
WEST VIRGINIA CODE CHAPTER 22
ARTICLE 15

WV Legislature

§22-15-1. Purpose and legislative findings.

(a) The purpose of this article is to establish a comprehensive program of controlling all phases of solid waste management.

(b) The Legislature finds that solid waste disposal is a universal problem for all of the United States and that West Virginia is committed to participating in the waste stream market and not interfering with the free flow of solid waste into or out of this state. However, the Legislature also recognizes that solid waste disposal has inherent long-term environmental, health and infrastructure impacts on local communities where the solid waste facilities are located. It is the Legislature's intent to establish reasonable uniform requirements on all waste disposed of in this state regardless of origin. Because of the importance and impact associated with the location and operation of solid waste facilities, this article establishes a thorough and balanced application and regulatory process which provides an efficient and reasonable permitting process while affording the state and its citizens full and fair participation in decisions associated with the location, operation and oversight of the solid waste collection and disposal process.

(c) The Legislature further finds that solid waste disposal has inherent risks and negative impact on local communities and specifically finds the following: (1) Uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste is a public nuisance and a clear and present danger to people; (2) provides harborage and breeding places for disease-carrying, injurious 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; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste; (6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.

(d) The Legislature further finds that Class A landfills often create special environmental problems that require statewide coordination of the management of such landfills.

(e) The Legislature further finds based upon engineering, environmental concerns, land-use planning, transportation system networks, public health, safety and welfare, that the amount of solid waste disposed of by solid waste facilities must be limited in order to protect this state's environment and the public in general against adverse impact.

(f) The Legislature further finds that incineration technologies present potentially significant health and environmental problems.

(g) The Legislature further finds that there is a need for efforts to continue to evaluate the viability of future incineration technologies that are both environmentally sound and

economically feasible.

(h) The Legislature further finds that composting large quantities of sewage sludge at a single location can seriously impact the local community where the facility is located. The potential adverse impact of noxious odors and environmental and health hazards requires assurances that local communities are not adversely impacted by the location of sewage sludge composting facilities. Further, the newness of the technology and processes for managing sewage sludge processing require careful and evolving regulatory oversight mechanisms, assuring that sewage sludge processing and composting are properly conducted. Therefore, limitations and qualifications for location and management of sewage sludge processing facilities are a necessary and integral part of the management of solid waste in West Virginia.

§22-15-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article the terms:

"Advanced recycling" means a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, and other products like waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, hydrogenation, solvolysis, and other similar technologies. The recycled products produced at advanced recycling facilities include, but are not limited to, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons. Advanced recycling shall not be considered solid waste management or solid waste disposal.

"Advanced recycling facility" means a facility that receives, stores, and converts post-use polymers and recovered feedstocks it receives using advanced recycling. An advanced recycling facility is a manufacturing facility subject to applicable department manufacturing regulations for air, water, and land use. Advanced recycling facilities shall not be considered solid waste facilities.

"Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed:

- (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation on the land; and
- (2) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management, or family relationships as the director may specify, including the following: Spouses, parents, children, and siblings.

"Approved solid waste facility" means a solid waste facility or practice which has a valid permit under this article.

"Back hauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption, or reusable item which may be refilled with any substance or material used as food by humans.

"Bulking agent" means any material mixed and composted with sewage sludge.

"Catalytic cracking" is a manufacturing process through which post-use polymers are heated and melted in the absence of oxygen and then processed in the presence of a catalyst to produce valuable raw materials and intermediate and final products, including, but not

limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons.

"Class A facility" means a commercial solid waste facility which handles an aggregate of between 10,000 and 30,000 tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tonnage of solid waste handled per month by such landfills exceeds 9,999 tons of solid waste per month.

"Commercial recycler" means any person, corporation, or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least 70 percent by weight of the materials coming into the commercial recycling facility.

"Commercial solid waste facility" means any solid waste facility that accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing, or composting of solid waste created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation, and similar applications, and does not include any solid waste facility that accepts solid waste collected pursuant to and under a common carrier certificate of convenience and necessity issued by the Public Service Commission by the owner or operator (or its affiliate(s)) of the solid waste facility for consolidation and subsequent transport to a disposal or recycling facility: *Provided*, That the owner or operator of the solid waste facility shall comply with §22-15-12 and §22-15-13 of this code: *Provided, however*, That any such solid waste facility be located on a site that contains a mixed waste processing and resource recovery facility that possesses a solid waste facility permit from the Department of Environmental Protection.

"Compost" means a humus-like material resulting from aerobic, microbial, or thermophilic decomposition of organic materials.

"Composting" means the aerobic, microbial, or thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

"Commercial composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a composting facility owned and operated by a person for the sole purpose of composting waste created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

"Cured compost" or "finished compost" means compost which has a very low microbial or decomposition rate which will not reheat or cause odors when put into storage and that has been put through a separate aerated curing cycle stage of 30 to 60 days after an initial

composting cycle or compost which meets all regulatory requirements after the initial composting cycle.

"Department" means the Department of Environmental Protection.

"Depolymerization" means a manufacturing process where post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate, or final products, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons.

"Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity, or any other use not specified herein.

"Gasification" means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons that are returned to economic utility in the form of raw materials and products.

"Hydrogenation" is a manufacturing process through which hydrogen is used to remove impurities from post-use polymers or recovered feedstock to enable further processing into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons.

"Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation, or any other method by which solid waste is incinerated.

"Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

"Landfill" means any solid waste facility used for the disposal of solid waste on or in the land for the purpose of permanent disposal. The facility is situated, for purposes of this article, in the county where the majority of the spatial area of the facility is located.

"Materials recovery facility" means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

"Mature compost" means compost which has been produced in an aerobic, microbial, or thermophilic manner and does not exhibit phytotoxic effects.

"Mixed solid waste" means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

"Mixed waste processing facility" means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling, or composting.

"Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

"Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

"Person" or "persons" means any industrial user, public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

"Post-use polymer" means a plastic to which all the following apply:

- (1) The plastic is derived from any industrial, commercial, agricultural, or domestic activities;
- (2) It is not mixed with solid waste or hazardous waste onsite or during processing at the advanced recycling facility;
- (3) The plastic's use or intended use is as a feedstock for the manufacturing of plastic and chemical feedstocks, other basic hydrocarbons, raw materials, or other intermediate products or final products using advanced recycling;
- (4) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities (e.g., paper labels and metal rings); and
- (5) The plastic is processed at an advanced recycling facility or held at the facility prior to processing.

"Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw

domestic, industrial, or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort, or property of any of the inhabitants of this state before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

"Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons, that are returned to economic utility in the form of raw materials or products.

