

**Full Performance Evaluation**

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**Department of  
Environmental Protection**

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**The DEP Recleans a Significant Number of  
Open Dump Sites Because It Does Not  
Adequately Make Landowners Accountable**



**July 2005  
PE 05-08-351**

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John Sylvia  
Director

July 10, 2005

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the *Department of Environmental Protection*, which will be presented to the Joint Committee on Government Operations on Sunday, July 10, 2005. The issue covered herein is "The DEP Recleams a Significant Number of Open Dump Sites Because It Does Not Adequately Make Landowners Accountable."

We transmitted a draft copy of the report to the Department of Environmental Protection on June 27, 2005. We held an Exit Conference with the Department of Environmental Protection on July 1, 2005. We received the agency response on July 7, 2005.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/tlc

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*Joint Committee on Government and Finance*



# Contents

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<b>Executive Summary</b> .....	5
<b>Review Objective, Scope and Methodology</b> .....	7
<b>Issue 1:</b> The DEP Recleans a Significant Number of Open Dump Sites Because It Does Not Adequately Make Landowners Accountable.....	9
 <b>List Of Tables</b>	
<b>Table 1:</b> DEP Enforcement Actions for Open Dumps and Dumps Cleaned by Responsible Party Fiscal Years 2002 - 2004.....	11
<b>Table 2:</b> Number of Dumps Cleaned and Financial Expenditures for Dump Cleanup by the DEP Fiscal Years 2000 to 2004.....	12
 <b>List Of Figures:</b>	
<b>Figure 1:</b> Photograph of Open Dump Located in McDowell County.....	11
<b>Figure 2:</b> Photograph of Open Dump Located in Kanawha County.....	14
 <b>List Of Appendices</b>	
<b>Appendix A:</b> Transmittal Letter to Agency.....	21
<b>Appendix B:</b> Open Dump Projects by County.....	23
<b>Appendix C:</b> Agency Response.....	25



# Executive Summary

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## **Issue 1: The DEP Recleans a Significant Number Open Dump Sites Because DEP Does Not Adequately Make Landowners Accountable.**

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*The DEP spends nearly \$1 million a year to clean improperly disposed solid waste. The Legislative Auditor finds that each year many sites that the DEP cleans had been cleaned by the DEP in the past.*

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Each year, the Department of Environmental Protection (DEP) cleans nearly 1,000 open dumps throughout the state. By definition, an open dump may be harmful to the environment or it may violate the laws for proper disposal of solid waste. The DEP spends nearly \$1 million a year to clean improperly disposed solid waste. Although it is evident that the DEP has an active role in limiting the existence of open dumps, **the Legislative Auditor finds that each year many sites that the DEP cleans had been cleaned by the DEP in the past.**

It may take one or more years for some areas to be retrashed; nevertheless, it is not uncommon for the DEP to clean sites that it cleaned previously. It is not certain how many retrashed sites DEP cleans each year because until 2004 the agency had deficient management information to determine the number of retrashed sites it cleans each year. However, based on field work performed by the Legislative Auditor's Office, **it is reasonable to conclude that the number of sites that are recleaned is significantly more than 10 percent, as DEP contends. Based on the expenditures for cleaning open dumps, the DEP expends significantly more than \$100,000 annually to reclean open dumps which it has previously cleaned.**

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*Based on the expenditures for cleaning open dumps, the DEP expends significantly more than \$100,000 annually to reclean open dumps.*

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The main reason why the DEP recleans a significant number of open dump sites is because it has not implemented an adequate process that makes landowners accountable. The DEP has stated that in the majority of open dumps that it cleans, it does not develop documentation for what solution can inhibit future unauthorized dumping, who the landowner is, or documentation that cooperation has been sought from the landowner. In short, **in the majority of cases, the DEP simply cleans the open dump with no documented attempt to make the landowner accountable.**

In the minority of cases in which the DEP states that it makes landowners accountable, these open dumps are entirely on private property and access to the dump site is through the same private property. However, If the landowner is identified in any case and cooperation is sought as the DEP has stated, it is apparently done informally.

