WEST VIRGINIA CODE CHAPTER 22 ARTICLE 15A

WV Legislature

§22-15A-1. Legislative findings and purpose.

(a) The Legislature finds that litter is a public nuisance and distracts from the beauty of the state and its natural resources. It is therefore necessary to establish and implement a litter control program to coordinate public and private litter control efforts; to establish penalties for littering; to provide for litter pickup programs; to create education programs; and to provide assistance to local solid waste authority litter control efforts.

(b) The Legislature further finds that the improper management of commercial and residential solid waste and the unlawful disposal of such waste create open dumps that adversely impact the state's natural resources, public water supplies, and the public health, safety, and welfare of the citizens of the state. It is therefore necessary to establish a program to promote pollution prevention and to eliminate and remediate open dumps.

(c) The Legislature further finds that waste tire piles are a direct product of state citizens' use and enjoyment of state roads and highways, and proper tire waste disposal is a necessary component of maintenance of the transportation system. The accumulation of waste tires has also become a significant environmental and public health hazard to the state, and the location and number of waste tires are directly related to the efficiency of travel, by citizens, visitors, and commerce, along public highways in West Virginia. In particular, the Legislature recognizes that waste tires are widespread in location and in number throughout the state; waste tires physically touch and concern public highways, including, but not limited to, state roads, county roads, park roads, secondary routes, and orphan roads, all of which interferes with the efficiency of public highways; and further that the existence of waste tires along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

(d) The Legislature also recognizes and declares that waste tires are a public nuisance and hazard; that waste tires serve as harborage and breeding places for rodents, mosquitoes, fleas, ticks, and other insects and pests injurious to the public health, safety, and general welfare; that waste tires collected in large piles pose an excessive risk to public health, safety, and welfare from disease or fire; that the environmental, economic, and societal damage resulting from fires in waste tire piles can be avoided by removing the piles; and that tire pile fires cause extensive pollution of the air and surface and groundwater for miles downwind and downstream from the fire.

(e) Therefore, in view of the findings relating to waste tires, the Legislature declares it to be the public policy of the State of West Virginia to eliminate the present danger resulting from discarded or abandoned waste tires and to eliminate the visual pollution resulting from waste tire piles and that in order to provide for the public health, safety, welfare, and quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires.

WV Legislature

(f) The Legislature further finds that abandoned and dilapidated structures statewide have become a significant hazard and can result in the formation of open dumps or solid waste not disposed of in a proper or lawful manner. In particular, the Legislature recognizes that damage to the environment, natural resources, and the public health, safety, and welfare may result from abandoned and dilapidated structures. Abandoned and dilapidated structures are widespread in location and in number throughout the state; and further, that the existence of abandoned and dilapidated structures along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

(g) In view of the findings relating to abandoned and dilapidated structures, the Legislature declares it to be the public policy of the State of West Virginia to establish a program to eliminate and remediate abandoned and dilapidated structures.

(h) The Legislature finds that many citizens desire a recycling program in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills, reduce the need for new landfills, and create markets for recyclable materials. It is therefore necessary to establish goals for recycling solid waste; to require certain municipalities to implement recycling programs; to authorize counties to adopt comprehensive recycling programs; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.

(i) The Legislature finds that the effectiveness of litter control, open dump, tire cleanup programs and recycling programs have been made less efficient by fragmented implementation of the various programs by different agencies. It is therefore necessary to coordinate all such programs under one program managed by the department to ensure that all current and future litter, open dump, waste tire, and recycling issues are managed and addressed efficiently and effectively.

(j) This article implements the A. James Manchin Rehabilitation Environmental Action Plan, a coordinated effort to address litter, waste, open dump, tire cleanup, and recycling programs.

WV Legislature

§22-15A-2. Definitions.

Unless the context clearly indicates a different meaning or defined elsewhere in this chapter, as used in this article:

(1) "Beneficial use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers and other civil engineering applications, feed hopper or watering troughs for livestock, other agricultural uses approved by the Department of Environmental Protection, playground equipment, boat or truck dock construction, house or building construction, go-cart, motorbike or race track barriers, recapping, alternative daily cover or similar types of beneficial applications: *Provided*, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the Secretary of the Department of Environmental Protection, is put at risk.

(2) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(3) "Collected for commercial purposes" means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two, chapter twenty-four-a of this code.

(4) "Computer" means a desktop, personal computer or laptop computer, including the computer monitor. Computer does not include a personal digital assistant device, computer peripheral devices such as a mouse or other similar pointing device, a printer or a detachable keyboard.

(5) "Court" means any circuit, magistrate or municipal court.

(6) "Covered electronic device" means a television, computer or video display device with a screen that is greater than four inches measured diagonally. "Covered electronic device" does not include a video display device that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial or medical equipment.

(7) "Department" means the Department of Environmental Protection.

(8) "Litter" means all waste material, including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, covered electronic devices, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(9) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the secretary's rules promulgated pursuant to subsection (e), section three of this article.

WV Legislature

(10) "Manufacturer" means a person that is the brand owner of a covered electronic device or television sold or offered for sale in this state by any means, including transactions conducted through retail sales outlets, catalogs or the Internet.

(11) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

(12) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state or an area held open for unrestricted access by the general public.

(13) "Recyclable materials" means those materials that would otherwise become solid waste for disposal in a refuse disposal system and which may be collected, separated or processed and returned to the marketplace in the form of raw materials or products.

(14) "Recycling" means any action or process such as collecting, separating, baling, and/or shipping of recyclable materials for the purpose of reuse or conversion into raw materials or new products.

(15) "Recycling establishment" means an in-state establishment engaged in recycling of, or brokering of, reportable recyclable materials. Recycling establishment does not include any of the following:

(a) A retail establishment that bales cardboard packaging or collects other materials, for off-site shipment;

(b) An end user of reportable recyclable materials such as a paper mill, steel mill, foundry, or die caster that converts the reportable recyclable materials into new products or raw materials for conversion into new products; or

(c) A recycling establishment that sends all reportable recyclable materials to another in-state recycling establishment.

(16) "Reportable recyclable material" means materials which are separated from household and/or commercial waste and delivered to an establishment for recycling including, but not limited to, the following:

(a) Paper and paper products;

(b) Plastics and plastic products;

(c) Glass;

(d) Electronics;

(e) Ferrous metals;

WV Legislature

(f) Non-ferrous metals;

(g) Textiles; or

(h) Single stream recyclable materials that include any combination of the materials listed above.