"Recovered feedstock" means one or more of the following materials that has been processed so that it may be used as feedstock in an advanced recycling facility:

- (1) Post-use polymers;
- (2) Materials for which the United States Environmental Protection Agency has made a nonwaste determination pursuant to 40 C.F.R. 241.3(c), or has otherwise determined are feedstocks and not solid waste;
- (3) Recovered feedstock does not include unprocessed municipal solid waste;
- (4) Recovered feedstock is not mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility.

"Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical, or thermal transformation of solid waste occurs: *Provided*, That mixed waste recovery facilities, sludge processing facilities, and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, §22-15A-1 *et seq.* and §22C-4-1 *et seq.* of this code.

"Sewage sludge" means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

"Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial, and anaerobic digestion.

"Secretary" means the Secretary of the Department of Environmental Protection or such

other person to whom the secretary has delegated authority or duties pursuant to §22-1-1 *et seq.* of this code.

"Sludge" means any solid, semisolid, residue, or precipitate, separated from or created by a municipal, commercial, or industrial waste treatment plant, water supply treatment plant, air pollution control facility, or any other such waste having similar origin.

"Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid, or contained liquid or gaseous material resulting from industrial, commercial, mining, or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under §22-5A-1 *et seq.* of this code, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under §22-5E-1 *et seq.* of this code or refuse, slurry, overburden, or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage, and recovery of coal, oil, and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter 22, chapter 22A, or chapter 22B of this code, so long as placement or disposal is in conformance with a permit issued pursuant to those chapters, or post-use polymers and recovered feedstocks converted at an advanced recycling facility or held at the facility prior to conversion.

"Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping, throwing, or causing any solid waste to be placed, deposited, dumped, or thrown.

"Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to §16-26-8 of this code.

"Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities, and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with §22-15-20 of this code. The facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of the facility is located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of §17-23-1 *et seq.* of this code, is not a solid waste facility and an advanced recycling facility is not a solid waste facility.

"Solid waste facility operator" means any person or persons possessing or exercising operational, managerial, or financial control over a commercial solid waste facility, whether

or not the person holds a certificate of convenience and necessity or a permit for the facility.

"Solvolysis" means a manufacturing process through which post-use polymers are purified with the aid of solvents, while heated at low temperatures and/or pressurized to make useful products, allowing additives and contaminants to be separated. The products of solvolysis include monomers, intermediates, valuable chemicals, and raw materials. The process includes, but is not limited to, hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

"Source-separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

§22-15-3. Special provision for wood waste.

(a) The purpose of this section is to allow for the combustion of wood waste without a solid waste facility permit and to allow facilities to use wood waste as an alternative fuel.

(b) "Wood waste" means wood residues from logging operations, sawmills, wood product manufacturing, furniture making operations, recycling of wood products and other industrial processes, but does not include wood waste which contains hazardous constituents, including copper chromium arsenate, which would cause such wood waste to be regulated pursuant to article eighteen of this chapter.

(c) For purposes of section two of this article and section two, article four, chapter twenty-two-c of this code:

(1) Wood waste is not "solid waste" unless disposed of at a solid waste facility or an open dump;

(2) Wood waste is a material which may be used as an effective substitute for commercial products or raw material feedstock.

(d) The use of incineration technologies in an energy recovery incinerator for the purposes of combusting wood waste is not prohibited and no solid waste facility permit is required. The provisions of this section do not allow the combustion of wood waste without a source permit from the director if such permit is required by article five of this chapter or the rules promulgated under the provisions of said article five.

(e) The division may promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to effectuate the purposes of this section.

§22-15-4. Authority of commissioner of bureau of public health.

Although the director is primarily responsible for the permitting and regulating of solid wastes, the commissioner of the bureau of public health may enforce the public health laws over solid waste management which presents an imminent and substantial endangerment to the public health.

WV Legislature

§22-15-5. Powers and duties; rules and rulemaking.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the director in this code and elsewhere described by law, the director is empowered as follows:

(a) The director shall promulgate rules in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, source or characteristics of the solid waste, potential for contamination of ground, surface and potable waters, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the Division of Highways, the financial capability of the applicant, soil and geological considerations, environmental and other natural resource considerations.

(b) The director, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility: Provided, That the director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility is likely to cause adverse impacts on the environment. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above-cited factor and may delete such geographical area from consideration for that type and size solid waste facility.

(c) The director may refuse to grant any permit if he or she has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or person owning a five percent or more interest, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

(1) Has demonstrated, either by his or her police record or by his or her record as a permittee under articles eleven through nineteen of this chapter or chapter twenty of this code, a lack of respect for law and order, generally, or for the laws and rules governing the disposal of solid wastes;

(2) Has misrepresented a material fact in applying to the director for a permit;

(3) Has been convicted of a felony or other crime involving moral turpitude;

(4) Has exhibited a pattern of violating environmental laws in any state or the United States

or combination thereof; or

(5) Has had any permit revoked under the environmental laws of any state or the United States.

(d) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter onto any approved solid waste facility, open dump or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

(e) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter any approved solid waste facility, open dump or property where solid waste is present and take samples of the waste, soils, air or water or may, upon issuance of an order, require any person to take and analyze samples of such waste, soil, air or water.

(f) The director may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated thereunder.

(g) The director or his or her authorized representative, employee or agent shall make periodic inspections at every approved solid waste facility to effectively implement and enforce the requirements of this article or its rules and may, in coordination with the commissioner of the Division of Highways, conduct at weigh stations or any other adequate site or facility inspections of solid waste in transit.

(h) The director shall require and set the amount of performance bonds for persons engaged in the practice of solid waste disposal in this state, pursuant to section twelve of this article.

(i) The director shall require: (1) That persons disposing of solid waste at commercial solid waste facilities within the state file with the operator of the commercial solid waste facility records concerning the type, amount and origin of solid waste disposed of by them; and (2) that operators of commercial solid waste facilities within the state maintain records and file them with the director concerning the type, amount and origin of solid waste accepted by them.

