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Section IV - Solid Waste Management

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SECTION IV. SOLID WASTE MANAGEMENT[1]

There has been no comprehensive scheme of solid waste management in Wyoming. The solid waste management provisions of the Act may serve as a vehicle for the adoption of uniform and effective standards.

Prior state legislation did not deal directly with solid waste disposal sites. Air quality,[2] water quality,[3] public health and safety,[4] and nuisance[5] were the basis for state regulation. Municipalities had primary responsibility for not only collection but regulation of solid waste.[6] Ordinances that deal with land quality standards attempt to do so at the collection point.[7]

Solid waste is the only pollution source which is not directly controlled by federal standards. Only when solid waste management practices violate federal air or water quality standards do federal regulations apply. Federal efforts have been confined to the encouragement of state and local development of solid waste disposal plans[8] and to recovery of solid waste resources.[9] Matching fund grants have been used to encourage planning and development of solid waste systems.[10]

1. WYO. STAT. § 35-502.42 to .44 (Supp. 1973). These sections establish procedures for the promulgation of rules, regulations and standards concerning solid waste management.
2. WYOMING AIR QUALITY STANDARDS AND REGULATIONS, § 13 (January 22, 1972). This section, promulgated by the Air Quality Section, Division of Health and Medical Services, Wyoming Department of Health and Social Services, restricts the disposal of refuse by open burning.
3. WYO. STAT. § 35-196 (1957). By the terms of this statute, the contamination of any stream or lake in the state through the depositing of refuse matter, sawdust, or any other deleterious substance therein by any sawmill, mining operation, or industrial works, is prohibited.
4. WYO. STAT. § 35-465 (1957). This section requires the owner of dead animals to bury them or move them more than one half mile from the nearest human habitation. WYO. STAT. § 35-466 (Supp. 1973) forbids the depositing of any form of solid waste on public or private property without the consent of the owner. WYO. STAT. § 35-20 (1957) permits the State Department of Public Health to inspect cities and towns for conditions which may cause epidemic conditions.
5. WYO. STAT. § 35-462 (1957) declares that the depositing of solid waste into rivers, ditches, railroad rights of way, highways, etc, is a nuisance.
6. WYO. STAT. § 15.1-3(39) (1957). This section authorizes cities and towns to utilize vacant land for dumps. WYO. STAT. § 15.1-3(40) (1957) allows cities and towns to promulgate regulations necessary for health, safety, and welfare of the City. By the terms of WYO. STAT. § 18-286 (1957) County Commissioners may zone for dumps.
7. LARAMIE, WYO., CODE §§ 15-1 to 15-28 (1947); GREEN RIVER, WYO., ORDINANCE No. 905, §§ 1 to 11 (1971).
8. The Solid Waste Disposal Act, 42 U.S.C. §§ 3251 to 3259 (Supp. 1973).
9. Resource Recovery Act of 1970, 42 U.S.C. §§ 3252 to 3259 (Supp. 1973).
10. Wyoming was the recipient of a grant under The Solid Waste Disposal Act, of which the federal share was $14,224. This grant financed the WYOMING

Solid waste is the sum of those articles which have reduced in value to such an extent that they are discarded. These used resources are solid material from residential, commercial, industrial and agricultural sources. It includes garbage, rubbish, refuse, yard clippings, dead animals, and abandoned automobiles. Solid waste does not include any part of domestic sewage or dissolved or suspended solids in waste water.[11] Solid waste management concerns the storage, collection, and transfer as well as disposal of solid waste materials.

The volume of solid waste per capita is increasing geometrically in proportion to population. The amount of commercial and residential solid waste per person per day in 1920 in the United States was 2.75 pounds.[12] The National Solid Waste Survey, conducted in 1968, indicated that amount had risen to 5.3 pounds daily per person.[13] This amounted to a U.S. production of 250 million tons of commercial and residential solid waste in 1969, of which only 190 million tons were collected. These figures do not include 2 billion tons of agricultural wastes, 1.7 billion tons of mining wastes, and 110 million tons of industrial waste per year.[14] The smaller amounts of commercial and residential wastes constitute the largest problem as they are generated in areas of greatest population density where disposal sites are at a premium.