This is equally true when the landowner is the Division of Highways. If the process of accountability is not performed formally, with complete documentation of all elements for accountability for each case, then recleaning of open dump sites will continue to occur at its present rate. Additionally, there

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is no way to ensure that landowners who are identified provide the necessary cooperation since there is no record of who the landowner was or what cooperation was sought. Although the DEP states that it provides accountability in some cases, the Legislative Auditor contends that without a formal and fully documented accountability process, **there is inadequate accountability for both public and private landowners.** Consequently, the recleaning of previously cleaned open dumps is not inhibited.

## Recommendations

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*There is inadequate accountability for both public and private landowners.*

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1. *The DEP should formally establish land ownership for all open dump violations when a solution to prevent future dumping is identified. Furthermore, the DEP should formally document the type of cooperation that is sought from the land owner as defined by 33 CSR §7.1 to stop unauthorized dumping in accordance with West Virginia Code.*
2. *The Legislature should consider a process that would provide for greater accountability of SWA's in relation to providing cooperation to prevent future unauthorized dumping on county property.*



# Review Objective, Scope and Methodology

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This preliminary performance review of the West Virginia Department of Environmental Protection is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. The mission of the DEP is to use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations.

## **Objective**

The objective of this review was to determine if the Department of Environmental Protection is in compliance with the Solid Waste Management Act as it relates to open dumps. Furthermore, the DEP's process of cleaning open dumps was reviewed.

## **Scope**

The scope of this evaluation covers the period from 1999 to Present.

## **Methodology**

The methodology included but was not limited to interviews, conversations and correspondence with the Department of Environmental Protection, and a review of the DEP's open dump database. This review also included field visits of 16 sites that the DEP had cleaned 5 years ago. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).



# Issue 1

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## The DEP Recleans a Significant Number Of Open Dump Sites Because It Does Not Adequately Make Landowners Accountable.

### Issue Summary

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*The DEP cleans approximately 1,000 open dumps throughout the state and spends nearly \$1 million a year to clean improperly disposed solid waste.*

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*The Legislative Auditor finds that each year many sites that the DEP cleans had been cleaned by the DEP in the past.*

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*These sites are re-trashed primarily because the DEP has not implemented a process that would make public or private landowners accountable.*

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Each year, the Department of Environmental Protection (DEP) cleans approximately 1,000 open dumps throughout the state. By definition, an open dump may be harmful to the environment or it may violate the laws for proper disposal of solid waste. The DEP spends nearly \$1 million a year to clean improperly disposed solid waste. Although it is evident that the DEP has an active role in limiting the existence of open dumps, **the Legislative Auditor finds that each year many sites that the DEP cleans had been cleaned by the DEP in the past.** It may take one or more years for some areas to be re-trashed; nevertheless, it is not uncommon for the DEP to clean sites that it cleaned previously. It is not certain how many re-trashed sites DEP cleans each year because until 2004 the agency had deficient management information to determine the number of re-trashed sites it cleans each year. The DEP has estimated through a process it implemented last year that 10 percent of the sites it cleans each year are re-trashed sites. However, the Legislative Auditor contends that this estimate significantly understates the problem. It should be noted that the process used to arrive at the 10 percent estimate has been used less than a year, which is not long enough to adequately determine the number of re-trashed sites that are cleaned because some sites may take longer than one year to become re-trashed. Second, prior to 2004, the DEP did not keep adequate records of the location of some sites it cleaned, so that in some cases the DEP does not know if a site it is currently cleaning had been cleaned before. Finally, the Legislative Auditor's staff and DEP staff visited 16 sites for which site location information was available and that DEP had cleaned five years ago. The visits revealed that 9 of the 16 sites were presently re-trashed and that DEP either had no knowledge of their existence or had yet to clean them again. That is more than 50%. Although the process of selecting these 16 sites was not intended to be representative of all sites cleaned 5 years ago, **it is reasonable to conclude that the number of sites DEP recleans is significantly more than 10 percent.**