"Reportable recyclable material" does not include any of the following:

(i) Materials that are directed to or received by a person subject to §61-3-49 of this code; or

(j) Materials generated from the shredding or dismantling of motor vehicles or parts from motor vehicles.

(17) "Remediate or remediation" means to remove all litter, solid waste and tires located above grade at a site: *Provided*, That remediation does not include clean up of hazardous waste.

(18) "Television" means any telecommunication system device that can receive moving pictures and sound broadcast over a distance and includes a television tuner or a video display device peripheral to a computer in which the display contains a television tuner.

(19) "Secretary" means the Secretary of the Department of Environmental Protection.

(20) "Video display device" means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of image sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion. Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving image on the screen. A "video display device" may use a cathode-ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, other image-projection technology or imaging display technologies.

(21) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(22) "Waste tire monofill or monofill" means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

(23) "Waste tire processing facility" means a solid waste facility or manufacturer that

www.legislature

accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling and/or marketing.

(24) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands.

(25) "Yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that materials, which due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, are not yard waste: *Provided*, That the same or similar waste generated by commercial agricultural enterprises is excluded.

WV Legislature

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.

(a) After July 1, 2005, the litter control and recycling programs heretofore operated and managed by the Division of Natural Resources shall transfer to the Department of Environmental Protection.

With the transfer of the West Virginia Litter Control and Recycling Programs from the jurisdiction of the Division of Natural Resources to the jurisdiction of the Department of Environmental Protection, all records, assets, and contracts, along with rights and obligations thereunder, obtained or signed on behalf of the Litter Control and Recycling Programs are hereby transferred and assigned to the Department of Environmental Protection.

(b) The Commissioner of the Division of Natural Resources and the Secretary of the Department of Environmental Protection shall determine which employees of the Division of Natural Resources will be transferred to the Department of Environmental Protection. All employees including administrators of the litter control and recycling programs are subject to being transferred to the Department of Environmental Protection. Employees in the classified service who have gained permanent status as of the effective date of this article, enacted during the 2005 regular session of the Legislature, will not be subject to further qualifying examination in their respective classifications by reason of the transfer required by the provisions of this section. Nothing contained in this section may be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in §29-6-1 et seq. of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in that article. The Division of Personnel shall work with the commission and secretary to efficiently transfer employees from the Division of Natural Resources to the Department of Environmental Protection.

(c) In addition to all other powers, duties, and responsibilities granted and assigned to the Secretary of the Department of Environmental Protection in this chapter and elsewhere by law, the secretary, in the administration of the West Virginia Litter Control Program created by this section, shall:

(1) Coordinate all industry and business organizations seeking to aid in the litter control and recycling effort;

(2) Cooperate with all local governments to accomplish coordination of local litter control and recycling efforts;

(3) Encourage, organize, coordinate, and increase public awareness of and participation in all voluntary litter control and recycling campaigns, including citizen litter watch programs,

WV Legislature

seeking to focus the attention of the public on the litter control and recycling programs of the state and local governments and of private recycling centers;

(4) Recommend to local governing bodies that they adopt ordinances similar to the provisions of §22-15A-4 of this code;

(5) Investigate the methods and success of techniques of litter control, removal, and disposal utilized in other states, and develop, encourage, organize, and coordinate local litter control programs funded by grants awarded pursuant to subsection (d) of this section utilizing such successful techniques;

(6) Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;

(7) Attract to the state persons or industries that purchase, process, or use recyclable materials;

(8) Contract for the development, production, and broadcast of radio and television messages promoting the West Virginia Litter Control Program. The messages should increase public awareness of and promote citizen responsibility toward the reduction of litter; and

(9) Encourage, organize, coordinate, and increase public awareness of, and participation in, a volunteer litter reporting program statewide.

(d) All authority to promulgate rules pursuant to §29A-3-1 et seq. of this code establishing criteria for awarding direct or matching grants for the study of available research and development in the fields of litter control, removal, and disposal, methods for the implementation of such research and development, and the development of public educational programs concerning litter control is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature: Provided, That any rule promulgated by the Division of Natural Resources relating to such grants shall remain in force and effect as though promulgated by the Department of Environmental Protection until the Secretary amends the rules in accordance with the provisions of §29A-3-1 et seq. of this code.

(e) All authority to promulgate rules pursuant to §29A-3-1 et seq. of this code designating public areas where litter receptacles shall be placed and the minimum number of litter receptacles in accordance with §22-15A-4(g) of this code is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature. Any rule promulgated by the Division of Natural Resources relating to littering receptacles shall remain in effect as if promulgated by the secretary until amended by the secretary.

WV Legislature

(f) Commencing on July 1, 2019, the secretary shall expend annually at least 30 percent of the moneys credited to the Litter Control Fund in the previous fiscal year for matching grants to counties and municipalities for the initiation and administration of litter control programs. The secretary shall promulgate rules pursuant to §29A-3-1 et seq. of this code establishing criteria for the awarding of matching grants.

(g) The Secretary of the Department of Environmental Protection in cooperation with the Commissioner of Highways, the Department of Commerce, the West Virginia State Police, the United States Forestry Service, and other local, state, and federal law-enforcement agencies shall be responsible for the administration and enforcement of all laws and rules relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys, streams, rivers, and any other private or public areas of the state. These other agencies shall make recommendations to the secretary, from time to time, concerning means and methods of accomplishing litter control consistent with the provisions of this chapter. The cooperation shall include, but not be limited to, contracts with the Commissioner of Highways to operate a litter control program.

(h) All other state agencies and local governments shall cooperate with the secretary in effecting the purposes of the litter control program.

WV Legislature

§22-15A-3a. Creation of Adopt-A-Stream Program required.

(a) The Adopt-A-Highway Program was established in the late 1980s to improve the quality of the state's environment by encouraging public involvement in the elimination of highway litter. That program is cosponsored by the Division of Highways and the Department of Environmental Protection, Rehabilitation Environmental Action Plan. Its objective is to save taxpayer money by increasing public awareness and to serve as an educational tool by focusing on the consequences of littering. The program offers volunteers the opportunity to take charge of their own environment by making a positive effort to create a cleaner, more aesthetic place in which to live.

In West Virginia there are currently 25,000 volunteers who regularly pick up litter on 4,000 miles of highway. They have been responsible for removing more than 40 million pounds of litter since the program began.

