WEST VIRGINIA CODE: §22-15-11

§22-15-11. Solid waste assessment fee; penalties.

(a) *Imposition*. —

(1) A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of $1.75 per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(2) Effective July 1, 2021, in addition to the fee set forth in subdivision (1) of this subsection, an additional solid waste assessment fee shall be levied and imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state. This additional fee shall be in the amount of 20 cents per ton beginning July 1, 2021, 40 cents per ton beginning July 1, 2022, 60 cents per ton beginning July 1, 2023, 80 cents per ton beginning July 1, 2024, and $1.00 per ton beginning July 1, 2025, thereafter or like ratio on any part of a ton of solid waste. The additional fee set forth in this subdivision shall be distributed as follows:

(A) Twenty-five percent of the additional fee shall be distributed equally to each county or regional solid waste authority; and

(B) Seventy-five percent of the additional fee shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau.

The proceeds from this fee are to be expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties. The Tax Commissioner may promulgate interpretive rules to provide for the distribution of funds as provided by this subdivision.

(b) *Collection, return, payment, and records*. — The person disposing of solid waste at the solid waste disposal facility shall pay the fees imposed by this section, whether or not such person owns the solid waste, and the fees shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The fees imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fees imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fees accrued.

WV Legislature

Upon remittance of the fees, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the Tax Commissioner.

(4) If any operator fails to collect the fees imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties, and interest imposed by §11-10-1 *et seq*. of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fees, or file returns with the fees as required in this section, the Tax Commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of such fees in such account until remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fees imposed by this section and the owner is secondarily liable for remittance of the fees imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fees imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fees and any additions to tax, penalties, and interest imposed by §11-10-1 *et seq*. of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fees imposed by this section shall keep complete and accurate records in such form as the Tax Commissioner may require in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers*. — The fees imposed by this section and §7-5-22 of this code is considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of said fees in said motor carrier's rates for solid waste removal service. In calculating the amount of said fees to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

WV Legislature

(d) *Definition of "solid waste disposal facility"*. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the fees imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions*. — The following transactions are exempt from the fees imposed by this section:

(1) Disposal of solid waste at a solid waste facility: (A) By the person who owns, operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities; (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the secretary is exempt from the solid waste assessment fees; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(f) *Procedure and administration*. — Notwithstanding §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq*. of this code shall apply to the imposed by this section with like effect as if said act were applicable only to the fees imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties*. — Notwithstanding §11-9-2 of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fees imposed by this section with like effect as if said sections were applicable only to the fees imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds*. – Except as provided in subdivision (2), subsection (a) of this section, the net proceeds of the fees collected by the Tax Commissioner pursuant to this section shall be deposited at least monthly in an account designated by the secretary. The secretary shall allocate 25 cents for each ton of solid waste disposed of in this state upon which the fees imposed by this section is collected and shall deposit the total amount so

WV Legislature

allocated into the Solid Waste Reclamation and Environmental Response Fund to be expended for the purposes hereinafter specified. The first $1 million of the net proceeds of the fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Enforcement Fund and expended for the purposes hereinafter specified. The next $250,000 of the net proceeds of the fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Management Board Reserve Fund, and expended for the purposes hereinafter specified: *Provided*, That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause no less than $50,000 nor more than $250,000 to be deposited to the fund: *Provided, however*, That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause not less than $250,000 nor more than $500,000 to be deposited in the fund: *Provided further*, That if a facility owned or operated by the State of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the State Treasury:

(1) The Solid Waste Enforcement Fund which shall be expended by the secretary for administration, inspection, enforcement, and permitting activities established pursuant to this article;

(2) The Solid Waste Management Board Reserve Fund which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to §22C-3-1 *et seq*. of this code;

(3) The Solid Waste Reclamation and Environmental Response Fund which may be expended by the secretary 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.

(i) *Findings*. — In addition to the purposes and legislative findings set forth in §22-15-1 of this code, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

WV Legislature

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby created as a special revenue fund in the State Treasury to be administered by the West Virginia Division of Highways and to be expended only on the improvement, maintenance, and repair of public roads of three lanes or less located in the county where the waste is generated through the Division of Highways county office in that county that are identified by the Commissioner of the Division of Highways as having been damaged by trucks and other traffic associated with horizontal well drilling sites or the disposal of waste generated by such sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that interferes with the use of said roads by residents in the vicinity of such roads: *Provided*, That up to $750,000 from such fund shall be made available to the Department of Environmental Protection from the same fund to offset contracted costs incurred by the Department of Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated by the provisions of §22-15-8(j) of this code. Any balance remaining in the special revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this section.

(k) *Horizontal drilling waste assessment fee*. — An additional solid waste assessment fee is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal well sites in the amount of $1 per ton, which fee is in addition to all other fees and taxes levied by this section or otherwise and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility: *Provided*, That the horizontal drilling waste assessment fee shall be collected and administered in the same manner as the solid waste assessment fee imposed by this section, but shall be imposed only upon the disposal of drill cuttings and drilling waste generated by horizontal well sites.

WVLegislature