These sites are re-trashed primarily because the DEP has not implemented a process that would make public or private landowners accountable. Although the DEP holds landowners accountable in some cases, the process is informal and lacks complete documentation. The DEP needs to formalize a complete process that incorporates the elements of accountability envisioned by the Legislature as defined in statute. The landowner should be

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identified in all cases when a solution to prevent future dumping is identified, and a formal document indicating the cooperation being sought. Unless there is an improvement in making landowners accountable through a formal and completely documented process, the DEP will continue to reclean open dump sites at the current rate.

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*The uncontrolled disposal of solid waste has inherent risks.*

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## **The DEP's Progress in Enforcement of the Solid Waste Management Act**

According to West Virginia Code, the uncontrolled disposal of solid waste has certain inherent risks which include the following:

- (1) constitutes a public nuisance and a clear and present danger to people;
- (2) provides breeding places for disease-carrying insects, rodents and other pests harmful to the public health, safety and welfare;
- (3) constitutes a danger to livestock and domestic animals;
- (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; and,
- (5) results in the squandering of valuable nonrenewable and non-replenishable resources contained in solid waste.

For these reasons, the Legislature established the Solid Waste Management Act to provide for proper disposal of solid waste. Because of the risks associated with the uncontrolled disposal of solid waste and the prevalence of uncontrolled disposal of solid waste, the Legislature designated certain acts to be unlawful in relation to open dumps and established the Solid Waste Reclamation and Environmental Response Fund (Fund) to clean open dumps already in existence. Figure 1 shows an open dump located in McDowell County.

**Figure 1**



*The DEP institutes a number of enforcement actions each year against individuals who are guilty of creating or contributing to an open dump.*

The DEP institutes a number of enforcement actions each year against individuals who are guilty of creating or contributing to an open dump. The DEP has identified these individuals through the inspection of contents at a dump site also through the use of concealed cameras. According to the DEP, when an individual is held accountable for an open dump, it generally results in the dump being cleaned by the responsible party with no expenditures by the DEP. Table 1 shows the number of enforcement actions and the number of dumps cleaned by responsible parties for fiscal years 2002 through 2004.

<b>Table 1</b> <b>DEP Enforcement Actions for Open Dumps and Dumps Cleaned by Responsible Party</b> <b>Fiscal Years 2002 - 2004</b>		
<b>Fiscal Year</b>	<b>Enforcement Actions</b>	<b>Number of Dumps Cleaned</b>
2002	288	404
2003	238	201
2004	385	267

*Source: WV DEP Environmental Enforcement Statewide Monthly Activity Reports*

According to WV Code, the proceeds of the Solid Waste Reclamation and Environmental Response Fund are to be expended:

*by the director for the purposes of reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.*

*The DEP utilizes a number of methods to clean open dumps. As a result, the DEP has cleaned an average of 921 dumps per year at an average cost of \$947,091 per year.*

The DEP utilizes a number of methods to clean open dumps. These methods include the use of the Make-it-Shine<sup>1</sup> program, cooperation with certain county governments in the use of incarcerated individuals to perform the necessary cleanup work, and the use of other volunteer programs such as watershed groups. As a result, the DEP has cleaned an average of 921 dumps per year at an average cost of \$947,091 per year. Table 2 shows the number of open dump projects per year, the number of open dumps cleaned, and the financial expenditures by the DEP associated with cleaning the open dumps for fiscal years 2000 to 2004. A breakdown of open dump projects by county is included as Appendix B.

Fiscal Year	Number of Projects*	Number of Dumps Cleaned**	Expenditures‡
2000	288	682	\$885,980
2001	275	833	\$848,632
2002	362	908	\$1,026,837
2003	432	1164	\$979,217
2004	523	1022	\$994,793

\* Source: DEP's Pollution Prevention and Open Dump Cleanup database.  
 \*\* A project may include cleaning multiple open dump sites.  
 ‡ Source: DEP financial document (includes non-reclamation and administrative costs).