(b) As with the Adopt-A-Highway Program, individuals, families, churches, businesses, schools, civic organizations, government agencies, scouting groups, fraternities, and communities may participate in an Adopt-A-Stream Program, which the department shall create and implement. Participants 17 years of age or younger must be accompanied by an adult. Any stream or river within the state of West Virginia is eligible for adoption, with the exception of streams or rivers determined to be unsafe by the department. Adopted streams or river sections must be at least one mile long. Applications for adoptions will be reviewed and approved or denied at the department's discretion. The Litter Control Fund, or other sources of funding deemed appropriate by the secretary, may be used to support the Adopt-A-Stream Program.

(c) Adoptions are for a period of three years, during which time at least one cleanup is required per year. Collected litter will be placed at designated locations approved by the department. The department may coordinate with volunteers, local authorities, and state agencies for removal and disposal of collected litter. Garbage bags, safety training, and gloves are to be furnished by the program.

(d) Adopted streams or rivers may be identified by a sign at a location along the adopted section bearing the Adopt-A-Stream logo and the name of the adopter after the first cleanup has been completed. Volunteers who complete one required litter pickup within the first year of the three-year contract period shall be awarded a certificate of accomplishment signed by the secretary.

(e) Any stream obstruction or other cause for concern observed by volunteers may be reported to the Department of Environmental Protection, Division of Natural Resources, the State Conservation Committee, or the appropriate local county emergency manager.

(f) The secretary may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code.

WV Legislature

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; Litter Control Fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) A person may not place, deposit, dump, throw, or cause to be placed, deposited, dumped, or thrown any litter as defined in §22-15A-2 of this code, in or upon any public or private highway, road, street, or alley; any private property; any public property; or the waters of the state or within 100 feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) A person may not place, deposit, dump, throw, or cause to be placed, deposited, dumped, or thrown any litter from a motor vehicle or other conveyance or perform any act which constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown, or caused to be placed, deposited, dumped, or thrown from a motor vehicle, boat, airplane, or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane, or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter on his or her private property in an amount not exceeding 50 pounds in weight is not subject to the criminal provisions of this section.

(5) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than $100 nor more than $2,500, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than 100 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than $500 nor more than $3,000, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than 20 hours nor more than 120 hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size, but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than $2,500 nor more than $5,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or

WV Legislature

public property, or waters of the state, as designated by the court, for not less than 16 hours nor more than 200 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than $3,000 nor more than $5,500, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than 20 hours nor more than 220 hours, or both.

(7) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not less than $2,500 nor more than $25,000 or confinement in jail for not more than one year, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than $3,000 nor more than $11,000, or confinement in jail for not more than one year, or both. In addition, he or she may be guilty of creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the enforcement provisions of §22-15-15 of this code.

(8) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(9) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(10) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean-up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

(11) All law-enforcement agencies, officers, and environmental inspectors shall enforce compliance with this section within the limits of each agency’s statutory authority.

(12) A magistrate or municipal court judge may not dismiss an action brought under the provisions of this section without notification to the prosecuting attorney of that county of his or her intention to do so and affording the prosecuting attorney an opportunity to be heard.

(13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his or her own private property or rented or leased property or prohibits the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of §22-11-1 *et seq*. of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits any of these materials or substances to be placed, deposited,

WV Legislature

dumped, or thrown in a location that high water or normal drainage conditions will cause these materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter, or lessee intended to violate the provisions of this section: *Provided,* That if a landowner, renter, or lessee, private or otherwise, reports any placing, depositing, dumping, or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources, or the Department of Environmental Protection, the landowner, renter, or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the materials or substances.

(b) Any indication of ownership found in litter is prima facie evidence that the person identified violated the provisions of this section: *Provided,* That no inference may be drawn solely from the presence of any logo, trademark, trade name, or other similar mass reproduced things of identifying character appearing on the found litter.

(c) (1) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty of not less than $200 nor more than $2,000 as costs for clean up, investigation, and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

(2) The clerk of the circuit court, magistrate court, or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit 50 percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund known as the Litter Control Fund which was transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining 50 percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, clean up, and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to §22C-4-8 of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and §17C-14-14 of this code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed

WV Legislature

at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates, or otherwise controls any public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of this code shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the secretary shall be fined $30 per day of the violation.

WV Legislature

§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.

(a) Litter pickup and removal. --

(1) Each county commission and the Regional Jail Authority may establish a jail or prison inmate program including a regular litter pickup work regimen under proper supervision pursuant to section four, article fifteen, chapter seventeen of this code. Funding for these programs shall be from the Litter Control Fund. Funding requirements may include salaries for additional personnel needed for the program. The program may include the cooperative help of the Division of Highways or any other voluntary state, local, private, civic or public agency for personnel, equipment or materials in establishing a county or regionwide, continual program of inmate litter pickup. Upon final approval of the projected cost of the program for a given fiscal year, the secretary shall disburse the approved amount to the county or Regional Jail Authority. The funds will be used by the Authority to reimburse the county commission or Regional Jail Authority for its expenses related to the program and to pay other costs related to the use of inmates for litter pickup. Nothing contained herein shall preclude a county or counties from expending whatever additional funds its commission or commissions may deem appropriate from any other revenue source in furtherance of said program.

(2) All persons involved with litter pickup may separate identifiable recyclable materials from other litter collected. The funds resulting from the sale of those recyclable materials shall be returned to the Litter Control Fund.

(3) The county or regional solid waste authority may also contract with local governments, civic organizations or chief correctional officers in any county to implement litter pickup and removal pursuant to this act when the state offender workforce is not available. In such cases, the contract provisions shall require that identifiable recyclable materials shall be separated from other litter collected, with resulting funds returned to the Litter Control Fund. Priority shall be given to those contracts that maximize the use of community service hours by inmates and youth employment programs.

(b) Education. --

(1) The Department of Education in cooperation with the Department of Environmental Protection shall distribute educational materials to the schools based on the goals of litter clean up and proper solid waste disposal, the rationale for the goals and how primary and secondary school students can contribute to the achievement of the goals. The Department of Education shall further incorporate this information into the curriculum of the public school system as appropriate.

(2) The Division of Highways and local governments shall conduct public awareness programs to notify the public of the provisions of this law and how they can participate, to

WV Legislature

inform them as to the rationale behind the provisions of this law, to advise them of other avenues for achievement of the noted goals and to encourage their participation.