Wyoming's volume of per capita collected solid waste is somewhat less than the national average. Collection records of various Wyoming communities indicate that only about 3.5 pounds per person daily is collected.[15] We are blessed with vast areas of arid land suitable for proper solid waste disposal. However, many smaller Wyoming communities have an extremely low total volume of solid waste generated daily. This

1972 SOLID WASTE MANAGEMENT PLAN, a study conducted by the Department of Health and Social Services of solid waste problems and practices in Wyoming.

11. WYO. STAT. § 35-502.3 (d) (i) (Supp. 1973).
12. COUNCIL ON ENVIRONMENTAL QUALITY—THE FIRST ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 106 (1970).
13. R. Block, A. Muhich, A. Klee, H. Hickman, Jr., and R. Vaughan, THE NATIONAL SOLID WASTE SURVEY: AN INTERIM REPORT 12 (U.S. Department of Health, Education, and Welfare, Public Health Service, 1968).
14. THE FIRST ANNUAL REPORT, *supra* note 12, at 107.
15. WYOMING DEPARTMENT OF HEALTH AND SOCIAL SERVICES, WYOMING 1972 SOLID WASTE MANAGEMENT PLAN 1.

fact may make adoption of sophisticated methods of solid waste management difficult and appear to be economically unfeasible.

It is important that Wyoming establish effective standards for solid waste disposal prior to population growth. The responsibility for promulgating standards rests with the State Department of Environmental Quality. The land quality and water quality divisions of the Department are the successors of the powers, duties, regulatory authority and functions of the former Sanitary Engineering Services Branch of the Division of Health and Medical Services. The Department acquired no general rules and regulations concerning solid waste management from the Sanitary Engineering Services.[16] The director is designated as the coordinator for all programs within the state which deal with solid waste management and disposal. Persons or municipalities who require technical expertise or information to comply with the Act may request assistance from the director.[17] The director may promulgate guidelines and recommend procedures for the management of solid waste and for the operation of solid waste disposal sites, but only after consultation with the land advisory board.[18]

All persons[19] or municipalities[20] intending to operate a solid waste disposal site must obtain the director's approval of the site prior to its operation. Applicants are required to

16. WYO. STAT. § 35-502.7(c)(d) (Supp. 1973). The Water Quality Division is currently undertaking the practical administration of the solid waste provisions of the Act, due to the particular expertise of personnel in that division. Interview with Mr. Frank R. Harman, Sanitary Engineer, Water Quality Division, Department of Environmental Quality, Cheyenne, Wyo., Sept. 21, 1973.
17. WYO. STAT. § 35-502.42 (Supp. 1973).
18. WYO. STAT. § 35-502.44 (Supp. 1973). As of October 1, 1973, rules and regulations for solid waste management have not been promulgated pursuant to the Act.
19. WYO. STAT. § 35-502.3(a)(vi) (Supp. 1973).
"Person" means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of the state, or any interstate body or any other legal entity.
20. WYO. STAT. § 35-502.3(a)(ix) (Supp. 1973).
"Municipality" means a city, town, county, district, association, or other public body;
County wide or regional solid waste management districts will be considered municipalities under Wyoming law. This would involve cooperation with one or more political subdivisions in the implementation of a solid waste management plan. WYO. STAT. § 9.18.7 (1971).

submit sufficient information for the director to determine the adequacy of the proposed site.[21] The director may request similar information from those presently operating disposal sites. He will discuss the adequacy of the present site with the municipality having jurisdiction. Sites found to be in violation of air or water quality standards may be required to bring their operations within permissible standards or to abandon the site and re-locate. Disposal sites found to have undesirable aspects of a non-violating character such as inconvenient access or poor aesthetic[22] site management may be studied by the director for the purpose of recommending improvements.[23]

No less than forty states and the District of Columbia have promulgated general rules, regulations, and standards for solid waste management. A majority of these rules, regu-

21. Applicants should submit information to the director in the form of plans. WYO. STAT. § 35-502.43(a) (Supp. 1973).

> The plans shall include drawings, specifications and descriptive information in sufficient detail to describe the location, local ground surface, groundwater conditions, distance to roads and all-weather accesses, distances to dwellings and other such technical data sufficient for the director to analyze the conditions relevant to the disposal site.