<sup>1</sup>The Make-it-Shine program is a cooperative program between the WV Division of Natural Resources (DNR), the WV Division of Highways (DOH), and the WV DEP. The program utilizes volunteers to assist in cleaning up trashed areas. The DNR organizes the program, the DOH provides transportation for the collected trash, and the DEP provides cleaning materials for the volunteers and pays all fees associated with proper disposal of the collected waste.



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## The DEP Cleans a Significant Number of Sites that it has Cleaned Previously

The Legislative Auditor's Office has concluded that **a significant portion of funds expended by the DEP to clean open dumps each year are actually being spent to clean open dumps which it has already cleaned previously.**

*A significant portion of funds expended by the DEP to clean open dumps each year are actually being spent to clean open dumps which it has already cleaned previously.*

It may take one or more years for some areas to be retrashed; nevertheless, it is not uncommon for the DEP to clean sites that it cleaned previously. It is not certain how many retrashed sites DEP cleans each year because until 2004 the agency had deficient management information to determine the number of retrashed sites it cleans each year. For example, the DEP's information system contains 660 "Accounting" entries. These are entries that are made by the DEP to reconcile the management information system with what the DEP knows institutionally that it cleaned. These entries represent nearly 21 percent of all dumps cleaned by the DEP. For many of these entries, the DEP may know only the date and county where a dump was cleaned.

*The DEP has estimated that 10 percent of the sites it cleans each year are retrashed sites.*

In FY 2004, the DEP implemented a process whereby it began using Global Positioning Satellite (GPS) to track open dump sites cleaned. The DEP has estimated through a process it implemented last year that 10 percent of the sites it cleans each year are retrashed sites. However, the Legislative Auditor contends that this estimate significantly understates the problem. First, the process used to arrive at the 10 percent estimate has been used less than a year. This is not long enough to adequately determine the number of retrashed sites that are cleaned because, as previously stated, some sites may take longer than one year to become retrashed. Second, prior to 2004, the DEP did not keep adequate records of the location of some sites it cleaned, so that in some cases the DEP does not know if a site it is currently cleaning had been cleaned before.

*It is reasonable to conclude that the number of sites that are recleaned is significantly more than 10 percent, as DEP contends. Based on the expenditures for cleaning open dumps, the DEP expends significantly more than \$100,000 annually to reclean open dumps.*

Finally, the Legislative Auditor's staff and DEP staff visited 16 sites for which site location information was available and that DEP had cleaned five years ago. The visits revealed that 9 of the 16 sites were presently retrashed and that DEP either had no knowledge of their existence or had yet to clean them again. That is more than 50%. Although the process of selecting these 16 sites was not intended to be representative of all sites cleaned 5 years ago, **it is reasonable to conclude that the number of sites that are recleaned is significantly more than 10 percent, as DEP contends. Based on the expenditures for cleaning open dumps, the DEP expends significantly more than \$100,000 annually to reclean open dumps which it has previously cleaned.** Figure 2 shows an open dump in Kanawha County that

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DEP will clean a second time.

**Figure 2**



### **The DEP does not Adequately Make Landowners Accountable to Inhibit Cleaned Sites from Being Retrashed.**

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*The main reason why the DEP recleans a significant number of open dump sites is because it has not implemented an adequate process that makes landowners accountable.*

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The main reason why the DEP recleans a significant number of open dump sites is because it has not implemented an adequate process that makes landowners accountable. The Legislature recognized the need for accountability for the landowner when the DEP cleans an open dump located on a landowner's property. According to WV Code §22-15-10(a):

*the owners of the land on which unauthorized dumps have been or are being made are not liable for such unauthorized dumping **unless such landowners refuse to cooperate with the division in stopping such unauthorized dumping.** (emphasis added)*

According to this statutory language, the Legislature specifies elements to hold landowners accountable. These elements are to:

1. Determine a solution (if any) that would possibly stop the unauthorized dumping;
2. Identify all landowners for which an open dump is located on their property;



- 
3. Seek the cooperation of the landowner to implement the solution;
  4. Make landowners liable for the unauthorized dumping if they refuse to cooperate.