(j) Identification of interests. -- The director shall require an applicant for a solid waste facility permit to provide the following information:

(1) The names, addresses and telephone numbers of:

(A) The permit applicant;

(B) Any other person conducting or managing the affairs of the applicant or of the proposed permitted premises, including any contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant; and

(C) Parties related to the applicant by blood, marriage or business association, including the relationship to the applicant;

(2) The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, the proposed permit area;

(3) The names and addresses of the holders of record to a leasehold interest in surface or subsurface areas within, and contiguous to, the proposed permit area;

(4) A statement of whether the applicant is an individual, corporation, partnership, limited partnership, government agency, proprietorship, municipality, syndicate, joint venture or other entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:

(A) Names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant;

(B) For corporations, the principal shareholders;

(C) For corporations, the names, principal places of businesses and internal revenue service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations; and

(D) Names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the division, including, but not limited to, associates and agents;

(5) If the applicant or an officer, principal shareholder, general or limited partner or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(A) The name, address and tax identification number or employer identification number of the corporation or other person or municipality; and

(B) The nature of the relationship or participation with the corporation or other person or municipality;

(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) of this subdivision and to other related parties to the applicant, that are currently in effect or have been in effect in at least part of the previous ten years. This list shall include the type of permit or license, number, location, issuance date and, when applicable, the expiration date;

(7) An application shall identify the solid waste facilities in the state which the applicant or a person or municipality identified in paragraph (1) of this subdivision and other related parties to the applicant currently owns or operates, or owned or operated in the previous ten years. For each facility, the applicant shall identify the location, type of operation and state or federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

(k) Compliance information. -- An application shall contain the following information for the ten-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the division to the applicant or a related party, concerning any environmental law, rule, or order of the division, or a condition of a permit or license. In lieu of a description, the applicant may provide a copy of notices of violation;

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the division, and civil penalty actions adjudicated by the state, against the applicant or a related party concerning any environmental law, rule, or order of the division, or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions;

(3) A description of a summary, misdemeanor or felony conviction, a plea of guilty or plea of no contest that has been obtained in this state against the applicant or a related party under any environmental law or rule concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions;

(4) A description of a court proceeding concerning any environmental law or rule that was not described under paragraph (3) of this subdivision in which the applicant or a related party has been party. The description shall include the date, location, nature and disposition of the proceedings;

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or rule in which the division, other governmental agencies, the United States environmental protection agency, or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, a decree or agreement;

(6) For facilities and activities identified under paragraph (1) of this subdivision, a statement of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the

environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the division has denied a permit application filed by the applicant or a related party, based on compliance status;

(7) When the applicant is a corporation, a list of the principal shareholders that have also been principal shareholders of other corporations which have committed violations of any environmental law or rule. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationship between the principal shareholder and both the applicant and the other corporation;

(8) A description of a misdemeanor or felony conviction, a plea of guilty and a plea of no contest, by the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense;

(9) A description of final administrative orders, court orders, court decrees, consent decrees or adjudications, consent orders, final civil penalty adjudications, final bond forfeiture actions or settlement agreements involving the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(l) All of the information provided by the applicant pursuant to this section is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code.

§22-15-6. Fee for filing a certificate of site approval.

The fee for the certificate of site approval is \$25 payable upon the filing of the application therefor with the county, county solid waste authority or regional solid waste authority, as the case may be.

WV Legislature

§22-15-7. Special provision for residential solid waste disposal.

All commercial and public landfills shall establish and publish a yearly schedule providing for one day per month on which a person not in the business of hauling or disposing of solid waste may dispose of, in a landfill, an amount of residential solid waste, up to one pick-up truckload or its equivalent, free of all charges and fees: Provided, That the provisions of this section shall not take effect until July 1, 1998. Any person who is not a resident of West Virginia may only participate in the monthly free disposal day upon proof that his or her state of residence would likewise allow West Virginia residents to dispose of residential solid waste in the same or substantially similar manner.

§22-15-8. Limit on the size of solid waste facilities; rulemaking.

(a) On and after October 1, 1991, it is unlawful to operate any commercial solid waste facility that handles between ten thousand and thirty thousand tons of solid waste per month, except as provided in section nine of this article and sections twenty-six, twenty-seven and twenty-eight, articles four and four-a, chapter twenty-two-c of this code.

(b) Except as provided in section nine of this article, the maximum quantity of solid waste which may lawfully be received or disposed of at any commercial solid waste facility is thirty thousand tons per month.

(c) The secretary shall, within the limits contained in this article, place a limit on the amount of solid waste received or disposed of per month in commercial solid waste facilities. The secretary shall consider at a minimum the following criteria in determining a commercial solid waste facility's monthly tonnage limit:

(1) The proximity and potential impact of the solid waste facility upon groundwater, surface water and potable water;

(2) The projected life and design capacity of the solid waste facility;

(3) The available air space, lined acreage, equipment type and size, adequate personnel and wastewater treatment capabilities; and

(4) Other factors related to the environmentally safe and efficient disposal of solid waste.

(d) Within the limits established in this article, the secretary shall determine the amount of sewage sludge which may be safely treated, stored, processed, composted, dumped or placed in a solid waste facility.

(e) The secretary shall promulgate emergency rules and propose for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, to effectuate the requirements of this section. When developing the rules, the secretary shall consider at a minimum the potential impact of the treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

(1) On the groundwater, surface waters and potable waters in the area;

(2) On the air quality in the area;

(3) On the projected life and design capacity of the solid waste facility;

(4) On the available air space, lined acreage, equipment type and size, personnel and wastewater treatment capabilities;

(5) The facility's ability to adequately develop markets and market the product which results

from the proper treatment of sewage sludge; and

(6) Other factors related to the environmentally safe and efficient treatment, storage, processing, composting, dumping or placing of sewage sludge at a solid waste facility.

(f) Sewage sludge disposed of at a landfill must contain at least twenty percent solid by weight. This requirement may be met by adding or blending sand, sawdust, lime, leaves, soil or other materials that have been approved by the secretary prior to disposal. Alternative sewage sludge disposal methods can be utilized upon obtaining written approval from the secretary. No facility may accept for land filling in any month sewage sludge in excess of twenty-five percent of the total tons of solid waste accepted at the facility for land filling in the preceding month.

(g) Notwithstanding any other provision of this code to the contrary, a commercial solid waste facility that is not located in a county that is, in whole or in part, within a karst region as determined by the West Virginia Geologic and Economic Survey may lawfully receive drill cuttings and drilling waste generated from horizontal well sites above the monthly tonnage limits of the commercial solid waste facility under the following conditions and limitations:

(1)(A) The drill cuttings and associated drilling waste are placed in a separate cell dedicated solely to the disposal of drill cuttings and drilling waste;

(B) The separate cell dedicated to drill cuttings and associated drilling waste is constructed and maintained pursuant to the standards set out in this article and legislative rules promulgated thereunder; and

(C) On or before March 8, 2014, the facility has either obtained a certificate of need, or amended certificate of need, or has a pending application for a certificate or amended certificate of need, authorizing such separate cell as may be required by the Public Service Commission in accordance with section one-c, article two, chapter twenty-four of this code.

