director's employment contract, if any as according to **WV Code 22C-4-23(10)(11)** The Executive Director shall serve as an ex-officio member of the Board of Directors and all standing committees with the right to vote on matters before the Board and will abstain from voting on any personal employment issues. **WV Code 22C-4-23-(3) (4) (5) (17)**

ARTICLE VI MEETINGS

All meetings of the Nicholas County Solid Waste Authority, a public agency, shall be held in accordance with **WV Code 6-9A, the Open Governmental Proceedings Act**.

The Board shall meet at such times and places as it or the Chair may determine. It is the duty of the chair to call a meeting of the board upon the written request of a majority of the members thereof according to **WV Code 22C-4-7 (d)**

Notice of Regular meetings shall be given to each Board member at least five days prior to the meeting. Public notice of all regular meetings shall include the date, time, and place and be posted or published three days in advance of the regularly scheduled meeting. Agendas for such meetings will be available to the public three days in advance at the Landfill office.
WV Code 6-9A-3

Notice of Special meetings shall be given to each Board member two days prior to the meeting. Public notice of the special meeting shall include the date, time, place and purpose and be posted or published two days in advance of the meeting. *WV Code 6-9A-3*

Notice of Emergency meetings, in the event of an emergency requiring immediate official action, an emergency meeting may be held with notice given as soon as possible prior to the meeting and delivered to each member of the Board. Notice shall state the date, time, place and purpose of the meeting and facts and circumstances of the emergency. *WV Code 6-9A-3*

Executive Sessions The Board may hold an executive session during a regular, special or emergency meeting in accordance with *WV Code 6-9A-4*.

Committees

All committee meetings shall provide public notice and be open to the public in the same manner as regular meetings and minutes shall be kept. *WV Code 6-9A-4*

Quorum The presence of a majority of the Board shall constitute a quorum.
WV Code 6-9A-2 (7)

Manner of Voting The voting on all motions at Board meetings shall be by a roll call vote. The result of the vote will be recorded in the minutes. Any member abstaining from a vote must note for the record the reason for the abstention. In the event that a quorum is not present, members shall either be allowed to participate and vote via telephone or other telecommunication systems or those present may adjourn the meeting to a later date.
WV Code 6-9A-5 WV Code 22C-4-23(4)

Meeting Procedures Robert's Rules of Order shall control the transactions of all business conducted at all Board meetings. *WV Code 6-9-A-3*

Public Attendance The Authority may make and enforce reasonable rules for public attendance at its meetings. The Authority may remove from the meeting any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.
WV Code 6-9A-3

Public Comment The Authority does not provide for a public comment period.

Members of public may make written request to the Chairman of the Board to be added to the Authorities agenda. Upon approval by a majority vote of the Board, the requester may be added to the next available agenda. *WV Code 6-9A-3*

Minutes Minutes of all regular, special and emergency meetings of the Board shall be recorded by mechanical means and transcribed. *WV Code 6-9A-5*

Article VII Purchasing

The Nicholas County Solid Waste Authority shall adhere as closely as possible to the WV Purchasing Guidelines when applicable and feasible.

Article VIII Miscellaneous Procedures

Conflict of Interest The Chair shall distribute, receive and review any Conflict of Interest Statements of Directors each year at the annual meeting. The purpose of the conflicts of interest policy is to protect the corporation's interest when the business before the corporation might benefit the private interest of an officer, director, executive director or employee of the corporation or the interests of their spouse, immediate family members, relatives or business with which they are associated. *WV Code 22C-4-23*

Whenever the Board or Board Committee is considering a transaction or arrangement with an organization, entity, or individual in which a person covered by this Policy has a Financial or Conflicting Interest, the following shall occur:

- (A) The Interested Person must disclose the Financial or Conflicting Interest to the Board or Board Committee. Or in the event the Interested Person does not disclose the Financial or Conflicting Interest any person having knowledge of the Financial or Conflicting Interest may announce to the Board or Board Committee the Financial or Conflicting Interest.
- (B) The Board Chairman, the Board Committee or the Board may ask the Interested Person to leave the meeting during discussion and vote of the matter that gives rise to the potential conflict. If asked, the Interested Person shall leave the meeting.
- (C) The NCSWA Board will follow the WV Ethics Commission Opinion regarding conflict of interest statements, the Solid Waste Authority must independently determine, in consultation with its attorney, if a financial or other relationship requires recusal in accordance with the Solid Waste Authorities conflict of interest policy.