In order to develop a process that implements these elements for accountability, DEP should have documentation for:

1. The exact location of the open dump;
2. What solution the DEP determined would inhibit future unauthorized dumping when applicable;
3. Who the landowner is in every case that the DEP has determined a solution to prevent future dumping is possible;
4. Confirmation on whether the landowner cooperated with DEP in implementing the solution.

To facilitate the elements of accountability, the DEP has developed guidelines in rule that outline what measures constitute cooperation from landowners. The legislative rules (33 CSR §7.1.e) indicate that cooperation includes but is not limited to the following:

1. The posting of signs stating that dumping is illegal;
2. The erection of fencing to surround the accumulated waste;
3. Surveillance of the open dumping areas to determine the identity of contributors to such open dumps;
4. The removal and keeping of certain indications of ownership as contemplated by W. Va. Code §20-7-26(b); or
5. Testimony before a judicial officer regarding the identity of contributors to the dump.

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*In the majority of cases, the DEP simply cleans the open dump with no documented attempt to make the landowner accountable.*

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The DEP has stated that in the majority of open dumps that it cleans, it does not develop documentation for who the landowner is, what solution can inhibit future unauthorized dumping, or documentation that cooperation has been sought from the landowner. Furthermore, it is only since 2004 that the DEP has complete documentation on the exact location of the open dump through the implementation of the GPS system. In short, **in the majority of cases, the DEP simply cleans the open dump with no documented attempt to make the landowner accountable.**

The DEP indicated that in these specific cases in which it does not make the landowner accountable, the open dumps are located on property (either private or public) that is adjacent to a public highway, right-of-way, or a stream. The DEP stated: “The agency normally does not determine the landowner [for an open dump that is] adjacent to a public highway, right of

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way, stream, etc.” The DEP further indicated that the reason it does not hold the landowner accountable is because in these cases the landowner that would be accountable is the Division of Highways. The dumps cleaned by the DEP in these cases exist on public property and partially on private property or may be entirely on private property, but access to that property is through public property such as the vehicle right-of-way or a public highway. Furthermore, the DEP has indicated that when a dump exists partially on public property and partially on private property, or when access to the private property is through the vehicle right-of-way, that cooperation from the public landowner (namely the Division of Highways) has occasionally been sought. The Deputy Secretary indicated the following:

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*In the minority of cases in which the DEP states that it makes landowners accountable, these open dumps are entirely on private property and access to the dump site is through the same private property.*

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*There have been occasions when we have contacted DOH and requested installation of a guardrail or other type barrier to prevent access to a dump site. DOH has accommodated some of these requests.*

In the minority of cases in which the DEP states that it makes landowners accountable, these open dumps are entirely on private property and access to the dump site is through the same private property. In these cases, the DEP states that the private landowner is identified and cooperation is sought. According to the Deputy Secretary of the DEP,

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*However, if the landowner is identified in any case and cooperation is sought as the DEP has stated, it is apparently done informally.*

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*Such cleanups generally result from a complaint investigation and “verbal” notification to properly dispose of waste. This may escalate to a Notice of Violation, which may further escalate to a formal enforcement action (criminal or administrative). Therefore paperwork (if any exists for a particular site) would be in the form of a complaint investigation, NOV, criminal complaint, or order.*

However, the database used by the DEP to track open dumps that it cleans does not indicate if a dump was entirely on private property or partially on public property. Nor does the database indicate that the landowner was identified, who the landowner was, or what cooperation, if any, was sought. If the landowner is identified in any case and cooperation is sought as the DEP has stated, it is apparently done informally. This is equally true when the landowner is the Division of Highways. However, if the process of accountability is not performed formally, with complete documentation of all elements for accountability for each case, then recleaning of open dump sites will continue to occur at its present rate. Additionally, there is no way to ensure that landowners who are identified provide the necessary cooperation since there is no record of who the landowner was or what cooperation was sought.