(2) The secretary may only allow those solid waste facilities that applied by December 31, 2013 for a permit modification to construct a separate cell for drill cuttings and associated drilling waste, to accept drill cuttings and associated drilling waste at its commercial solid waste facility without counting the deposited drill cuttings and associated drilling waste towards the landfill's permitted monthly tonnage limits.

(3) No solid waste facility may exclude or refuse to take municipal solid waste in the quantity up to and including its permitted tonnage limit while the facility is allowed to lawfully receive drill cuttings or drilling waste above its permitted tonnage limits.

(h) Any solid waste facility taking drill cuttings and drilling waste must install radiation monitors by January 1, 2015. The secretary shall promulgate emergency and legislative rules to establish limits for unique toxins associated with drill cuttings and drilling waste including, but not limited to heavy metals, petroleum-related chemicals, (benzene, toluene,

xylene, barium, chlorides, radium and radon) and establish the procedures the facility must follow if that limit is exceeded: Provided, That said rules shall establish and set forth a procedure to provide that any detected radiation readings above any established radiation limits will require that the solid waste landfill immediately cease accepting all affected drill cuttings and drilling waste until the secretary has inspected said landfill and certified pursuant to established rules and regulations that radiation levels have returned to below the established radiation limits. Any truck load of drill cuttings or drilling waste which exceeds the radiation reading limits shall not be allowed to enter the landfill until inspected and approved by the Department of Environmental Protection.

(i) Except for facilities which meet the requirements of (g)(1) of this section, the total amount of waste received at a commercial solid waste landfill that continues to mix said waste with its municipal solid waste may not exceed the total volume of its permitted capacity for that facility in any month, and the quantities of drill cuttings and drilling waste received at that facility shall be counted and applied toward the facility's established tonnage cap.

(j) On or before July 1, 2015, the secretary shall submit an investigation and report to the Joint Legislative Oversight Commission on Water Resources and the Legislature's Joint Committee on Government and Finance which examines: (1) The hazardous characteristics of leachate collected from solid waste facilities receiving drill cuttings and drilling waste, including, but not limited to, the presence of heavy metals, petroleum related chemicals (benzene, toluene, xylene, etc.) barium, chlorides, radium and radon; (2) the potential negative impacts on the surface water or groundwater resources of this state associated with the collection, treatment and disposal of leachate from such landfills; (3) the technical and economic feasibility and benefits of establishing additional and/or separate disposal locations which are funded, constructed, owned and/or operated by the oil and gas industry; and (4) viable alternatives for the handling, treatment and disposal of drill cuttings, including the potential for processing, reusing and reapplying a portion of the collected drill cuttings as suitable fill material for roads, brownfield development or other projects, instead of disposing of all collected material into landfills.

(k) The secretary shall submit any proposed contract for conducting the studies set forth in subsection (j) of this section for review and preapproval by the Legislature's Joint Committee on Government and Finance.

§22-15-9. Exemption for solid waste facility handling in excess of thirty thousand tons per month.

(a) Notwithstanding any provision in this article, article four, chapter twenty-two-c, article two, chapter twenty-four of this code, any other section of this code, or any prior enactment of the code to the contrary, and notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of the following criteria, any person who on October 1, 1991, has:

(1) Obtained site approval for a commercial solid waste facility from a county or regional solid waste authority or county commission pursuant to a prior enactment of this code, or has otherwise satisfied the requirements of subsection (a), section twenty-five, article four, chapter twenty-two-c of this code;

(2) Entered into a contract with a county commission regarding the construction and operation of a solid waste facility, which contract contains rates for the disposal of solid waste anticipated to be disposed of at the facility;

(3) Obtained, pursuant to section one-f, article two, chapter twenty-four of this code, following a public hearing, an order from the Public Service Commission approving the rates established in the contract with the county commission; and

(4) An application for a permit for a commercial solid waste facility pending with the Division of Environmental Protection, or is operating under a permit or compliance order, is permitted to handle in excess of the limitation established in section eight of this article up to fifty thousand tons of solid waste per month at a commercial solid waste facility so long as the person complies with the provisions of this section.

(b) Any person desiring to operate a commercial solid waste facility which handles an amount of solid waste per month in excess of the limitation established in section eight of this article, but not exceeding the tonnage limitation described in subsection (a) of this section may file a notice with the county commission of the county in which the facility is or is to be located requesting a countywide referendum. Upon receipt of such notice, the county commission shall order a referendum be placed upon the ballot, not less than fifty-six days before the next primary or general election:

(1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial solid waste facility be permitted to handle more than the limitation established in section eight of this article not to exceed fifty thousand tons per month. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable;

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall a commercial solid waste facility, permitted to handle up to, but no more than fifty thousand tons of solid waste per month be located within _____ County, West Virginia?

/ For the facility

/ Against the facility

(Place a cross mark in the square opposite your choice.)"

If a majority of the legal votes cast upon the question is against the facility handling an amount of solid waste of up to fifty thousand tons per month then the division shall not proceed any further with the application. If a majority of the legal votes cast upon the question is in favor of permitting the facility within the county, then the application process as set forth in this article may proceed: Provided, That such vote is not binding on or require the division to issue a permit.

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with regard to the person's commercial solid waste facility within the county under this article or article four, chapter twenty-two-c of this code, or previously enacted sections of articles five-f and nine, chapter twenty of this code are valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions are cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code to the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division provided in section ten of this article, shall not be required to comply with the requirements of sections twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code: Provided, That such person is entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a) of this section, notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level is the only approval, permit or action required at the county or regional level to establish and site the proposed facility.

§22-15-10. Prohibitions; permits required.

(a) Open dumps are prohibited and it is unlawful for any person to create, contribute to, or operate an open dump or for any landowner to allow an open dump to exist on the landowner's property unless that open dump is under a compliance schedule approved by the director. The compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to April 1, 1988, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm, are not a violation of this section, if the open dump was not a violation of law on January 1, 1988, and unauthorized dumps which were created by unknown persons are not a violation of this section: Provided, That a person may not contribute additional solid waste to any such dump after April 1, 1988, except that the landowners on which unauthorized dumps have been or are being made are not liable for the unauthorized dumping unless the landowners refuse to cooperate with the division in stopping the unauthorized dumping.

(b) It is unlawful for any person, unless the person holds a valid permit from the division to install, establish, construct, modify, operate, or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated, or abandoned in accordance with §22-15-1 et seq. of this code, plans, specifications, orders, instructions, and rules in effect.