(3) The Department of Environmental Protection and the Solid Waste Management Board shall provide technical assistance to local governments in the implementation of this law.

(c) Government recycling responsibilities. --

(1) All state agencies and regional planning councils may establish and implement aluminum container, glass and paper recycling programs at their public facilities. To the extent practicable, programs for other metals, plastics, covered electronic devices, rubber and other recyclable materials may be established and implemented. The moneys collected from the sale of such materials shall be deposited and accounted for in the Litter Control Fund pursuant to the authority of section four of this article.

(2) To further promote recycling and reduction of the waste stream, county and municipal governments shall consider the establishment of recycling programs as provided in this section in the operation of their facilities and shall evaluate the cost effectiveness of:

(A) Procedures that separate identifiable recyclable materials from solid waste collected; and

(B) Programs that provide for:

(i) The establishment of a collection place for recyclables at all landfills and other interim solid waste collection sites and arrangements for the material collected to be recycled;

(ii) Public notification of such places and encouragement to participate;

(iii) The use of rate differentials at landfills to facilitate public participation in on-site recycling programs.

(3) In preparing the recycling plan as required under this subsection, the county may address methods for the separate collection and recycling of covered electronic devices, including efforts by the county with manufacturers, recyclers, retailers or other local governments for the collection and recycling of covered electronic devices.

(d) Each affected agency and local government shall monitor and evaluate the programs implemented pursuant to this law.

(e) The secretary shall submit a report to the Speaker of the House and the President of the Senate not later than March 1, 2006, and every five years thereafter regarding the effectiveness of the programs authorized by this law.

WV Legislature

§22-15A-6. Assistance to solid waste authorities.

The Secretary may expend funds from the Litter Control Fund established pursuant to section four of this article to assist county and regional solid waste authorities in the formulation of their comprehensive litter and solid waste control plans pursuant to section eight, article four, chapter twenty-two-c of this code and in the construction and maintenance of approved commercial solid waste facilities authorities which would in the opinion of the Secretary be unable to construct or maintain an approved commercial solid waste facility without grant funds.

WV Legislature

§22-15A-7. Pollution prevention and open dumps.

(a) The Secretary shall establish the Pollution Prevention and Open Dump (PPOD) Program to encourage the proper disposal of commercial and residential solid waste and to undertake all reclamation, clean up and remedial actions necessary to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner. The program shall seek to eliminate open dumps, which often include waste tires and to recycle as many items as possible from these reclamation efforts. This program shall be funded through the Solid Waste Reclamation and Environmental Response Fund established in section eleven, article fifteen of this chapter.

(b) Authorized representatives of the department have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of an open dump, to determine the feasibility of the reclamation or prevention of such adverse effects and to conduct reclamation activities provided herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

WV Legislature

§22-15A-8. Waste tires prohibited in certain places; penalty.

The Waste Tire Remediation Program heretofore under the jurisdiction of the Division of Highways is transferred to the Department of Environmental Protection effective upon enactment of this article by the Legislature during the regular session of two thousand five.

(a) No person shall, within this state, place, deposit or abandon any waste tire or part thereof upon the right-of-way of any public highway or upon any other public property nor deposit or abandon any waste tire or part thereof upon any private property unless it is at a licensed monofill, solid waste facility or at any other business authorized by the Department of Environmental Protection to accept, process, manufacture or remanufacture waste tires: Provided, That the Secretary may temporarily accumulate as many waste tires as he or she deems necessary at any location or locations necessary to effectuate the purposes of this article.

(b) No person, except those persons who have received and maintain 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 more than one hundred waste tires for beneficial use without obtaining a license or permit from the Department of Environmental Protection.

(c) Any person who violates any provision of this section shall be guilty of creating an open dump and subject to enforcement actions or prosecution under the provisions of article fifteen of this chapter.

WV Legislature

§22-15A-9. Creation of the A. James Manchin Fund; proceeds from sale of waste tires; fee on issuance of certificate of title.

(a) There is continued in the state Treasury a special revenue fund known as the A. James Manchin Fund. All moneys appropriated, deposited or accrued in this Fund shall be used exclusively for remediation of waste tire piles as required by this article, for the tire disposal program established under section ten of this article or for the purposes of subsection (h), section ten of this article or for the purposes of subsection (c), section eleven of this article. The Commissioner of the Division of Highways shall work with and may use moneys in the fund to contract with the Secretary of the Department of Environmental Protection to accomplish the remediation of waste tire piles. The Fund consists of the proceeds from the sale of waste tires; fees collected by the Division of Motor Vehicles as provided in section sixteen, article ten, chapter seventeen-a of this code; any federal, state or private grants; legislative appropriations; loans; and any other funding source available for waste tire remediation. Any unprogrammed balance remaining in the Fund at the end of any state fiscal year shall be transferred to the state Road Fund.

(b) No further collections or deposits shall be made after the Commissioner of the Division of Highways certifies to the Governor and the Legislature that the remediation of all waste tire piles that were determined by the Commissioner to exist on July 1, 2001, has been completed and that all infrastructure bonds issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code have been paid in full or legally defeased.

(c) If infrastructure bonds are not issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state on or before December 31, 2006, all further collections and deposits to the A. James Manchin Fund which are not programmed for remediation or disposal shall be transferred to the state road fund at the end of each fiscal year.

WV Legislature

§22-15A-10. Department to administer funds for waste tire remediation; rules authorized; duties of secretary.

(a) The department shall administer all funds made available to the department by legislative appropriation or by funds made available by the Division of Highways, as well as federal, state or private grants for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles.

(b) All authority to promulgate legislative rules necessary to implement the provisions of this article is transferred from the Division of Highways to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 of the Legislature. Any legislative rules promulgated by the Commissioner of the Division of Highways in furtherance of the waste tire remediation program established in former article twenty-four, chapter seventeen of this code shall remain in force and effect as if promulgated by the secretary until they are amended in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(c) The secretary also has the following powers:

(1) To apply and carry out the provisions of this article and the rules promulgated under this article.

(2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the Governor.

(d) The secretary shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.

(e) The secretary may contract with the Department of Health or the Division of Corrections, or both, to remediate or assist in remediation of waste tire piles throughout the state. Use of available Division of Corrections work programs shall be given priority status in the contract process so long as such programs prove a cost-effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped upon the discovery of any potentially hazardous material at a remediation site. The department shall respond to the discovery in accordance with the provisions of article nineteen of this chapter.