Fiscal Year The fiscal year of the Board shall commence on the first day of July and end on the thirtieth day of the following June. *WV Code 22C-23 (3) (4) (5)*

Financial Examination The Board shall cooperate fully with *WV Code 22C-4-9(j)*

Legal Representation shall be provided by the WV Attorney General's office, or with written approval of the attorney general, other approved counsel may be employed, in accordance with *WV Code 22C-4-9*.

Notice Whenever notice is required to be given to any Board member, such notice shall be either delivered personally, given in writing by mail, postage prepaid, addressed to such member at the address of record, or with member permission, via fax or email. Notice shall be deemed given at the time it is postmarked. *WV Code 22C-4-23 (3) (4) (5)*

Annual Budget A proposed budget for the next fiscal year shall be presented to the Board at least one month prior to July 1. The proposed budget shall be approved at the June meeting for the upcoming fiscal year, which begins in July. *WV Code 22C-4-23 (3) (4) (5)*

Freedom of Information Act Records of the Authority are public information, in accordance with *WV Code 29B*.

Article IX Administrative Rules

The authority may adopt administrative rules in accordance with *WV Code 22C-4-23*

**Article X
Amending Bylaws**

The Board shall have the power to adopt, amend or repeal these bylaws by a majority vote of the Board members present at any regular meeting of the Board, provided that written notice of such proposed changes to the bylaws be provided to all Board members at least seven (7) days prior to the meeting.

These bylaws were adopted on March 26, 2013

Chairperson

Gary L. Brown

Secretary/Treasurer

Pat Justice



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January 6, 2014

Larry Bradford
Executive Director
Nicholas County Solid Waste Authority
P.O. Box 59
Calvin, WV 26660

RE: OMAO 2013-03, Nicholas County Solid Waste Authority Bylaws Review

Dear Mr. Bradford,

The amended Nicholas County Solid Waste Authority (NCSWA) bylaws now comply with the Open Meetings Act, and are therefore approved. The bylaws and this approval letter will be attached to the above-captioned opinion accordingly.

Sincerely,



C. Joan Parker
Executive Director

NICHOLAS COUNTY SOLID WASTE AUTHORITY

BYLAWS

AMMENDED MARCH 2013

AMMENDED NOVEMBER 2013 PER WV ETHICS DIRECTIVES

2013 DEC 18 PM 1:11

BY-LAWS
OF
NICHOLAS COUNTY SOLID WASTE AUTHORITY

ARTICLE I

The official name of the organization shall be the Nicholas County Solid Waste Authority. It was created by West Virginia Legislature on January 1, 1989, as a public agency in accordance with **WV Code 22C-4-3**.

The Authority will be located at 120 Baughman Road, Calvin, WV 26660, Nicholas County, West Virginia. The present mailing address is P.O. Box 59; Calvin WV 26660, phone number 304-742-3518, email is larry.bradford@nicholas.com. All communication with NCSWA must be directed to these addresses only, and the use of other addresses may result in the return to sender of unopened mail.

ARTICLE II
Purpose

The purpose of the Nicholas County Solid Waste Authority (Authority) is to protect the public health and welfare by ensuring a comprehensive program of solid waste collection, processing, recycling and disposal. Further, the Authority exists to establish programs based on source reduction, recycling, reuse, material recover and land filling. **WV Code 22C-4-1**

ARTICLE III
Board of Directors

WV Code 22C-4-7 (a) the management and control of the authority, its property, operations and affairs of any nature is vested in and governed by the board of directors.

The Board of Directors shall consist of a five member board and shall be selected, appointed and serve terms according to **WV Code 22C-4-3**.

No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.
WV Code 22C-4-3(b)

If a director resigns or for other reasons his or her membership terminates during his or her term in office, a successor shall be appointed by the entity who initially appointed such Director, in accordance with **WV Code 22C-4-3**.

The resignation of a member of the Board of Directors shall take effect upon receipt of a letter of resignation delivered to the Chairperson and the member's appointing entity.

WV Code 22C-4-23 (3) (4) (5)

The members of the Board shall receive no compensation for their services thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties.

WV Code 22C-4-3(b)

Newly appointed members must sign the conflict of interest policy and take the oath of office before participating in discussion and voting on matters before the Board. ***WV Code 6-1-3 and WV Code 6-1-5 WV Code 6-1-7***

A Chairperson and Vice Chairperson shall be elected annually at the regular July meeting, from among the members of the Board and shall hold the office for a one-year term or until successors is elected. The Board of Directors shall also appoint annually, at the July meeting, a Secretary-Treasurer, who need not be a member of the Board of Directors.