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Although the DEP states that it provides accountability in some cases, the Legislative Auditor contends that without a formal and fully documented accountability process, **there is inadequate accountability for both public and private landowners.** Consequently, the recleaning of previously cleaned open dumps is not inhibited.

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*There is inadequate accountability for both public and private landowners.*

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## County SWA's Need to be More Involved

Even when a landowner is identified, there may be instances when it will be difficult to prevent future dumping. In these instances, the DEP should contact the appropriate Solid Waste Authority (SWA). West Virginia Code §22C-4-1 et seq. establishes local SWA's and requires each SWA to establish and file with the Solid Waste Management Board a comprehensive litter and solid waste control plan. This plan is to include the following that relate to open dumps:

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*In instances when it will be difficult to prevent future dumping the DEP should contact the appropriate Solid Waste Authority (SWA).*

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- An assessment of litter and solid waste problems in the county;
- The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable.
- The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of garbage collection fee; or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;
- A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;
- A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;
- Coordination with the Division of Highways and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps; and,
- Establishment of a program to encourage and utilize those individuals incarcerated in the regional jail and those adults and juveniles sentenced to probation for the purposes of litter pickup.

Furthermore, the state provides an equal amount of funding to each SWA in the form of a monthly allowance distributed to each SWA by the Solid Waste Management Board. Additionally, if a SWA oversees the operation of a landfill or a transfer station, it receives additional revenue. When an open dump is located partially on county property, the DEP should notify the appropriate SWA as well as the Solid Waste Management Board to ensure for coordination of all efforts in obtaining cooperation. **If a SWA is reluctant or**

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**refuses to provide cooperation and a site cleaned on county property, the Legislature may consider a process that would provide for more accountability of the appropriate SWA that might include sanctioning the SWA.** This seems appropriate given that:

- cooperation has the ability to stop or reduce future unauthorized dumping;
- SWA's have an obligation to address open dumping; and,
- SWA's receive state funding to implement the litter and waste control plan.

### **DEP Suggests Effective Mandatory Collection Service Law**

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*The DEP has suggested that the implementation of an effective mandatory collection service law would be more beneficial in stopping unauthorized dumping than obtaining cooperation from landowners.*

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The DEP has suggested that the implementation of an effective mandatory collection service law would be more beneficial in stopping unauthorized dumping than obtaining cooperation from landowners. A mandatory collection service law would aim to reduce the need for individuals to illegally dispose of solid waste instead of depriving individuals of a convenient place to dispose of the solid waste as cooperation from the landowner is intended to do.

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*Until such time as the Legislature would deem it necessary to enact such a law, the DEP should utilize the elements of accountability currently enacted in law to inhibit open dumping.*

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While the Legislative Auditor acknowledges that an effective mandatory collection law has the potential to reduce the occurrences of open dumping, it would not eliminate open dumping. Individuals will still have types of waste such as tires, vehicle gas tanks, construction debris, certain bulky goods, etc., that a collection service will not remove. Furthermore, a mandatory collection law has certain implications to those who lack the ability to afford such a service. While there is currently a law that requires individuals to properly dispose of waste, no such mandatory collection service law exists. **Until such time as the Legislature would deem it necessary to enact such a law, the DEP should utilize the elements of accountability currently enacted in law to inhibit open dumping.** Furthermore, this should be done completely and formally.