(c) Any permit issued under §22-15-1 et seq. of this code shall be issued in compliance with the requirements of §22-15-1 et seq. of this code, its rules and §22-11-1 et seq. of this code and the rules, promulgated under §22-11-1 et seq. of this code, so that only a single permit is required of a solid waste facility under those two articles. Each permit issued under §22-15-1 et seq. of this code shall have a fixed term not to exceed five years: Provided, That the director may administratively extend a permit beyond its five-year term, if the approved solid waste facility is in compliance with §22-15-1 et seq. of this code, its rules, and §22-11-1 et seq. of this code and the rules promulgated under §22-11-1 et seq. of this code: Provided, however, That the administrative extension may not be for more than one year. Upon expiration of a permit, the division may issue renewal permits in compliance with rules promulgated by the director.

(d) For existing solid waste facilities which formerly held division of health permits which expired by law and for which complete permit applications for new permits pursuant to §22-15-1 et seq. of this code were submitted as required by law, the division may enter an administrative order to govern solid waste activities at the facilities, which may include a compliance schedule, consistent with the requirements of the division's solid waste management rules, to be effective until final action is taken to issue or deny a permit for the facility pursuant to §22-15-1 et seq. of this code, or until further order of the division.

(e) A person may not dispose of any solid waste in this state in a manner which endangers the environment or the public health, safety, or welfare as determined by the director:

Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director, the Commissioner of the Bureau for Public Health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) A commercial solid waste facility shall not discriminate in favor of or against the receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.

(g) In addition to all the requirements of §22-15-1 et seq. of this code and the rules promulgated under §22-15-1 et seq. of this code, the division may not issue a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, unless the Public Service Commission has granted a certificate of need, as provided in §24-2-1c of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of §22-15-1 et seq. of this code: Provided, That the provisions of this subsection do not apply to materials recovery facilities or mixed waste processing facilities as defined by §22-15-2 of this code, except within a 35-mile radius of a facility sited in a karst geological region and which has been permitted by the West Virginia Department of Environmental Protection as a mixed waste processing facility and has received a certificate of need by July 1, 2016.

(h) The director shall propose legislative rules for promulgation pursuant to §29A-3-1 et seq. of this code which reflect the purposes as set forth in this section.

§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. 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.

(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 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;
- (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.

§22-15-12. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, rules promulgated hereunder and the permit. The amount of the bond required shall be determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include, but are not limited to, satisfactory monitoring, post-closure care, leachate treatment and remedial measures: Provided, That the amount of the bond shall be sufficient to conform to and be consistent with the financial assurance requirements set forth under Subtitle D of the federal Resource Conservation and Recovery Act, 42 U. S. C. §§6901 et seq. and the regulations promulgated thereunder. All bonds required to be posted shall be consistent, whether the facility is publicly or privately owned or operated. All permits shall be bonded for at least \$10,000. The bond shall cover either: (1) The entire area to be used for the disposal of solid waste; or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code. If the operator chooses to use incremental bonding, as succeeding increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit and for a period of up to thirty full years after final closure of the permit site: Provided, That any further time period necessary to achieve compliance with the requirements in the closure plan of the permit is considered an additional liability period.

(c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods.

If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds

of the State of West Virginia, or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the State of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled from time to time to receive from the state Treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the thirty-year period following final closure, the division will conduct a final inspection of the facility. The purpose of the inspection is to determine compliance with this article, the division's rules, the terms and conditions of the permit, orders of the division and the terms and conditions of the bond. Based upon this determination, the division will either forfeit the bond prior to the expiration of the thirty-year period following final closure, or release the bond at the expiration of the thirty-year period following final closure. Bond release requirements shall be provided in rules promulgated by the director.

(e) If the operator of a commercial solid waste facility abandons the operation of a solid waste disposal facility for which a permit is required by this article or if the permittee fails or refuses to comply with the requirements of this article in any respect for which liability has been charged on the bond, the director shall declare the bond forfeited and shall certify the same to the Attorney General who shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operation has deposited cash or securities as collateral in lieu of corporate surety, the director shall declare said collateral forfeited and shall direct the state Treasurer to pay said funds into a waste management fund to be used by the director to effect proper closure and to defray the cost of administering this article. Should any corporate surety fail to promptly pay, in full, forfeited bond, it is disqualified from writing any further surety bonds under this article.

§22-15-13. Pre-siting notice.

Any person investigating an area for the purpose of siting a commercial solid waste facility where no current solid waste permit exists, in order to determine a feasible, approximate location, shall prior to filing an application for a solid waste permit publish a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is to be located. Such notice shall inform the public of the location, nature and other details of the proposed activity as prescribed in rules promulgated by the director. Within five days of such publication such person shall file with the director a pre-siting notice, which shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. Such notice shall contain a certification of publication from a qualified newspaper, description of the area, the period of investigative review, a United States geological survey topographic map and a map showing the location of property boundaries of the area proposed for siting and other such information as required by rules promulgated pursuant to this section. The director shall hold a public hearing on the pre-siting notice in the area potentially affected. The director shall define pre-siting activities by promulgating legislative rules pursuant to chapter twenty-nine-a of this code. The pre-siting notice, as prescribed by the director, shall also be filed with the county or regional solid waste authority, established pursuant to article four, chapter twenty-two-c of this code, according to the county or region in which the proposed site is located within five days of the publication of the notice.

§22-15-14. Limitations on permits; encouragement of recycling.

(a) The director shall by rules promulgated in accordance with chapter twenty-nine-a of this code establish standards and criteria applicable to commercial solid waste facilities for the visual screening of such facilities from any interstate highway, turnpike, federal and state primary highway or scenic parkway. The director shall not issue a permit under this article to install, establish, construct or operate any commercial solid waste facility without proper visual screening from any interstate highway, turnpike, federal or state primary highway or scenic parkway.

(b) The director shall give substantial deference and consideration to the county or regional litter and solid waste control plan approved pursuant to article four, chapter twenty-two-c of this code and to the comprehensive county plan adopted by the county commission pursuant to article twenty-four, chapter eight of this code in the issuance or the renewal of any permit under this article: Provided, That the authority and discretion of the director under this article is not diminished or modified by this subsection.

(c) The director is authorized and directed to promulgate legislative rules pursuant to chapter twenty-nine-a of this code encouraging each commercial solid waste facility and each person, partnership, corporation and governmental agency engaged in the commercial collection, transportation, processing and disposal of solid waste to recycle paper, glass, plastic and aluminum materials and such other solid wastes as the director may specify.

(d) The director is authorized and directed to promulgate legislative rules pursuant to chapter twenty-nine-a of this code encouraging each person, partnership, corporation and governmental agency subscribing to solid waste collection services to segregate paper, glass, plastic and aluminum material, and such other solid waste material as the director may specify, prior to collection of such wastes at their source for purposes of recycling.

(e) Under no condition shall transloading solid waste materials be permitted within a municipality except those facilities owned or operated on behalf of the municipality in which the facility is located.