WV Code 22C-4-7 (d)

Attendance at all meetings of the Board is mandatory. Any absences by a Director must be excused by the Chairperson, or in the case of absence of the Chairperson, the Vice-Chairperson. If any Board of Director is absent three (3) consecutive meetings, without approval of the Chairperson, upon majority vote by the Board, a letter shall be sent to that member and their appointing agency informing both of them of their appointee's non-attendance. The Authority may request that the appointing agency replace the non-attending Board member at the end of their term. ***WV Code 22C-4-23 (3) (4) (5)***

Directors may participate in a meeting of the Board via phone or similar electronic communications equipment by means of which all persons participating in the meeting can hear each other. ***WV Code 22C-4-23 (3) (4) (5)***

Meetings may be held via conference call; provided that appropriate notice is given to the public in accordance with ***WV Code 6-9A (4)*** and provisions are made whereby the public can listen.

ARTICLE IV Duties of Officers

The Chairperson shall preside at all meetings of the Board. The Chair shall appoint all committees and may serve as ex-officio member of such. The Chair shall, together with the Secretary sign the minutes of all Board meetings at which he or she shall preside. The Chair shall execute, or if necessary appoint the Executive Director to, acknowledge for recording any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Authority. The Chair shall

distribute, receive and review any Conflict of Interest Statements of Directors each year at the annual meeting. **WV Code 22C-4-23 (3) (4) (5)**

If the Chairperson is absent or is unable to discharge the duties thereof, the same shall be discharged by any of the Board Members or the Executive Director as appointed for such duty by the Chairman. **WV Code 22C-4-23(3) (4) (17)**

The duties of the Secretary-Treasurer shall include, but are not limited to , preparing agendas under the direction of the Chairperson, notifying all members of meetings, preparing legal notices of meetings/hearings, and preparing/maintaining the minutes of all Board meetings. The Secretary-Treasurer shall have general charge of funds and record management of the Authority, and be custodian of deeds and other important writings and papers of the Authority. The Secretary-Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit reports and statements of the financial condition of the Authority at each regular meeting. He shall perform such other duties as may devolve upon him under the law or as may be conferred upon him by the members. The Secretary-Treasurer shall give bond in accordance with **WV Code 22C-4-7(d)**.

ARTICLE V POWERS AND DUTIES

The Authority may exercise all powers necessary or appropriate to carry out the purpose and duties as provided in **WV Code 22C-4-23**.

The Board of Directors may employ and/or appoint an individual that shall be titled "Manager", or "Executive Director" or other title as determined by the Board. He or she shall be its direct representative in the management of the corporation. The Executive Director shall be given the necessary authority and responsibility to operate the corporation and all its activities and departments and shall have such other duties and responsibilities as determined by the Board and as set forth in the Executive Director's employment contract, if any as according to **WV Code 22C-4-23(10)(11)** The Executive Director shall serve as an ex-officio member of the Board of Directors and all standing committees with the right to vote on matters before the Board and will abstain from voting on any personal employment issues. **WV Code 22C-4-23-(3) (4) (5) (17)**

ARTICLE VI MEETINGS

All meetings of the Nicholas County Solid Waste Authority and any committees or subcommittees thereof, a public agency, shall be held in accordance with **WV Code 6-9A, the Open Governmental Proceedings Act**.

The Board shall meet at such times and places as it or the Chair may determine. It is the duty of the chair to call a meeting of the board upon the written request of a majority of the members thereof according to *WV Code 22C-4-7 (d)*

Notice of Regular meetings shall be given to each Board member at least five days prior to the meeting. Public notice of all regular meetings shall include the date, time, and place and be posted at the Landfill office three business days in advance of the regularly scheduled meeting. Agendas for such meetings will be available to the public three days in advance at the Landfill office.

WV Code 6-9A-3

Notice of Special meetings shall be given to each Board member two days prior to the meeting. Public notice of the special meeting shall include the date, time, place and purpose of the meeting and shall be posted at the Landfill office two business days in advance. *WV Code 6-9A-3*

Notice of Emergency meetings. In the event of an emergency as defined in W.Va. Code 6-9A-2(2) an emergency meeting may be held. The NCSWA shall post public notice at the Landfill office as soon as practicable prior to the meeting. Notice must also be delivered to each member of the Board *WV Code 6-9A-3*

Executive Sessions The Board may hold an executive session during a regular, special or emergency meeting in accordance with *WV Code 6-9A-4.*

Committees

All committee and subcommittee meetings shall provide public notice and be open to the public, in the same manner as regular Nicholas County Solid Waste Authority meetings as described above. Minutes shall also be kept at committee and subcommittee meetings, in compliance with the Open Meetings Act. *WV Code 6-9A-(4)*

Quorum The presence of a simple majority of the Board shall constitute a quorum. *WV Code 6-9A-2 (7)*

Manner of Voting The voting on all motions at Board meetings shall be by a roll call vote. The result of the vote will be recorded in the minutes. Any member abstaining from a vote must note for the record the reason for the abstention. In the event that a quorum is not present, members shall either be allowed to participate and vote via telephone or those present may adjourn the meeting to a later date.

