

## CHAPTER 6: OPEN DUMPS - CLEANUP STANDARDS:

**Rule 6.0 Criteria for Selection of Open Dumping Abatement Action or Response Action:** Any interim or final *Open Dumping Abatement Action* or *Response Action* selected, required or approved pursuant to the authority vested or liability imposed by this Code of Rules shall comply with the requirements of this **Chapter 6** of this Code of Rules. With respect to any such Action(s), the FCSWA or the court shall select the appropriate *Open Dumping Abatement Action* or *Response Action* determined to be necessary to be carried out under the Code of Rules which are in accordance with the requirements of this Chapter 6, and which provide for cost-effective abatement or response. In evaluating the cost effectiveness of any proposed alternative, final *Open Dumping Abatement Action* or *Response Action*, the FCSWA or the court shall consider the total short- and long-term costs of such Action(s), including the costs of operation and maintenance for the entire period during which such activities will be required.

### 6.1 General Site Cleanup Standards:

- (a) **Preferred treatment or reprocessing:** With respect to all *Open Dumping Abatement Action* or *Response Action* subject to **Rule 6.0**, Action(s) in which reprocessing or treatment which permanently and significantly reduces the volume, toxicity or mobility of any of the *Hazardous Substance(s)* or *Toxic Pollutant(s) and Contaminant(s)* present at or that have emanated from the site or *Facility* at issue is a principal element are to be preferred over *Open Dumping Abatement Action* or *Response Action* not involving such reprocessing or treatment. The offsite transport and *Disposal of Hazardous Substance(s), Toxic Pollutant(s) or Contaminant(s)* or environmental media contaminated with either *Hazardous Substance(s)* or *Toxic Pollutant(s) and Contaminant(s)* without such reprocessing or treatment should be the least favored alternative *Open Dumping Abatement Action* or *Response Action* where practicable treatment or reprocessing technologies are available. The FCSWA or the court shall conduct, or require the timely and competent conduct of, an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of any *Hazardous Substance* or *Toxic Pollutant(s) and Contaminant(s)*, or both. In making such assessment, the FCSWA or the court shall specifically address, or require that the responsible party(ies) address the long-term effectiveness of various alternatives. In assessing alternative *Open Dumping Abatement Action* or *Response Action*, the FCSWA or the court shall, at a minimum, take into account:
- (1) the long-term uncertainties associated with land disposal;
  - (2) the goals, objectives, and requirements of *RCRA* and the W. Va. Solid Waste Management Act, W. Va. Code, Chapter 22, Article 15;
  - (3) the persistence, toxicity, mobility, and propensity to bioaccumulate of such *Hazardous Substances, Toxic Pollutant(s) and Contaminant(s)*, or both, and their constituents;

- (4) short- and long-term potential for adverse health effects from human exposure;
  - (5) long-term maintenance costs;
  - (6) the potential for incurrence of future *Open Dumping Abatement Action Costs* or *Response Costs* if the alternative *Open Dumping Abatement Action* or *Response Action* in question were to fail; and
  - (7) the potential threat to Public Health, Safety, Welfare or the *Environment* associated with excavation, transportation, and re-disposal, or containment.
- (b) The FCSWA or the court shall select an *Open Dumping Abatement Action* or *Response Action* that is protective of human health and the *Environment*, that is cost effective, that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable, and that, to the maximum extent practical, is consistent with and promotes the accomplishment of the public goals set forth in the Fayette County Solid Waste Plan and the applicable provisions, if any, of the formally approved Fayette County General Plan, land use and Urban Renewal Plans. If the FCSWA selects or recommends any Interim or Final *Open Dumping Abatement* or *Remedial Action(s)*, other than an Order requiring a Liable *Person(s)* to perform a Remedial Investigation and Feasibility Study with respect to any *Open Dump*, *Open Dumping Public Nuisance* or *Solid Waste Public Nuisance*, not appropriate for a preference under this **Rule 6.1(a)** or **(b)**, the FCSWA shall publish an explanation for public review and comment as to why such *Open Dumping Abatement Action* or *Response Action* involving such reductions was not selected.
- (c) The FCSWA or the court may select an alternative *Open Dumping Abatement Action* or *Response Action* meeting the objectives of this **Rule 6.1** regardless of whether such **Action** has been achieved in practice at any other **Facility** or site that has similar characteristics. In making such a selection, the FCSWA or the court may consider the degree of support for such *Open Dumping Abatement Action* or *Response Action* by the public and the parties interested in such site.

**6.2 Site-specific Requirements Applicable to Recommendation, Selection, and Conduct of Open Dumping Abatement Action(s) or Response Action(s):**

- (a) **Cleanup and Response requirements applicable to a Class 1 Open Dump or an Open Dumping Public Nuisance:** In addition to complying with the requirements of Rule 6.1, all *Open Dumping Abatement Action* or *Response Action* subject to the requirements of this **Chapter 6** of this Code of Rules taken or required with respect to a *Class 1 Open Dump* or an *Open Dumping Public Nuisance* shall be undertaken in a manner not inconsistent with the *National Contingency Plan* (interpreted and applied with the FCSWA serving as, and exercising the authority and discretion therein assigned to, either the "U.S. Environmental Protection Agency" or the "Lead Agency").
- (b) **Cleanup and Response requirements applicable to a Class 2 Open Dump or a Solid Waste Public Nuisance:** In addition to complying with the requirements of