(g) The secretary may establish a tire disposal program within the department to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at locations designated by the department that have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The secretary may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the

WV Legislature

department. The secretary may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The secretary may in his or her discretion authorize commercial businesses to participate in the collection program: *Provided*, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The Commissioner of the Division of Highways may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin Fund created by section nine of this article to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: *Provided*, That a waste tire processing facility shall be determined by the Solid Waste Management Board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: *Provided, however*, That the waste tire processing facility shall have a capital cost of not less than $300 million and the council for community and economic development shall determine that the waste tire processing facility is a viable economic development project of benefit to the state's economy.

WV Legislature

§22-15A-11. Disposal of waste tires.

(a) The department may sell waste tires collected during remediation of waste tire piles at public auction or to a waste tire monofill, waste tire processing facility or business authorized by the Department of Environmental Protection to accept, store, use or process waste tires.

(b) If there is no market in West Virginia for the sale of waste tires the department may sell them at any available market.

(c) If there is no market for the sale of waste tires the department may dispose of them in any lawful manner.

WV Legislature

§22-15A-12. Remediation; liability for remediation and court costs.

(a) Any person who has, prior or subsequent to the effective date of this act, illegally disposed of waste tires or has waste tires illegally disposed on his or her property shall be liable for:

(1) All costs of removal or remedial action incurred by the department;

(2) Any other necessary costs of remediation, including properly disposing of waste tires and damage to adjacent property owners; and

(3) All costs incurred in bringing civil actions under this article.

(b) The department shall notify any person who owns real property or rights to property where a waste tire pile is located that remediation of the waste tire pile is necessary. The department shall make and enter an order directing such person or persons to remove and properly dispose of the waste tires. The department shall set a time limit for completion of the remediation. The order shall be served by registered or certified mail, return receipt requested, or by a county sheriff or deputy sheriff.

(c) If the remediation is not completed within the time limit or the person cannot be located or the person notifies the department that he or she is unable to comply with the order, the department may expend funds, as provided herein, to complete the remediation. Any amounts so expended shall be promptly repaid by the person or persons responsible for the waste tire pile. Any person owing remediation costs or damages shall be liable at law until such time as all costs or damages are fully paid.

(d) Authorized representatives of the department have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a waste tire pile, to determine the feasibility of the remediation or prevention of such adverse effects and to conduct remediation activities provided herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

(e) There is hereby created a statutory lien upon all real property and rights to the property from which a waste tire pile was remediated for all reclamation costs and damages incurred by the department. The lien created by this section shall arise at the later of the following:

(1) The time costs are first incurred by the department; or

(2) The time the person is provided, by certified or registered mail or personal service, written notice as required by this section.

The lien shall continue until the liability for the costs or judgment against the property is

WV Legislature

satisfied.

(f) Any person, who is a bona fide purchaser of real property prior to July 1, 2001, who did not cause, permit or profit from the illegal disposal of waste tires on the property is only liable for the costs of remediation to the extent that the fair market value of the property, when remediation is completed, exceeds the fair market value of the property that existed on July 1, 2001. The department shall have a cause of action against any previous owner who caused, permitted, contributed or profited from the illegal disposal of waste tires on the property for the difference in the amount recovered from the purchaser and the cost of remediation.

(g) Liens created by this section shall be duly recorded in the office of the clerk of the county commission in the county where the real property is located and be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served. The department shall have the power and authority to enforce such liens in a civil action to recover the money due for remediation costs and damages plus court fees and costs and reasonable attorney's fees.

(h) The department may foreclose upon the premises by bringing a civil action, in the circuit court of the county where the property is located, for foreclosure and an order to sell the property to satisfy the lien.

(i) Any proceeds from any sale of property obtained as a result of execution of a lien or judgment under this section for remediation costs, excluding costs of obtaining judgment and perfecting the lien, shall be deposited into the A. James Manchin Fund of the state Treasury.

(j) The provisions of this section do not apply and no lien may attach to the right-of-way, easement or other property interest of a utility, whether electric, gas, water, sewer, telephone, television cable or other public service, unless the utility contributed to the illegal tire pile.

(k) Upon determining the existence of a waste tire pile, the department shall file a notice of the location of the waste tire pile in the office of the county clerk in the county where property containing a waste tire pile is situate. The department shall immediately file the notice for all property known to have waste tire piles as of the day the Legislature enacted the amendment to this section during the 2005 legislative session. The notice shall contain the property owner's name, a location and description of the property and the waste tire pile and the potential liability for remediation. The county clerk shall record the notice in the same manner as a lien and index the notice by the name of the property owner.

WV Legislature

§22-15A-13. Injunctive relief; additional remedy.

In addition to all other remedies provided in this article, the Attorney General of this state, the Department, the prosecuting attorney of any county where any violation of any provision of this article occurs, or any citizen, resident or taxpayer of the county where any violation of any provision of this article occurs, may apply to the circuit court, or the judge thereof in vacation, of the county where the alleged violation occurred, for an injunction to restrain, prevent or abate the maintenance and storage of waste tires in violation of any provision of this article, or the violation of any other provision of this article. In seeking an injunction, it is not necessary for the Secretary or any state agency seeking an injunction under this section to post bond.

WV Legislature

§22-15A-14. Authority of Commissioner of Bureau for Public Health.

Although the secretary is primarily responsible for remediation of waste tire piles under the provisions of this article, the Commissioner of the Bureau for Public Health may enforce the public health laws in any instance where the Commissioner of the Bureau for Public Health determines there is an imminent and substantial endangerment to the public health.

WV Legislature

§22-15A-15.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§22-15A-16. Recycling goals.

It is the goal of this State to establish a base recycling rate which shall be evaluated every five years to aid in implementation of recycling initiatives aimed at increasing this rate. In order to evaluate the State's recycling rate, the Department shall create and implement a process by which recycling establishments shall report, at a minimum, to the State the following information:

(a) The recycling establishment's name, physical location, postal mailing address, e-mail address, telephone number, contact person, and amount and kind of reportable recyclable material handled at the recycling establishment; and

(b) The amount of each category of reportable recyclable material received at the recycling establishment and the amount of recyclable material shipped from the recycling establishment.

(c) A recycling establishment shall report the previous calendar year's data to the Department no later than March 1, 2026, and each year thereafter.