WV Code 22C-4-23(4)

Meeting Procedures Except as otherwise provided in the Constitution of the United States and the State of West Virginia, the laws of the State of West Virginia all questions of order, the methods of organization and the conduct of business of the municipal council shall be governed

by Robert's Rules of Order in all cases to which they are applicable, and in which they are not inconsistent with the governing rules of the NCSWA Bylaws. **WV Code 6-9-A-3**

Public Attendance The Authority may make and enforce reasonable rules for public attendance at its meetings where there is not room enough for all members of the public who wish to attend. The Authority may remove from the meeting any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised. **WV Code 6-9A-3**

Public Comment The Authority does not provide for a public comment period.

Minutes of all regular, special and emergency meetings of the Board shall be recorded by mechanical means and transcribed. Minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances, and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name. **WV Code 6-9A-5**

Article VII Purchasing

The Nicholas County Solid Waste Authority shall adhere as closely as possible to the WV Purchasing Guidelines when applicable and feasible.

Article VIII Miscellaneous Procedures

Conflict of Interest The Chair shall distribute, receive and review any Conflict of Interest Statements of Directors each year at the annual meeting. The purpose of the conflicts of interest policy is to protect the corporation's interest when the business before the corporation might benefit the private interest of an officer, director, executive director or employee of the corporation or the interests of their spouse, immediate family members, relatives or business with which they are associated. **WV Code 22C-4-23**

Whenever the Board or Board Committee is considering a transaction or arrangement with an organization, entity, or individual in which a person covered by this Policy has a Financial or Conflicting Interest, the following shall occur:

- (A) The Interested Person must disclose the Financial or Conflicting Interest to the Board or Board Committee. Or in the event the Interested Person does not disclose the Financial or Conflicting Interest any person having knowledge of the Financial or Conflicting Interest may announce to the Board or Board Committee the Financial or Conflicting Interest.
- (B) The Board Chairman, the Board Committee or the Board may ask the Interested Person to leave the meeting during discussion and vote of the matter that gives rise to the potential conflict. If asked, the Interested Person shall leave the meeting.
- (C) The NCSWA Board will follow the WV Ethics Commission Opinion regarding conflict of interest statements, the Solid Waste Authority must independently determine, in consultation with its attorney, if a financial or other relationship requires recusal in accordance with the Solid Waste Authorities conflict of interest policy.

Fiscal Year The fiscal year of the Board shall commence on the first day of July and end on the thirtieth day of the following June. *WV Code 22C-23 (3) (4) (5)*

Financial Examination The Board shall cooperate fully with *WV Code 22C-4-9(j)*

Legal Representation shall be provided by the WV Attorney General's office, or with written approval of the attorney general, other approved counsel may be employed, in accordance with *WV Code 22C-4-9*.

Notice Whenever notice is required to be given to any Board member, such notice shall be either delivered personally, given in writing by mail, postage prepaid, addressed to such member at the address of record, or with member permission, via fax or email. Notice shall be deemed given at the time it is postmarked. *WV Code 22C-4-23 (3) (4) (5)*

Annual Budget A proposed budget for the next fiscal year shall be presented to the Board at least one month prior to July 1. The proposed budget shall be approved at the June meeting for the upcoming fiscal year, which begins in July. *WV Code 22C-4-23 (3) (4) (5)*

Freedom of Information Act Records of the Authority are public information, in accordance with *WV Code 29B*.

**Article IX
Administrative Rules**

The authority may adopt administrative rules in accordance with *WV Code 22C-4-23*

**Article X
Amending Bylaws**

The Board shall have the power to adopt, amend or repeal these bylaws by a majority vote of the Board members present at any regular meeting of the Board, provided that written notice of such proposed changes to the bylaws be provided to all Board members at least seven (7) days prior to the meeting.

These bylaws were adopted on amended December 13, 2013

Chairperson

Eugene L. Brown

Secretary/Treasurer

Beth Armstrong