§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.

(a) If the secretary, upon inspection or investigation by duly authorized representatives or through other means observes, discovers or learns of a violation of this article, its rules, article eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the Attorney General, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who violates this article, or permits issued pursuant to this article or rules or orders issued by the secretary or board is subject to administrative, civil and criminal sanctions as follows:

(1) Any person who fails or refuses to discharge any duty imposed upon him or her by this article or by any rule of the secretary promulgated pursuant to the provisions and intent of this article or by an order of the secretary or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of the permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned.

(2) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the secretary thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$10,000, or imprisoned in a county or regional jail not more than six months, or both fined and imprisoned.

(3) Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any provision of this article or any rule of the secretary or any order of the secretary or board is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor more than \$25,000 per day of violation, or imprisoned in a county or regional jail not more

than one year, or both fined and imprisoned.

(4) Any person convicted of a second offense or subsequent willful violation of subdivision (2) or (3) of this subsection or knowingly and willfully violating any provision of any permit, rule or order issued under or subject to the provisions of this article or knowingly and willfully violating any provision of this article, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than \$50,000 for each day of violation, or both fined and imprisoned.

(5) Any person convicted of accumulating or disposing of one thousand or more tires in violation of this article is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years and shall be required to clean up and properly dispose of the waste tires or reimburse the state agency or agencies for costs incurred in cleaning up the waste tires. In addition, any person so convicted may be fined not more than \$50,000 for each day of the continued violation.

(6) A person may be prosecuted and convicted under the provisions of this section, notwithstanding that the administrative remedies provided in this article have not been pursued or invoked against the person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against the person.

(7) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, that person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

(c) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than \$5,000 for each day of the violation, not to exceed a maximum of \$20,000:

(1) In assessing a penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the secretary by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the

informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the secretary shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the secretary's decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of section sixteen of this article. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed \$25,000 for each day of a violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section five of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article;

(2) No assessment levied pursuant to subdivision (1) of this subsection becomes due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed \$25,000 for each day of the violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom relief is sought.

(f) Upon request of the secretary, the Attorney General or the prosecuting attorney of the county in which the violation occurs shall assist the secretary in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails may be awarded costs and reasonable attorney's fees.

(h) In addition to all other grounds for revocation, the secretary shall revoke a permit for any of the following reasons:

- (1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;
- (2) Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage or disposal of solid waste, or of any rule adopted pursuant thereto;
- (3) Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or
- (4) Preventing, without authorization of the secretary, any permittee from disposing of solid waste at a licensed treatment, storage or disposal facility.

§22-15-16. Appeal procedures.

Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit or by the permit's terms or conditions, may appeal to the environmental quality board as provided in article one, chapter twenty-two-b of this code.

WV Legislature

§22-15-17. Limited extension of solid waste facility closure deadline.

(a) The director may grant an extension of the closure deadline up to September 30, 1994, to a solid waste facility required under the terms of an extension granted pursuant to this subsection to close by June 30, 1993, or required by solid waste management rules to close by September 30, 1993, provided that the solid waste facility:

(1) Has a solid waste facility permit, or by March 1, 1993, had an application to obtain a permit pending before the division for the construction of a landfill in accordance with title forty-seven, series thirty-eight, solid waste management rules; and

(2) Has a certificate of need or had an application pending therefor, from the Public Service Commission; and

(3) Has been determined by the director to pose no significant hazard to public health, safety or the environment; and

(4) Has entered into a compliance schedule with the Division of Environmental Protection to be in full compliance, no later than September 30, 1994, with title forty-seven, series thirty-eight, solid waste management rules or to be in full compliance, no later than September 30, 1994, with pre-closure provisions of title forty-seven, series thirty-eight, solid waste management rules: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, 1994, or such date as any landfill installs a composite liner system, for any landfill in a county in which there is also located a commercial solid waste landfill which has installed a composite liner system in accordance with the requirements of the solid waste management rules.

(b) Any solid waste facility seeking to extend its closure deadline until September 30, 1994, shall submit to the director, no later than April 30, 1993, an application sufficient to demonstrate compliance with the requirements of subsection (a) of this section. The director shall grant or deny any application within thirty days of receipt thereof: Provided, That as a condition precedent for granting such closure extension, a solid waste facility must enter into an agreement with the director that the solid waste facility shall, no later than September 30, 1993, complete and submit to the director an analysis of the facility's specific requirements and cost to comply with the applicable design criteria, groundwater monitoring provisions of title forty-seven, series thirty-eight, solid waste management rules and the corrective action, financial assurance and closure and post-closure care provisions of Subtitle (d) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6941-6949.

(c) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section may obtain judicial review thereof in the same manner as provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in section four, article five,

chapter twenty-nine-a of this code, in the circuit court of the county where such facility exists: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director of the division.

(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with said Supreme Court of Appeals within thirty days from the date of entry of the judgment of the circuit court.

(e) Notwithstanding any other provision of this article, the director, upon receipt of a request for an extension, shall grant an extension of the closure deadline up to September 30, 1994, to any solid waste facility required to close on the thirty-first day of March, 1993, or September 30, 1993, which is owned by a solid waste authority or owned by a municipality and which accepts at least thirty percent of its waste from within the county in which it is located and which has not been determined by the director to pose a significant risk to human health and safety or cause substantial harm to the environment and which could not be granted an extension up to September 30, 1994, pursuant to the terms of subsections (a) and (b) of this section if:

- (1) The cost of transporting the waste is prohibitive; or
- (2) The cost of disposing of waste in other solid waste facilities within the watershed would increase.

(f) Notwithstanding any other provision of this article, the director shall grant an extension of the closure deadline up to September 30, 1994, to any solid waste landfill which, on or before March 1, 1993, has entered into a compliance schedule with the director for the construction of a transfer station or to any solid waste landfill which on March 1, 1993, is already in the process of constructing a solid waste transfer station and applies by April 1, 1993, to enter into with the director, a compliance schedule for the completion of the transfer station: Provided, That upon the completion of the transfer station and commencement of operations of the transfer station, such landfill shall cease accepting solid waste for disposal.

(g) Notwithstanding any other provision of this article, any commercial solid waste facility which has demonstrated and continues to be in compliance with the requirements of subsections (a) and (b) of the prior enactment of this section in chapter one hundred twenty-five, acts of the Legislature, regular session, 1993, may make application by August 1, 1994, to the director for a special extension of the closure deadline up to December 31, 1994. Such application shall set forth all reasons why the applicant should receive a special extension. The director shall grant or deny an application within thirty days of receipt thereof. As a condition for being granted a special extension, the solid waste facility permittee must meet one of the following conditions:

- (1) Have started construction of an approved composite liner system; or
- (2) Have obtained financing for such construction; or
- (3) Have demonstrated good faith efforts to obtain such financing and the director has made a finding, in writing, that such financing and construction is likely to occur within the extension period and that the facility is necessary to the waste management plan of the watershed or the geographic area served.