(d) The secretary may propose legislative rules pursuant to § 29A-3-1 *et seq*. of this code.

WV Legislature

§22-15A-17. Recycling plans.

(a) Each county or regional solid waste authority, as part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section eight, article four, chapter twenty-two-c of this code, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section sixteen of this article.

(b) Each recycling plan required by this section shall include, but not be limited to:

(1) Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

(2) Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

WV Legislature

§22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

(a) On or before October 18, 1992, each municipality described in subsection (b) of this section shall submit a proposal to the Solid Waste Management Board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The Solid Waste Management Board shall review the submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan, and the statewide management plan. The Solid Waste Management Board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) On or before October 18, 1993, each municipality with a population of 10,000 or more people, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Implementation shall be phased in by July 1, 1995. Such program shall include, at a minimum, the following:

(1) An ordinance adopted by the governing body of the municipality requiring that each person, partnership, corporation, or other entity in the municipality shall separate at least three recyclable materials, as deemed appropriate by the municipality, from other solid waste: *Provided*, That the list of recyclables to be separated may be adjusted according to whether the generator is residential, commercial or other type of establishment.

(2) A scheduled day, at least one per month, during which separated materials are to be placed at the curbside, or similar location, for collection.

(3) A system that collects recyclable materials from the curbside, or similar location, at least once per month: *Provided*, That to encourage full participation, the program shall, to the maximum extent possible, provide for the collection of recyclables at the same rate of frequency, and simultaneous with, the regular collection of solid waste.

(4) Provisions to ensure compliance with the ordinance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional, or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality and incentives and penalties.

(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs, and maximize

the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation, and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing, or disposal of solid waste within the county shall accept only solid waste from which recyclable materials in accordance with the county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to §22-15A-17 of this code shall, to the extent practicable, be incorporated in the county's comprehensive recycling program.

(d) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bimetallic cans, aluminum, glass, paper, and such other solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.

(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon 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, shall apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address, and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than 70 days before the election, order that the issue be placed on the ballot and referendum held at the next primary or general election to determine whether it is the will of the voters of the county that a policy of comprehensive recycling of solid waste be established in the county: *Provided*, That the petition bearing the necessary signatures has been filed with the county

WV Legislature

commission at least 100 days prior to the election.

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

"Shall the county commission be required to establish a comprehensive recycling program for solid waste in _____ County, West Virginia?

For Recycling

Against Recycling

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

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within 180 days of certification, establishing a comprehensive recycling program for solid waste in the county: *Provided*, That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, the policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the county commission be required to terminate the comprehensive recycling program for solid waste in _____ County, West Virginia?

Continue Recycling

End Recycling

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

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within 90 days of certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, the ordinance shall not

WV Legislature

be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than 30,000 persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: *Provided*, That a materials recovery facility shall be subject to approval by both the Public Service Commission and the Solid Waste Management Board upon a finding by both the Public Service Commission and the Solid Waste Management Board that the establishment of a materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

WV Legislature

§22-15A-19. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) *Imposition*. — A recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of $2 per ton or part of a ton of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

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

(1) The fee 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 fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall 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 they are remitted to the Tax Commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount that 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 fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the 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 the fees in the account until remitted to the Tax Commissioner. The 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 fee imposed by this section and the owner is secondarily liable for remittance of the fee 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 fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly

WV Legislature

and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by §11-10-1 *et seq*. of this code may be enforced against them and against the association or corporation which they represent; and

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

(c) *Regulated motor carriers*. — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under §24A-1-1 *et seq*. 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 the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the 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*. — For purposes of this section, "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 facility within this state that collects the fee imposed by this section.

Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions*. — The following transactions are exempt from the fee 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; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the secretary by rule as exempt from the fee imposed pursuant to §22-15-11 of this code.

(f) *Procedure and administration*. — Notwithstanding the provisions of §11-10-3 of this code,

WV Legislature

each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq*. of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) *Criminal penalties*. — Notwithstanding §11-9-2 and §11-9-3 through §11-9-17, inclusive, of this code apply to the fee imposed by this section with like effect as if the sections were the only fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds*. — The proceeds of the fee collected pursuant to this section shall be deposited by the Tax Commissioner, at least monthly, in a special revenue account designated as the Recycling Assistance Fund which is hereby continued and transferred to the Department of Environmental Protection. The secretary shall allocate the proceeds of the fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties, and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. The secretary shall promulgate rules, in accordance with. §29A-3-1 *et seq*. of this code, containing application procedures, guidelines for eligibility, reporting requirements, and other matters considered appropriate: *Provided*, That persons responsible for collecting, hauling, or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, are not eligible to receive grants under the provisions of this article;

(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried natural resources police officers;

(3) Twelve and one-half percent of the total proceeds shall be directly allocated to the solid waste planning fund;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the Solid Waste Reclamation and Environmental Response Fund, established pursuant to §22-15-11 of this code, to be expended by the Department of Environmental Protection to assist in the funding of the pollution prevention and open dumps program which encourages recycling, reuse, waste reduction, and clean-up activities; and

(5) Twelve and one-half percent of the total proceeds shall be deposited in the Hazardous Waste Emergency Response Fund established in §22-19-1 *et seq*. of this code.

WV Legislature

§22-15A-20. Establishment of state recycling program for solid waste.

(a) In the absence of either a municipal or a comprehensive county recycling plan pursuant to section eighteen of this article, all agencies and instrumentalities of the state, all primary and secondary schools, where practicable, and private colleges and universities shall implement programs to recycle solid waste. To carry out the purposes of this section, any affected party may be eligible to receive grants pursuant to subdivision (1), subsection (h), section nineteen of this article. Such programs shall include, but not be limited to, the following:

(1) Source separation of at least two recyclable materials; and

(2) In the absence of either a municipal program or a comprehensive county recycling plan pursuant to section eighteen of this article, collection and transportation of source separated recycled materials to an appropriate location.

(b) For purposes of this section, the Department shall be designated the lead agency to ensure proper compliance and coordination of any such recycling program.

WV Legislature

§22-15A-21. Procurement of recycled products.

[Repealed].

WV Legislature

§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) It is unlawful to dispose of lead-acid batteries in a solid waste landfill in West Virginia.