Rule 6.1, all *Open Dumping Abatement Action* or *Response Action* subject to the requirements of this Chapter 6 of this Code of Rules taken or required with respect to a *Class 2 Open Dump* or *Solid Waste Public Nuisance* shall, to the maximum extent practicable, be undertaken in a manner not inconsistent with the *National Contingency Plan* (interpreted and applied with the FCSWA serving as, and exercising the authority and discretion therein assigned to the "U.S. Environmental Protection Agency" or "Lead Agency"); provided, however, that the FCSWA or the court, *sua sponte* or upon application of any governmental agency with jurisdiction over such site or *Facility* or of any Liable or Potentially Liable *Person(s)* at such site, may waive any specific requirement(s) imposed by this Chapter 6 that is not otherwise required by applicable federal or West Virginia statute or by applicable regulations of any federal agency or any West Virginia agency or authority other than the FCSWA upon a showing by clear and convincing evidence that, if such specific requirement is waived, the resulting *Open Dumping Abatement Action* or *Response Action* will be adequately protective of the Public Health, Safety, Welfare, the *Environment* within Fayette County and of all present and future beneficial uses of *Natural Resources* beyond the boundaries of the parcel(s) of real property upon which such *Class 2 Open Dump* or *Solid Waste Public Nuisance* is located.

- (c) **Cleanup and Response requirements applicable to a Class 3 Open Dump:** If the FCSWA, upon inspection or investigation by a duly authorized representative or through other means, specifically including receipt of a formal Finding and Recommendation of the *Secretary*, the West Virginia Solid Waste Management Board, the Fayette County Commission; the Fayette County Code Enforcement Agency ("FCoWV CEA"), the Fayette County Board of Health, or the Fayette County Urban Redevelopment Authority, observes, discovers or learns of reasonable cause to believe that there exist within Fayette County or adversely impacting on the Public Health, Safety, Welfare or the *Environment* within Fayette County a *Class 3 Open Dump*, it shall, in recognition of the provisions of W. Va. Code § 7-1-3ff(d), refer the matter to the Fayette County Litter Control Officer for appropriate action, or, in recognition of the provisions of W. Va. Code § 7-1-3ff(e) and (f)(1), refer the matter to the FCoWV CEA for appropriate action under Fayette County Ordinance No. 2018-001. Notwithstanding such referral or the fact that the resulting liability with respect to such *Open Dump* may be imposed either pursuant to W. Va. Code, Chapter 22, Article 15, or W. Va. Code § 7-1-3ff and Fayette County Ordinance 2018-001, unless such *Open Dump* is subject to a **Compliance Schedule**, any *Open Dumping Abatement Action* or *Response Action* taken or required by the FCoWVCEA, the Fayette County Commission, or the court with respect to a *Class 3 Open Dump* or *Solid Waste Public Nuisance* shall comply with the substantive and procedural requirements of **Rules 6.1** and **6.3** of this Code of Rules.
- (d) **Cleanup and Response requirements applicable to a Class 4 Open Dump:**
- (1) If the FCSWA, upon inspection or investigation by a duly authorized representative or through other means, specifically including receipt of a formal Finding and

Recommendation of the **Secretary**, the W. Va. Solid Waste Management Board, the Fayette County Commission; the Fayette County Code Enforcement Agency (“**FCoWVCEA**”), the Fayette County Board of Health, or the Fayette County Urban Renewal Authority, observes, discovers or learns of reasonable cause to believe that there exist within Fayette County or adversely impacting the Public Health, Safety, Welfare or the *Environment* within Fayette County a **Class 4 Open Dump**, it may, by majority vote of the members of the **FCSWA**, take any of the following actions:

- (A) in recognition of the provisions of W. Va. Code § 7-1-3ff(d), refer the matter to the Fayette County Litter Control Officer for appropriate action;
  - (B) in recognition of the provisions of W. Va. Code § 7-1-3kk and Fayette County Ordinance 2018-001, refer the matter to the **FCoWV CEA** for appropriate action; or
  - (C) take any other action authorized by this Code of Rules.
- (2) any **Response Action** or **Open Dumping Abatement Action** taken or required with respect to a **Class 4 Open Dump** by the **FCSWA**, **FCoWV CEA**, the Fayette County Commission, or the court shall comply with the requirements of **Rules 6.1(b)** and **(c)** and **6.3** of this Code of Rules;

**6.3 Requirements Regarding Any Open Dumping Abatement Action or Response Action Involving the Transfer of Any Hazardous Substance or Toxic Solid Waste Offsite to Any Location within Fayette County:** Any interim or final **Open Dumping Abatement Action** or **Response Action** selected, required or approved pursuant to the authority vested or liability imposed by this Code of Rules that involves the transfer offsite to any location within Fayette County of any **Hazardous Substance** or **Toxic Solid Waste** must require that any such **Hazardous Substance** or **Toxic Solid Waste** only be transferred to a **Facility** which is permitted pursuant to, and operating in compliance with, **RCRA** sections 3004 and 3005 and all applicable requirements of West Virginia law. Such **Hazardous Substance** or **Toxic Solid Waste** may be transferred to a land disposal **Facility** within Fayette County only if the **FCSWA** determines that both of the following requirements are met:

- (a) The unit to which the **Hazardous Substance** or **Toxic Solid Waste** is transferred is not **Releasing** any **Hazardous Substances**, **Hazardous Waste**, **Toxic Solid Waste**, or constituent thereof, into the groundwater or surface water or soil; and
- (b) All such **Releases** from other units at the facility are being controlled by a corrective action program approved by the Administrator of the U.S. Environmental Protection Agency under **RCRA** Subtitle C or by the **Secretary** in accord with the W. Va. Hazardous Waste Management Act, W. Va. Code, Chapter 22, Article 18, and the W. Va. Solid Waste Management Act, W. Va. Code, Chapter 22, Article 15.