WV Legislature

§22-15-18. Condition on receiving permit.

(a) Notwithstanding any other provision of this code, a permit application for a solid waste landfill facility submitted by any person who has owned, operated or held a permit for a solid waste landfill upon which funds have been, or are to be, expended on pursuant to the provisions of article sixteen of this chapter, may be approved under the provisions of this article only if all funds so expended are repaid in full, plus interest, or arrangements, satisfactory to the director, are made for the repayment of the funds and the interest. The repayment shall be made a specific condition of a permit.

(b) In the case where a permittee has entered into a repayment arrangement with the director in order to obtain a permit under this article, the repayment of the funds shall be considered by the Public Service Commission a reasonable cost of operating the newly permitted landfill in determining rates to be charged at the landfill.

§22-15-19. Municipal and commercial solid waste incineration and backhauling prohibited; exceptions.

(a) Notwithstanding any other provision of this code to the contrary, it is unlawful to install, establish or construct a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration: Provided, That such prohibition does not include the development of pilot projects which may include tire or tire material incineration, designed to analyze the efficiency and environmental impacts of incineration technologies: Provided, however, That any pilot project proposing to incinerate solid waste must comply with regulatory requirements for solid waste facilities established in this chapter and shall demonstrate with particularity to the division that it has the financial and technical ability to comply with all rules applicable to solid waste facilities utilizing incineration technologies. The division shall require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of potential future environmental harm at the site.

(b) It is unlawful to engage in the practice of backhauling as such term is defined in section two of this article.

§22-15-20. Sewage sludge management.

(a) Within the limits imposed by section eight, article fifteen of this chapter, the division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate emergency rules and propose legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:

(1) That entities which generate, process, dispose or otherwise manage sewage sludge in the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

(ii) The amount of sewage sludge actually generated, treated, stored, processed, composted, disposed or placed;

(iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and

(iv) Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and periodic monitoring of all sewage sludge-related activities and to monitor data supplied by sewage sludge producers, processors or transporters to ensure compliance with state and federal regulations;

(3) That representatives of the division have the ability to enter onto any land application site for the purposes of inspecting and analyzing the effects of sewage sludge application on that site;

(4) That no permit for the processing or disposal of sewage sludge will be issued until there is an accurate finding that it has been adequately tested and shown not to contain heavy metals, pathogens, toxins or vectors in excess of regulatory standards;

(5) That the director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of future environmental remediation from producers and importers of sewage sludge;

- (6) That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc;
- (7) That no person be allowed to land apply so much sewage sludge as to exceed the agronomic rate for that land or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land;
- (8) That information relating to the disposal, treatment, storage, processing, composting, dumping, placing or land applying of sewage sludge is available to affected communities and other persons who may request the information in conformity with article one, chapter twenty-nine-b of this code;
- (9) That all sewage sludge processing facilities contain sufficient design specifications to protect ground, surface and potable waters, air quality, existing and potential land-use planning and public health and safety;
- (10) That regulation of composting facilities varies according to types and quantities of materials handled;
- (11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and
- (12) That a fee, to be paid by the producer, processor or transporter be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of section ten, article eleven of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.
- (c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to a water pollution control permit, including a West Virginia national pollutant discharge elimination system (WV/NPDES) permit required under article eleven of this chapter, a sewage sludge processing permit shall be a part of the permit and shall include a sewage sludge management plan approved by the director. Upon approval by the director, POTWs may accept sewage sludge from other POTWs on a cost-sharing or nonprofit basis under its NPDES permit without being considered a commercial solid waste facility.
- (d) On and after April 10, one thousand nine hundred ninety-three, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a

permit from the division. No such permit may be issued until the rule provided for in subsection (b) of this section is effective.

(e) All sewage sludge placed in, or used in a landfill disposal cell by a solid waste facility shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility's total tonnage, subject to the limitations established in this article and the provisions of article four, chapter twenty-two-c of this code: Provided, That no land within a solid waste facility but outside a landfill disposal cell, shall accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less.

(f) Sewage sludge shall not be used as daily cover by a landfill.

(g) Any solid waste facility currently operating under a permit from the director as a Class A solid waste facility and sewage sludge processing facility may receive, for the purpose of composting, up to a maximum of twelve thousand five hundred tons of sewage sludge per month, as weighed at the time of receipt at the facility. No Class A facility operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than one hundred twenty-five thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(h) Any solid waste facility currently operating under a permit from the director as a Class B solid waste facility and sewage sludge processing facility may receive, for the purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No Class B facility operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(i) Any POTW currently operating or holding a WV/NPDES permit to operate a sewage sludge processing facility for the purpose of composting sewage sludge may receive, for the purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No POTW operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(j) No person seeking to operate a sewage sludge processing facility, commercial composting facility or noncommercial composting facility may receive, for the purpose of composting, up to a maximum of two thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No person operating a sewage processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than twenty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(k) No sewage sludge processing facility may be located within a forty mile radius of another sewage sludge processing facility.

(l) Any facility under a consent agreement with the director or chief of the office of water resources as of the effective date of this article, regarding sewage sludge stored, retained or stockpiled at that facility, shall dispose of all accumulated sewage sludge in accordance with the consent agreement. Such sewage sludge is not subject to the limitations on storage, retention and stockpiling set forth above unless the facility violates the terms and conditions of its consent agreement.

(m) No person shall knowingly transport or deliver sewage sludge, or any intermediate or final material or product derived wholly or partially from sewage sludge in violation of this section.

(n) Any solid waste facility which composts sewage sludge shall have an annual output of finished or mature compost removed from the facility balanced to the annual input of sewage sludge relative to the nature of the sewage sludge taken in.

(o) A person or facility that temporarily or permanently, stores, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, shall maintain accurate operational records on site that are sufficiently detailed to clearly and convincingly demonstrate to the director that sewage sludge is being stored consistent with the provisions of this section. The records shall be made available to the director upon request.

(p) The director shall presume that a person or facility which temporarily or permanently, stores, treats, handles, processes, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, contrary to the provisions of this section is subject to all penalties available to the director under this chapter.

(q) All persons operating a sewage sludge processing facility shall provide off-site odor monitoring or testing mechanisms approved by the director. The director shall promulgate emergency rules and propose legislative rules for legislative promulgation, rules specifying the nature and type of odor monitoring or testing which will be approved or how to obtain approval for proposed odor monitoring or testing; the areas where the monitoring or testing should occur; the frequency of monitoring or testing which shall be no less than semiannually or as otherwise ordered by the director and any other conditions necessary to effectuate the purposes of this subsection.