It is contemplated by Department officials that the approval of the director will be manifested in the form of a permit. *Supra* note 15. *See* WYO. STAT. § 35-502.47 (Supp. 1973) for a discussion of permit procedures.

22. *See* Leighty, *Aesthetics as a Basis for Legislation and Suit*, 17 WAYNE L. R. 1347 (1971). It is interesting to note that poor aesthetic site management is not mentioned with reference to required standards of operation. Poor aesthetic quality of sites will be grounds for the director to recommend improvements, but not to require them. Judicial approval of legislation which restrains property interests merely on the basis of aesthetic considerations remains uncertain. This judicial reluctance is based on a policy in favor of allowing the fullest possible beneficial use and enjoyment of real property and upon the belief that beauty is a matter of individual taste. The use of the police power as a justification for aesthetic legislation may require that "general welfare" be defined to include visual beauty.

The Ohio Supreme Court has indicated its reluctance to include aesthetics as a valid reason for exercise of the police power.

> The police power, however, is based upon public necessity. There must be an essential public need for the exercise of the power in order to justify its use. This is the reason why mere aesthetic-considerations cannot justify the use of the police power. It is commendable and desirable, but not essential to the public need, that our aesthetic desires be gratified. Moreover, authorities in general agree as to the essentials of a public health program, while the public view as to what is necessary for aesthetic progress greatly varies. Certain legislatures might consider that it was more important to cultivate a taste for jazz than for Beethoven, for posters than for Rembrandt, and for limericks than for Keats. Successive city councils might never agree as to what the public needs from an aesthetic standpoint, and this fact makes an aesthetic standard entirely impractical as a standard for the use restrictions upon property. City of Youngstown v. Kahn Bros. Cldg. Co., 112 Ohio St. 654, 148 N.E. 842, 844 (1925).

23. WYO. STAT. § 35-502.43(b) (Supp. 1973).

lations, and standards were promulgated pursuant to statutes which themselves contained minimum standards. The Wyoming Environmental Quality Act does not provide minimum standards or guidelines for the promulgation of pursuant rules and regulations. The wealth of legislation and regulation from neighboring states[24] and their resulting experiences should be noted by Department officials. Utilization of this knowledge should aid in the promulgation of rules and regulations which will prove to be reasonable and effective for our particular environment.

There are several practices for solid waste management which virtually every state has incorporated into their regulations. It would appear that Wyoming will also adopt these provisions. Standards for the limitation or prevention of rodent and insect vectors is an almost universal feature of state solid waste regulations. Measures that insure that air and water quality standards be maintained are as frequently required.[25]

Provisions which require the compacting and covering of solid waste vary considerably. All such provisions require that landfills be covered with a layer of inert material at reguar intervals and that layers of solid waste material not exceed a maximum depth to insure adequate compacting. Other common requirements incude adequate fencing, limitations on salvaging, and keeping of records.[26]

The lack of minimum standards for solid waste in the Act provides for flexibility. It also indicates that the effectiveness of its solid waste management provisions will depend upon the willingness of the director, administrators, and board

24. COLO. REV. STAT. ANN. §§ 36-23-1 to 36-23-16 (Supp. 1973). COLORADO REGULATIONS, SOLID WASTE DISPOSAL SITES AND FACILITIES, Colorado Department of Public Health, Feb. 16, 1972. KAN. STAT. ANN. §§ 65-3401 to 3410 (1972), KANSAS SOLID WASTE MANAGEMENT STANDARDS AND REGULATIONS, Kansas State Department of Health, Jan. 1, 1972. REV. CODE MONT. §§ 69-4001 to 4010 (1965), REGULATIONS GOVERNING THE CONTROL AND LICENSING OF REFUSE DISPOSAL AREAS, Montana State Board of Health Regulation 52-46, Feb. 11, 1966. IDAHO CODE §§ 31- 4401 to 4416 (Supp. 1973). IDAHO SOLID WASTE CONTROL STANDARDS, Idaho Board of Health, Aug. 15, 1968. NORTH DAKOTA SOLID WASTE MANAGEMENT REGULATIONS, North Dakota State Department of Health Reg. No. 86, BNA 1973 ENVIRONMENT REPORTER, STATE SOLID WASTE—LAND USE ¶ 1271;0501.