### **Conclusion**

Each year, the DEP cleans a significant number of open dumps in which it cleaned previously. The DEP estimates that the percentage of the dumps it recleans each year is about 10 percent, which would amount to approximately \$100,000. However, evidence suggests that the percent of dumps recleaned each year is significantly higher than 10 percent, and the amount spent on recleaning is significantly higher than \$100,000. These sites are retrashed primarily because the DEP has not implemented a process that would make public or private landowners accountable. Although the DEP holds

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landowners accountable in some cases, the process is informal and lacks complete documentation. The DEP needs to formalize a complete process that incorporates the elements of accountability envisioned by the Legislature as defined in statute. Each dump should be analyzed to determine if a solution exists that may stop future unauthorized dumping, and that solution should be specified in the record, the landowner should be identified in all cases where a solution is possible, and a formal document indicating the cooperation being sought should be maintained. The DEP has an obligation by law to make landowners accountable when an open dump is cleaned on their land. If the process for accountability is not formal and complete, the DEP will continue to clean the same open dumps at the current rate, which is significantly higher than 10 percent.

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*The DEP needs to formalize a complete process that incorporates the elements of accountability envisioned by the Legislature as defined in statute.*

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## **Recommendations**

1. *The DEP should formally establish land ownership for all open dump violations when a solution to prevent future dumping is identified. Furthermore, the DEP should formally document the type of cooperation that is sought from the land owner as defined by 33 CSR §7.1 to stop unauthorized dumping in accordance with West Virginia Code.*
2. *The Legislature should consider a process that would provide for greater accountability of Solid Waste Authorities in relation to providing cooperation to prevent future unauthorized dumping on county property.*



# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia  
Director

June 27, 2005

Ms. Stephanie Timmermeyer, Secretary  
West Virginia Department of Environmental Protection  
601 57th Street  
Charleston, WV 25304

Dear Ms. Timmermeyer:

This is to transmit a draft copy of the Full Performance Evaluation of the Department of Environmental Protection. This report is scheduled to be presented during the July 10 - 12, 2005 interim meetings of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting between Tuesday June 28, 2005 and Monday, July 1, 2005. Please notify us to schedule an exact time. In addition, we need your written response by noon on Tuesday, July 5, 2005, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, July 7, 2005, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

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*Joint Committee on Government and Finance*

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## Appendix B: Open Dump Projects by County

County	Number of Open Dump Projects*
Barbour	34
Berkeley	36
Boone	42
Braxton	49
Brooke	24
Cabell	32
Calhoun	31
Clay	74
Doddridge	17
Fayette	194
Gilmer	34
Grant	62
Greenbrier	39
Hampshire	38
Hancock	19
Hardy	35
Harrison	79
Jackson	32
Jefferson	32
Kanawha	182
Lewis	27
Lincoln	85
Logan	34
Marion	51
Marshall	26
Mason	35
McDowell	87
Mercer	207

Mineral	52
Mingo	31
Monongalia	93
Monroe	22
Morgan	30
Nicholas	38
Ohio	22
Pendleton	38
Pleasants	18
Pocahontas	52
Preston	71
Putnam	69
Raleigh	248
Randolph	54
Ritchie	34
Roane	32
Summers	43
Taylor	38
Tucker	44
Tyler	28
Upsher	27
Wayne	207
Webster	41
Wetzel	28
Wirt	27
Wood	36
Wyoming	136

*\*Projects may involve the cleaning of more than one dump. Additionally, counties like Wyoming, Fayette, Wayne, and other counties with an active inmate cleaning program will appear significantly higher than other counties who rely entirely on the DEP to clean open dumps.*

# Appendix C: Agency Response



west virginia department of environmental protection

Executive Office  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Joe Manchin III, Governor  
Stephanie R. Timmermeyer, Cabinet Secretary  
www.wvdep.org

July 5, 2005

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PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

John Sylvia, Director  
West Virginia Legislature  
Performance Evaluation & Research Division  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610

Dear Mr. Sylvia:

The West Virginia Department of Environmental Protection (WVDEP) values your independent review and recommendations presented in the *Full Performance Evaluation of the Department of Environmental Protection* report. We also appreciate the opportunity to provide a written response to your findings.