§22-15-21. Waste tire management.

(a) No person, except those persons who have received and maintained a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire processing facility, or other such permitted activities, shall accumulate waste tires without obtaining a license or permit from the Division: Provided, That persons who use waste tires for beneficial uses may in the discretion of the Secretary of the Department of Environmental Protection accumulate waste tires without a permit.

(b) No person shall dispose of waste tires in or upon any public or private land, any site or facility other than a site or facility which holds a valid permit issued by the Department for such disposal or usage.

(c) No person shall knowingly transport or knowingly allow waste tires under his or her control to be transported to a site or facility that does not have a valid permit or license to accept waste tires.

(d) No person shall engage in the open burning of waste tires.

(e) Persons who violate this article are subject to all enforcement actions available to the Secretary under the provisions of section fifteen, article fifteen, chapter twenty-two of this code.

(f) Except as otherwise provided in subsection (g) of this section, each retailer is required to accept one tire of comparable size for each new tire sold at retail. The retailer may charge a disposal fee to cover the actual costs of lawful waste tire disposal. No retail tire dealer may deliver any waste tire, or part thereof, to a person not authorized by the State of West Virginia to transport or accept waste tires.

(g) Any person purchasing a new tire from a retailer must provide a used or waste tire for each tire purchased or sign a waiver, provided to the tire retailer by the Department, acknowledging that he or she is retaining the waste tire and that he or she is legally responsible for proper disposal of each tire retained. These forms are to be kept by the retailer for three years. If the tire purchaser returns to the tire retailer with a signed form given to the purchaser by that retailer, the retailer must accept up to the total number of comparable size tires as previously retained by the purchaser: Provided, That persons having winter tires changed or buying new winter tires and keeping usable summer tires for later installation are not required to provide a used or waste tire or sign a waiver.

(h) Each tire retailer shall post in a conspicuous place a written notice, provided by the Department, that bears the following statements:

(1) "State law requires us to accept your (old) waste tires for recycling or proper disposal if you purchase new tires from us."

(2) "State law authorizes us to charge you no more than the actual cost of disposal of your

waste tires even if you do not leave your tires with us."

(3) "It is a crime to burn, bury, abandon or throw away waste tires without authorization and or permits from the Department of Environmental Protection."

This notice must be at least eight and one-half inches wide and eleven inches high.

(i) Solid waste facilities shall accept whole waste tires and may charge a reasonable fee for acceptance of waste tires. All waste tires except those disposed of in a landfill shall be excluded from the calculation of monthly tonnage limits and from any solid waste disposal assessment fees imposed by section nineteen, article fifteen-a, chapter twenty-two; section eleven, article fifteen, chapter twenty-two; section four, article sixteen, chapter twenty-two; and section thirty, article four, chapter twenty-two-c of this code.

(j) Solid waste facilities shall accept and dispose of whole tires from state authorized tire remediation projects. All waste tires from state authorized tire remediation projects except those disposed of in a landfill shall be excluded from the calculation of monthly tonnage limits and from any solid waste disposal assessment fees imposed by section nineteen, article fifteen-a, chapter twenty-two; section eleven, article fifteen, chapter twenty-two; section four, article sixteen, chapter twenty-two; and section thirty, article four, chapter twenty-two-c of this code. For state-sponsored tire remediation projects, the state may negotiate with the solid waste facility for rates and charges for the disposal of waste tires regardless of the rates and charges established by the Public Service Commission pursuant to article one, chapter twenty-four of this code: Provided, That the disposal of whole tires in a solid waste facility is allowed only when the Department of Environmental Protection has determined there is no other reasonable alternative available.

(k) The Department shall propose for legislative promulgation emergency and legislative rules to effectuate the purposes of this section.

§22-15-22. Sludge management.

(a) Any sludge or other material determined by the secretary to have beneficial properties similar to sewage sludge may be beneficially used in accordance with the applicable requirements governing sewage sludge, and any other requirements determined to be necessary by the secretary to protect human health and the environment. Persons seeking to beneficially use sludge must meet the requirements of this article and the rules promulgated under this article.

(b) In order to enhance the resource recovery and recycling goals of this act and to encourage the beneficial use of sludge or other materials, the secretary shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to effectuate the purposes of this section. The secretary shall at a minimum include the following in the proposed rules:

- (1) A mechanism to determine beneficial use characteristics;
 - (2) A method to determine pollutant content of the material proposed for beneficial use;
 - (3) A method to determine that the beneficial properties of the material are derived from the raw material rather than additives;
 - (4) Buffer zones or other criteria necessary to adequately protect ground and surface water;
 - (5) Necessary restrictions of pollutant levels in the material;
 - (6) Analytical methods, loading rates and storage requirements for the material;
 - (7) Permit requirements; and
 - (8) Appropriate fees.
- (c) These rules do not apply to land-based aquaculture facilities.

§22-15-23. Water treatment plant sludge.

(a) Water treatment plant sludge determined by the secretary to have beneficial properties may be beneficially used in accordance with requirements determined necessary by the secretary to protect human health and the environment. Persons seeking to beneficially use water treatment plant sludge shall meet the requirements of this article and the rules promulgated under this article.

(b) In order to enhance the resource recovery and recycling goals of this article and to encourage the beneficial use of water treatment plant sludge, the secretary shall propose, for promulgation, legislative rules to effectuate the purposes of this section in accordance with the provisions of article three, chapter twenty-nine-a of this code. The secretary shall, at a minimum, include the following in the proposed rules:

- (1) A mechanism to determine beneficial use characteristics of water treatment plant sludge;
- (2) A method to determine pollutant content of water treatment plant sludge proposed for beneficial use;
- (3) A method to determine that the beneficial properties of the water treatment plant sludge are derived from the raw material rather than additives;
- (4) Buffer zones or other criteria necessary to adequately protect ground and surface water;
- (5) Necessary restrictions of pollutant levels in the water treatment plant sludge;
- (6) Analytical methods and storage requirements for water treatment plant sludge;
- (7) Permit requirements; and
- (8) Appropriate fees.

§22-15-24. Composting authorized.

(a) Notwithstanding any provision of this code to the contrary, composting of organic materials, including, but not limited to, yard waste, food scraps, food-processing residue, soiled or unrecyclable paper, animal carcasses, and agricultural waste may be disposed of by composting in this state.

(b) Any products sold as a result of composting are required to comply with the provisions of §19-15-1 *et seq.* of this code.