25. BNA 1973 ENVIRONMENT REPORTER, STATE SOLID WASJE—LAND USE ¶¶ 1001: 0001 to 1356:0201.

26. *Id.*

members to promulgate adequate rules, regulations, and standards, and see that they are enforced.

SECTION V. VARIANCES

A variance is an authorization to violate without penalty any rule, regulation, standard, or permit promulgated under the Act. Variances are designed to temper application of the Act's standards in individual cases where practical difficulties or unnecessary hardships would result from immediate application of the Act. Variances should not be thought of as exceptions to the provisions of the Act. Exceptions will not be granted. A variance should be thought of as an implementation schedule which allows the applicant a reasonable period of time to comply with the Act's provisions. Water variances will be granted under the water quality provisions of the Act[27] rather than under the general variance provisions discussed below.

A variance may be warranted in three cases. When no techniques are available to abate the pollution, a variance may be granted until such time as the technique becomes available. Such a variance may require that the grantee take substitute measures in the interim.[28] A variance may be granted when, because of complexity or cost, the implementation of necessary abatement measures must be spread over a period of time. If such a variance is granted, the grantee must follow an implementation schedule.[29] When other unreasonable hardships would be caused by the immediate application of the Act, a

27. WYO. STAT. § 35-502.19(a)(vii) (Supp. 1973).
28. WYO. STAT. § 35-502.45(b) (Supp. 1973).
    If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution, or mining operation involved, it shall continue in effect only until the necessary means for prevention, abatement or control becomes known and available and subject to the taking of any substitute or alternative measures that the director may prescribe.
29. WYO. STAT. § 35-502.45(c) (Supp. 1973).
    If the variance is granted on the ground that compliance with the particular requirement from which variance is sought will necessitate the taking of measures which, because of their extent or cost must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

variance may be granted. Variances issued for this reason will not be for more than one year's duration.[30]

Any person owning or in control of real or personal property affected by the Act may apply to the administrator of the appropriate division for a variance. The administrator will investigate the request, publish notice of and hold a hearing on the request. He must rule on the variance within sixty days of the hearing and obtain the approval of the director.[31] A variance may be renewed upon application, on terms and conditions and for a length of time which would be consistent with the initial granting.[32] One who believes the variance or renewal to be contrary to the provisions of the Act may file a written complaint with the director. If he qualifies as an aggrieved party,[33] he may also request a hearing before the Council. Based upon the results of the hearing and investigation, the council may affirm, modify, or rescind the variance.

Specific criteria for granting a variance have not been established. Granting of variances will quite likely turn upon the significance given the term "hardship." Variance provisions under the Act are most closely analogous to the granting of variances under zoning statutes.[34] Similar language contained in zoning statutes has not been strictly defined. Application of the provisions has been left to the sound discretion of the zoning authority.[35] Generally, zoning variances are granted only when the zoning authority finds that an unnecessary hardship would otherwise be imposed, and that:

30. WYO. STAT. § 35-502.45(d) (Supp. 1973).
    If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsection (b) and (c) of this section, it shall be for not more than one year.
31. WYO. STAT. § 35-502.45(a) (Supp. 1973).
32. WYO. STAT. § 35-502.45(e) (Supp. 1973).
    If complaint by an aggrieved party is made to the director on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the council finds that renewal is justified.
33. WYO. STAT. § 35-502.3(a)(vii) (Supp. 1973).
    "Aggrieved party" means any person named or admitted as a party or properly seeking or entitled as of right to be admitted as a party to any proceeding under this Act because of damages that person may sustain or be claiming because of his unique position in any proceeding held under this Act.
34. *See* WYO. STAT. § 15.1-89 (1957), as to cities' and towns' power to zone, and WYO. STAT. § 18-288 (1957), as to counties' power to zone.
35. Williams v. Zoning Adjustment Board, 383 P.2d 730 (Wyo. 1963).

(A) the special circumstances are peculiar to the applicant and are not the general case of this similarly situated; (B) that strict application of the law would deprive the applicant of the reasonable use of his property;[36] (C) the variance will not thwart the intent and purpose of the Act; and (D) the hardship is not self-induced.[37] Variances under the Act are implementation schedules rather than exceptions. Therefore, it is likely that unique circumstances of the applicant need not be alleged when applying for a variance.