The report focused solely on the WVDEP Pollution Prevention and Open Dump (PPOD) program's efforts to clean up improperly disposed solid waste. Although our detailed written response is enclosed, I would like to take this opportunity to point out that the WVDEP does not believe that the PPOD program, in and of itself, provides the sole solution to eliminating open dumps in our beautiful state. Rather, we believe the PPOD program serves to treat the symptom of an entrenched behavior that can only be resolved through a comprehensive litter control initiative.

We agree with your recommendation that the PPOD program can do more to formalize and document the procedures to hold landowners responsible for retrashing of open dump sites under certain circumstances. However, we do not believe it is wise to take actions against landowners when they have no reasonable chance to prevent trash spilling over to their property from public road right-of-ways. We are concerned that such enforcement actions would violate a basic sense of fairness and could possibly lead to a backlash against our litter control initiatives in general.

The PPOD program has many well publicized success stories. The PPOD program also serves to measure the success of the ongoing educational efforts and will serve as a baseline for new litter control measures that may need explored. It is encouraging that the PPOD program has documented a transition from cleaning up large open dumps to cleaning up much smaller open dumps. Although we acknowledge that a small open dump still poses unacceptable health and aesthetic impacts, it is empirical evidence that significant gains are being made in reducing the behaviors that lead to the illegal disposal of solid waste.

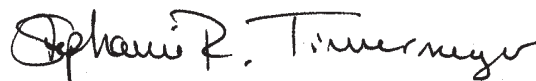
Promoting a healthy environment.

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John Sylvia  
Page 2  
July 5, 2005

Much more work is ahead in changing the attitudes and behaviors that underlie littering and the retrashing of open dumps. We plan a new generation of efforts, and with the support of the Legislature last session, have grouped all cleanup and litter control initiatives under one inclusive, comprehensive program. This program will be called "REAP: The Next Generation", which stands for Rehabilitation Environmental Action Plan. Working together, we can develop more sensible and effective litter prevention approaches.

Sincerely,



Stephanie R. Timmermeyer  
Cabinet Secretary

SRT/gb

Enclosure

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## **WVDEP Written Response to the Full Performance Evaluation**

### **The DEP Cleans a Significant Number of Sites Because DEP that It Has Cleaned Previously**

- The report states that it is reasonable to conclude that the number of sites DEP recleans is significantly more than 10 percent. This conclusion was drawn from field visits at 16 formerly cleaned up dumps where 9 of those sites were re-trashed to some degree. Follow up discussions with our PPOD field staff pointed out that the 16 sites represented some of the most problematic areas in the state. The staff also stress that the degree of re-trashing must be taken into consideration when considering the progress being made, especially in these areas prone to illegal dumping. Thus, we believe the rate and degree of re-trashing is declining, and although it may be higher than the 10% found in our relatively new GPS database, we believe on average across the entire state the re-trashing rate is much lower than 50%.

### **The DEP Does Not Adequately Make Landowners Accountable to Inhibit Cleaned Sites from Being Re-trashed.**

- The report states that sites are re-trashed primarily because the DEP has not implemented a process that would make public or private landowners accountable. The report notes that the DEP has developed guidelines in rule that outline what measures constitute cooperation from landowners. We agree that the PPOD program can take steps to strengthen the documentation of land ownership and documentation of steps taken to hold the landowner responsible for preventing future unauthorized dumping where a solution is possible. We believe we already follow the guidelines but have deficiencies in documentation. We also agree that it is not wise to divert significant resources to identifying property owners and locating property lines between public right-of-ways and private property, just for the purpose of complete documentation in a database, when no reasonable solution is available to the landowner. Further, we believe it would be counterproductive for the WVDEP to hold public and private property owners responsible for the prevention of re-trashing when no reasonable actions can be taken by landowners to prevent access and illegal dumping along public roadways. We are concerned that this approach would lead to less instead of more cooperation from landowners during the cleanup of open dump sites.