(b) It is unlawful to dispose of tires in a solid waste landfill in West Virginia except for waste tires collected as part of the departments waste tire remediation projects or other collection efforts in accordance with the provisions of this article or the pollution prevention and open dump program or other state-authorized remediation or clean up programs: Provided, That waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediation or clean up program has determined there is no reasonable alternative available.

(c) It is unlawful to dispose of yard waste in a solid waste facility in West Virginia: Provided, That the prohibitions do not apply to a facility designed specifically to compost yard waste or otherwise recycle or reuse yard waste: Provided, however, That reasonable and necessary exceptions to the prohibitions may be included as part of the rules promulgated pursuant to subsection (f) of this section.

(d) Effective July 1, 2016, covered electronic devices, as defined in section two of this article, may not be disposed of in a solid waste landfill in West Virginia, if a county or regional solid waste authority determines there is a cost effective recycling alternative for handling covered electronic devices.

(e) The Solid Waste Management Board shall design a comprehensive program to provide for the proper handling of yard waste, lead-acid batteries and tires.

(f) The secretary shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to implement and enforce the program for yard waste, lead-acid batteries and tires.

(g) The secretary's rule shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

(1) Disposal in a publicly or privately operated commercial or noncommercial composting facility;

(2) Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property;

(3) Disposal by open burning, where not prohibited; or

(4) Disposal in a publicly or privately operated landfill, only where none of the foregoing options are available. The manner of disposal shall only involve small quantities of domestic yard waste generated only from the property of the participating resident or tenant.

WV Legislature

§22-15A-23. Recycling facilities exemption.

Recycling facilities, as defined in section two, article fifteen of this chapter, whose only function is to accept free-of-charge, buy or transfer source-separated material or recycled material for resale or transfer for further processing are exempt from the provisions of said article and article four of chapter twenty-two-c and sections one-c and one-f, article two, chapter twenty-four of this code.

WV Legislature

§22-15A-24. Covered manufacturers; prohibited sales; effective date.

(a) This section, along with sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine of this article apply to a manufacturer that manufactured an average of more than one thousand covered electronic devices per year in the three-year period immediately preceding the initial registration required in section twenty-five of this article.

(b) On or after July 1, 2009, a manufacturer may not sell or lease or offer for sale or lease to any person in the state a new covered electronic device or television unless:

(1) The covered electronic device is labeled with the name of the manufacturer or the manufacturer's brand label; and

(2) The manufacturer has registered with and submitted a registration fee to the secretary as provided in section twenty-five of this article.

(c) If a manufacturer is subject to the requirements of this section and sections twenty-five and twenty-six of this article, a retailer may not sell or lease or offer for sale or lease to any person in the state a new covered electronic device unless the manufacturer has complied with the requirements of this section and sections twenty-five and twenty-six of this article.

WV Legislature

§22-15A-25. Manufacturer registration; registration fees; creating the Covered Electronic Devices Takeback Fund.

(a) Each manufacturer wishing to sell or lease covered electronic devices shall register with the secretary no later than January 1, 2009, and each year thereafter. The secretary shall provide a registration form which at a minimum shall include:

(1) The name, address and telephone number of the manufacturer;

(2) The brand names under which the manufacturer sells or offers for sale covered electronic devices or televisions in the state;

(3) Whether the manufacturer has implemented a takeback or recycling program for its covered electronic devices or televisions or both;

(4) If the manufacturer has implemented a takeback or recycling program for its covered electronic devices, the manufacturer must provide a toll-free number and website address that provides information about the takeback or recycling program, including a detailed description of how a person may return a covered electronic device for recycling, refurbishing or reuse.

(5) The secretary may request additional information necessary to further the goals of this program.

(b) One year after the implementation of the program and each year thereafter, the manufacturer must submit a report to the secretary on the implementation of the program during the prior year, including:

(1) The total weight of covered electronic devices received by the program from West Virginia during the prior year;

(2) The total number of covered electronic devices from West Virginia recycled, refurbished and reused during the prior year either by actual count or by using average product weights;

(3) The processes and methods used to recycle, refurbish or reuse the covered electronic devices received from West Virginia; and

(4) If the manufacturer has implemented a covered electronic device or television takeback program, be updated prior to any significant change in the program.

(c) The covered electronic device manufacturer registration fee is:

(1) $10,000 for the initial registration by the manufacturer that has not implemented a takeback program and is due no later than January 1, 2009;

(2) $3,000 for the initial registration by the manufacturer that has implemented a takeback

WV Legislature

program and is due no later than January 1, 2009;

(3) $5,000 for each subsequent annual registration by a manufacturer that did not have an implemented covered electronic device takeback program in the prior year; and

(4) $500 for each subsequent annual registration by a manufacturer that had implemented and maintained a covered electronic device takeback program in the prior year.

(d) All registration fees collected shall be deposited in a special account in the state Treasury to be known as the Covered Electronic Devices Takeback Fund which is to be administered by the secretary. Expenditures from the fund shall be for recycling grants to counties and municipalities for recycling or other programs that divert covered electronic devices from the waste stream and for the secretary's administrative expense in administering the requirements of this section and sections twenty-four, twenty-six, twenty-seven and twenty-eight of this article. Expenditures are not authorized from collections but are to be made only in accordance with the appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(e) The secretary shall review the registration submitted under this section. If the registration does not meet the requirements of this section and the rules adopted by the secretary, the secretary shall notify the manufacturer of the insufficiency.

(f) Within sixty days after receipt of a notice of insufficiency, the manufacturer shall submit a revised registration that addresses the insufficiencies noted by the secretary.

(g) The secretary shall maintain a list of registered covered electronic device manufacturers.

(h) The secretary shall publish the list of registered covered electronic device manufacturers online to provide retailers easy access to the manufacturers authorized to sell their products in this state.

WV Legislature

§22-15A-26. Manufacturers' takeback programs.

(a) Before a manufacturer may offer a covered electronic device for sale or lease in this state, the manufacturer may:

(1) Adopt and implement a takeback program; and

(2) Affix a permanent, readily visible label to the covered electronic device or television with the manufacturer's brand.

(b) The takeback program shall enable a consumer to recycle covered electronic devices or televisions without paying a separate recycling fee at the time of recycling and shall include provisions for:

(1) The manufacturer's collection from a consumer of any covered electronic device that has reached the end of its useful life and is labeled with the manufacturer's brand; and

(2) Recycling or reuse of covered electronic devices collected under subdivision (1) of this section.