SECTION VI. PERMITS

The issuance of permits[38] serves to regulate activities which fall within the scope of the Act and comply with applicable rules and regulations. A permit must be obtained before mining operations may be commenced. A permit becomes necessary for other operations upon promulgation of regulations requiring the issuance of a permit for the specific activity. The director[39] and the administrators[40] are empowered to issue, deny, amend, suspend, or revoke permits. Permits shall be issued upon showing by the applicant that he has complied with all relevant provisions of the Act. Applicants who have been denied permits may appeal to the council for a hearing to contest the denial.[41]

36. Financial hardship alone is usually not sufficient to constitute "hardship" for variance purposes. R. ANDERSON, AMERICAN LAW OF ZONING, Vol. 2 § 14.16. *See The Illinois Environmental Protection Act—A Comprehensive Program For Pollution Control*, 66 NORTHWESTERN L. R. 359 (1972) for a discussion of the Illinois application of the term "hardship" in environmental cases.

37. Levy v. Board of Adjustment of Arapahoe County, 149 Colo. 493, 369 P.2d 991 (1962); Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963).

38. WYO. STAT. § 35-502.47 (Supp. 1973).

39. WYO. STAT. § 35-502.47 (Supp. 1973).

40. WYO. STAT. § 35-502.10(a) (Supp. 1973).
> Each administrator shall have the following powers: .... (ii) To issue, deny, amend, suspend, or revoke permits and licenses and to determine the amount of bond to be posted by the operator to insure reclamation of any affected lands.

41. WYO. STAT. § 35-502.48 (Supp. 1973).
> The council shall give a public notice of such hearings. At such hearing, the director and appropriate administrator shall appear as respondent and the rules and practice and procedure adopted by the council pursuant to this Act and the Wyoming Administrative Procedure Act shall apply. The burden of proof shall be upon the petitioner. The council must take final action on any such hearing within 30 days from the date of the hearing.

See The Wyoming Administrative Procedure Act, WYO. STAT. § 9-276.19 et seq (1965).

Permits may impose conditions which limit the permitted activity. Conditions will be imposed when the permitted activity would otherwise contravene the purpose of the Act. Once a mining permit has been issued, a license must be obtained and a report filed on a yearly basis if operations are to continue. Although the Act does not provide for yearly licensing of water, air, and solid waste permits, these requirements may be imposed as a necessary condition.

SECTION VII. ENFORCEMENT

The enforcement provisions of the Act envision education and persuasion rather than immediate punishment of the violator and termination of the prohibited activity. When a violation is suspected, the appropriate administrator will investigate promptly. If it appears that a violation exists, the administrator shall, "by conference, conciliation, and persuasion, endeavor promptly to eliminate the source or cause of the violation."[42] If these tactics are unsuccessful, the director must provide the violator with written notice of the infringement. The notice may contain an order from the director to cease the violation within a reasonable time. The order becomes final thirty days after its issuance, unless the violator requests a hearing before the council, in which case the order will be stayed pending the council's final determination.[43]

Provision is made for violation which is the result of the malfunction of a pollution source and which is beyond the control of the owner or operator.[44] In such case, no punitive action will be taken provided the owner or operator advises the appropriate administrator of the circumstances and plans an acceptable corrective program.

The State Department of Environmental Quality is powerless to impose penalties or criminal sanctions. Only the Attorney General is authorized to bring action for violation of the Act or any rule, regulation or other determination made

42. WYO. STAT. § 35-502.46(a) (Supp. 1973).
43. WYO. STAT. § 35-502.46(d) (Supp. 1973). The council may affirm, rescind, or modify the director's order.
Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation shall cease and may prescribe timetables for action.
44. WYO. STAT. § 35-502.49(e) (Supp. 1973).

pursuant to it. Actions are brought in the county in which the violation occurred.[45]

The state may recover, in a civil action, a maximum penalty of $10,000 per day of violation,[46] plus the reasonable value of any fish, game, aquatic or bird life destroyed as a result of the violation.[47] Violators may be enjoined from continuing the proscribed activity.

Criminal sanctions for willful violation provide for a maximum penalty of $25,000 per day of violation and imprisonment not to exceed two years. One convicted of knowingly making false reports or statements which are required by the Act are subject to a maximum fine of $10,000 and imprisonment not to exceed six months.[48] Tampering with a required monitoring device is similarly punishable.

The Act does not provide for individual causes of action. Existing civil and criminal remedies are not altered even though the wrongful action was also a violation of the Act.[49] Those suing for damages caused by pollution must allege individual injury. Alleging only a public injury will not gain standing to sue.[50]

Mandamus[51] may be brought by any citizen against a state officer or employee who has failed to perform his statutory

45. WYO. STAT. § 35-502.49(b) (Supp. 1973).
46. WYO. CONST. art. 7, § 5 (1889). Fines and penalties shall belong to the public school fund of the respective county.
47. WYO. STAT. § 35-502.49(b) (Supp. 1973).
Any monies so recovered shall be placed in the general fund of Wyoming, state treasurer's office.
The application of this section may give rise to several problems. The terms, "fish, aquatic life, game or bird life" are not qualified by adjectives such as "usefull." What is the value of butterflies, toads, milkweed, suckers, or even mosquitoes? The Act gives no criteria for placing a value on these things, and hence the application of this section may give rise to huge liability. Where several polluters have contributed to the rising level of pollution in an area, the relative degree of guilt among polluters will become a difficult evidentiary question as well.
48. WYO. STAT. § 35-502.49(d) (Supp. 1973).
49. There is no general requirement that an injured party resort to procedures under the Act prior to bringing an independent action.
50. Sierra Club v. Morton, 405 U.S| 727 (1972). *See* Nettles, *Standing for Environmentalists; Sierra Club v. Morton*, 73 URBAN LAW ANNUAL 379 (1973).
51. WYO. STAT. § 1-877 (1957).
Mandamus is a writ issued in the name of the state to an inferior tribunal, a corporation, board or person commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

duty under the Act.[52] Mandamus may only be granted in the absence of an adequate remedy at law, where the duty to perform is clear, certain, and undisputable, and where it appears that it will be effectual as a remedy.[53] The enactment of regulations may be compelled by mandamus, where, as in the Act, the duty to promulgate regulations is imposed by law.[54]

The effectiveness of any legislation depends upon adequate enforcement. In the case of environmental legislation, where individual standing may be difficult to gain, governmental enforcement becomes especially important. The environment upon which we depend may be best protected through the enforcement provisions of the Act. Both conscientious officials and a watchful citizenry will be needed if these provisions are to be effectively utilized.

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52. Montana provides specific authority for any resident of the state to bring a writ of mandamus against any state officer or employee who has a duty to enforce any provision of Montana's strip mining law. The resident must first bring the violation to the attention of the public officer or employee. REV. CODE MONT. § 50-1055 (Supp. 1973).

> (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the County of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that the requirement of this act or a rule adopted under the act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

Absence of specific authority in the Act does not defeat the remedy. Mandamus may be brought against any state official, including the governor. State ex rel Irvine v. Brooks, 14 Wyo. 393, 84 P. 488 (1905). Writs of mandamus against state officials will be brought in the Wyoming Supreme Court. WYO. CONST. art. 5, § 2.

53. State ex rel Whitehead v. Gage, 377 P.2d 299 (Wyo. 1963); LeBeau v. State ex rel White, 377 P.2d 302, 304 (Wyo. 1963).

54. In the case of Richmond Funeral Directors Association v. Groth, 202 Va. 793, 120 S.E.2d 467, 470 (1961), a city official was required by ordinance to promulgate rules and regulations relating to parking at places where funerals were held. The court pointed out that:

> Under the ordinance, the respondent is vested with discretion as to what shall be contained in the rules and regulations to be promulgated by him. Since mandamus does not lie to direct the manner in which the respondent should exercise his discretion, we cannot control the contents of the rules and regulations. However, under the ordinance, the respondent has no discretion as to whether or not he shall promulgate the rules and regulations in the first instance. Mandamus is proper to compel him to perform his duty, without controlling the manner in which he exercises his discretion.