(c) The collection of covered electronic devices provided under the takeback program must be reasonable, convenient and available to consumers in the state and designed to meet the collection needs of consumers in the state. Examples of collection methods that alone or combined meet the convenience requirements of this section include:

(1) A system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning covered electronic devices by mail at no charge to the consumer.

(2) A system using a physical collection site that the manufacturer or the manufacturer's designee operates and to which the consumer may return covered electronic devices.

(3) A system using collection events held by the manufacturer or the manufacturer's designee at which the consumer may return covered electronic devices.

(d) Collection services under this section may use existing collection infrastructure for handling covered electronic devices and should encourage the inclusion of systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in this section, either individually, by working together with a group of manufacturers or by working with others, it shall be deemed to meet the convenience requirements of this section.

(e) The takeback program shall include information for the consumer on how and where to return the manufacturer's covered electronic device. The manufacturer shall include collection, recycling and reuse information on the manufacturer's publicly available website.

WV Legislature

The manufacturer shall provide collection, recycling and reuse information to the secretary. The manufacturer may include collection, recycling and reuse information in the packaging or in the other materials that accompany the manufacturer's covered electronic devices when the equipment is sold.

(f) If more than one person is a manufacturer of a certain brand of covered electronic devices as defined in section two of this article, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this article for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the covered electronic devices of that brand, the secretary may consider any of those persons to be the responsible manufacturer for purposes of this section and sections twenty-four, twenty-five, twenty-six and twenty-seven of this article.

WV Legislature

§22-15A-27. Civil actions and administrative fines; powers and duties of secretary.

(a) Civil action. -- In addition to being subject to injunctive relief under this article, a manufacturer who violates any provision of section twenty-four or twenty-five of this article or of any rule adopted pursuant to said sections is liable for a civil penalty not to exceed $10,000 to be collected in a civil action brought by the secretary. Venue for such actions shall be in the circuit court of Kanawha County. Each day a violation occurs is a separate violation.

(b) Administrative action. -- (1) In addition to any other remedies available at law and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the secretary may impose a penalty for violation of any provision of section twenty-four or twenty-five of this article or any rule adopted thereunder. The secretary's decision may be appealed to the Environmental Quality Board.

(2) The penalty imposed on a person under this subsection shall be up to $1,000 for each violation, but not to exceed a total of $50,000 a year. Each day a violation occurs is a separate violation under this subsection.

(3) Any penalty imposed under this subsection is payable to the State of West Virginia and collectible in any manner provided by law for the collection of debts.

(4) Any penalty collected under this section shall be placed in the Covered Electronic Devices Takeback Fund.

(c) Powers and duties of secretary. -- The secretary may conduct audits and inspections to determine compliance with the provisions of sections twenty-four and twenty-five of this article and may take enforcement action as provided herein. The secretary may remove a manufacturer from the registration list for failure to pay any penalty imposed under this section and upheld on appeal.

WV Legislature

§22-15A-28. Retailer penalties.

(a) The secretary may assess against any retailer that sells covered electronic devices not authorized for sale in this state a penalty up to $500 for each violation, but not to exceed $5,000 total for the year. The secretary's decision may be appealed to the Environmental Quality Board.

(b) A fine under subsection (a) of this section may be assessed only after the retailer that committed the violation has been issued three warnings from the secretary regarding the violation.

(c) Each day on which a violation occurs or continues is a separate violation under this section.

(d) All penalties assessed under this section shall be deposited into the Covered Electronic Devices Takeback Fund.

WV Legislature

§22-15A-29. Rulemaking.

The secretary shall propose for promulgation emergency and legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of sections twenty-four through twenty-eight, inclusive, of this article by January 1, 2009.

WV Legislature

§22-15A-30. Reclamation of Abandoned and Dilapidated Properties Program.

(a) To assist county commissions, municipalities, urban renewal authorities created pursuant to §16-18-1 *et seq*. of this code, and land reuse agencies and municipal land banks created pursuant to §31-18E-1 *et seq*. of this code, in their efforts to remediate abandoned, blighted, and dilapidated structures or properties as provided in this code, the Department of Environmental Protection may develop a program called the Reclamation of Abandoned and Dilapidated Properties Program. Using the fund established in subsection (b) of this section, the Department of Environmental Protection may work with county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks to implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for sites, and recommend actions county commissions or municipalities may take to remediate abandoned and dilapidated structures in their communities.

(b) There is created in the State Treasury a special revenue fund known as the Reclamation of Abandoned and Dilapidated Properties Program Fund. The fund shall be comprised of any money granted by charitable foundations, allocated by the Legislature, allocated from federal agencies, and earned from the investment of money held in the fund, and all other money designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund but shall remain in the account and be available for expenditure in succeeding fiscal years.

(c) The fund, to the extent that money is available, may be used solely to assist county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks to remediate abandoned and dilapidated structures and properties by demolishing, deconstructing, or redeveloping them together with predevelopment expenses related thereto and other activities as authorized by a charitable grant or legislative appropriation. The fund may also be used to defray costs incurred by the Department of Environmental Protection in administering the provisions of this section. However, no more than five percent of money transferred from the Solid Waste Facility Closure Cost Assistance Fund may be used for administrative purposes.

(d) The Department of Environmental Protection, in consultation with the State Fire Marshal, Insurance Commissioner, the Auditor, the Secretary of Revenue, and the Legislative Auditor, shall conduct a review of the needs of county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks. On or before December 31, 2023, the Department of Environmental Protection shall submit to the Joint Committee on Government and Finance a comprehensive report of that review, along with recommendations that are substantiated by the findings of the review that may be taken to meet the needs of the state in demolishing and redeveloping abandoned and dilapidated structures and properties.

(e) Statewide contracts. — The Department of Environmental Protection may cooperate with

WV Legislature

the Purchasing Division of the Department of Administration to establish one or more statewide contracts for services to be utilized by county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks to implement the purposes of this section.

(f) The Department of Environmental Protection may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, to include, but not be limited to, governing the disbursement of money from the fund, establishing the Reclamation of Abandoned and Dilapidated Properties Program, directing the distribution of money from the fund, entering contracts statewide contracts, and establishing criteria for eligibility to receive money from the fund.

(g) Nothing in this section shall be construed to limit, restrain, or otherwise discourage this state and its political subdivisions from disposing of abandoned and dilapidated structures in any other manner provided by the laws of this state.

WV Legislature