WEST VIRGINIA CODE CHAPTER 22 ARTICLE 16

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§22-16-1. Legislative findings and purpose.

The Legislature finds that:

There are numerous landfills throughout the state that must be closed because they cannot be operated in an environmentally sound manner;

The permittees of many of the landfills that will be closing do not have the financial resources to close their landfills in a manner that is timely and environmentally sound;

As long as these landfills remain open, the threat of continuing harm to the environment and the health and safety of the citizens of West Virginia exists, and the cost to remediate their adverse effects will continue to grow;

The untimely and disorderly closure of these landfills represents a significant threat to the health and safety of the people of West Virginia and its environment; and

It is in the best interests of all the citizens of this state to provide a mechanism to assist the permittees of these landfills in properly closing them.

Therefore, it is the purpose of this article to provide an assistance program that will be available to permittees of landfills that will facilitate the closure of these landfills in a timely and environmentally sound manner.

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§22-16-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

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

(2) "Cost of project" includes the cost of the services authorized in sections three and fifteen of this article, property, material and labor which are essential thereto, financing charges, interest during construction and all other expenses, including legal fees, trustees', engineers' and architects' fees which are necessarily or properly incidental to the program;

(3) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated duties or authority pursuant to sections six or eight, article one of this chapter.;

(4) "Landfill" means any solid waste facility for the disposal of solid waste on land, and also means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located;

(5) "Permittee" means a person who has or should obtain a permit for a commercial solid waste facility that is a landfill;

(6) "Project" means the providing of closure assistance to one or more landfills under this article.

The definitions provided in section two, article fifteen of this chapter, to the extent they are applicable, apply in this article.

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§22-16-3. Commercial solid waste landfill closure assistance program.

(a) There is established within the Division of Environmental Protection the commercial solid waste landfill closure assistance program. The purpose of the program is to provide assistance for the closure of landfills which are required to cease operations pursuant to the closure deadlines provided for in this chapter.

(b) Upon the acceptance of an application of the permittee of a solid waste landfill that satisfies the requirements in section ten of this article, the director shall provide, in accordance with the provisions of this article, and to the extent that funds are available, the following closure related services:

(1) Closure design, including an analysis of the effects of the landfill on groundwater and the design of measures necessary to protect and monitor the groundwater;

(2) Construction of all closure-related structures necessary to provide sufficient leachate management, sediment and erosion control, gas management, groundwater monitoring and final cover and cap, all to meet the closure-related requirements of article fifteen of this chapter and rules promulgated pursuant thereto; and

(3) All surface water and groundwater monitoring activities required pursuant to articles eleven and fifteen of this chapter and applicable rules promulgated thereunder.

(c) To the extent that there are funds available in the fund established in section twelve of this article or subdivision (3), subsection (h), section eleven, article fifteen of this chapter, the director may take remedial actions necessary to protect the groundwater and surface water, other natural resources and the health and safety of the citizens of this state.

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§22-16-4. Solid waste assessment fee; penalties.

(a) *Imposition*. — A solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of $3.30 per ton beginning July 1, 2021, $3.10 per ton beginning July 1, 2022, $2.90 per ton beginning July 1, 2023, $2.70 per ton beginning July 1, 2024, and $2.50 per ton beginning July 1, 2025, and thereafter or like ratio on any part of a ton of solid waste, except as provided in subsection (e) of this section: *Provided*, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that the facility is required by the Public Service Commission to set aside for the purpose of closure of that portion of the facility required to close by article fifteen of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(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 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 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 shall remain 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

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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 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 as 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 chapter 24A of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of 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) *Definitions*. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste 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;

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(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 director as exempt from the solid waste assessment fee; and

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

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

(h) *Dedication of proceeds*. — (1) The proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to §22-16-12 of this code: *Provided*, That the director may transfer up to 50 cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected on or after July 1, 1998, to the solid waste enforcement fund established pursuant to §22-15-11 of this code.

(2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to §22-16-12 of this code.

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§22-16-5. Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The solid waste management board is hereby empowered to issue, from time to time, solid waste closure revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance, in whole or in part, the closure of solid waste landfills by the division pursuant to the provisions of this article, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues pledged for the payment of bonds and notes issued pursuant to this section, and shall not exceed in the aggregate the sum of $150,000,000.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste closure revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes are obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board is immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the board, shall bear such dates and shall mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the board may authorize. The board may sell such bonds and notes at public or private sale, at the price the board determines. The bonds and notes shall be executed by the chair and vice chair of the board, both of whom may use facsimile signatures. The official seal of the board or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached thereto shall bear the signature or facsimile signature of the chair of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery and, in case the seal of the board has been changed after a

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facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the board to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the board; a covenant to fix, alter and collect rentals, fees, service charges and other charges so that pledged revenues will be sufficient to pay the cost of projects as provided in this article, related to closure activities, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any solid waste disposal project or any other assets of the board; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; agreement of the board to do all things necessary for the authorization, issuance and sale of bonds in such amounts as may be necessary for the timely retirement of notes issued in anticipation of the issuance of bonds; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the holders of which must consent thereto, and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the board for operating, administrative or other expenses of the board; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes are less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chair of the board shall certify, on or before December 1, of each year, the amount of such deficiency to the Governor of the state, for inclusion, if the Governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the board to be pledged for payment of such bonds or notes: Provided, That the Legislature is not required to make any appropriation so requested, and the amount of such deficiencies does not constitute a debt or liability of the state.

Neither the members of the board nor any person executing the bonds or notes are liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

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§22-16-6. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.

(a) Before issuing any revenue bonds in accordance with the provisions of this article, the solid waste management board shall consult with and be advised by the West Virginia water development authority as to the feasibility and necessity of the proposed issuance of revenue bonds.

(b) Prior to issuing revenue bonds under the provisions of this article, the board shall enter into agreements satisfactory to the West Virginia water development authority with regard to the selection of all consultants, advisors and other experts to be employed in connection with the issuance of such bonds and the fees and expenses to be charged by such persons, and to establish any necessary reserve funds and replacement and improvement funds, all such funds to be administered by the water development authority, and, so long as any such bonds remain outstanding, to establish and maintain a sinking fund or funds to retire such bonds and pay the interest thereon as the same may become due. The amounts in any such sinking fund, as and when so set apart by the board, shall be remitted to the West Virginia water development authority at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by the water development authority, as agent for the board, in a manner consistent with the provisions of this article and with the resolution pursuant to which the bonds have been issued. The water development authority shall act as fiscal agent for the administration of any sinking fund and reserve fund established under each resolution authorizing the issuance of revenue bonds pursuant to the provisions of this article, and shall invest all funds not required for immediate disbursement in the same manner as funds are invested pursuant to the provisions of section fifteen, article one, chapter twenty-two-c of this code.

(c) Notwithstanding any other provision of this article to the contrary, no revenue bonds shall be issued, nor the proceeds thereof expended or distributed, pursuant to the provisions of this article, without the prior approval of the water development authority.

(d) If the proceeds of revenue bonds issued for any solid waste landfill closure project exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used by the fiscal agent for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but not at a price exceeding the price at which any of such bonds are in the same year redeemable, as fixed by the board in its said resolution, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

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§22-16-7. Legal remedies of bondholders.

Any holder of solid waste disposal revenue bonds issued under the authority of this article or any of the coupons appertaining thereto, except to the extent the rights given by this article may be restricted by the applicable resolution, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state or granted under this article, by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the resolution, to be performed by the board or any officer or employee thereof, including the fixing, charging and collecting of sufficient rentals, fees, service charges or other charges.

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§22-16-8. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Solid waste closure revenue bonds and notes and solid waste closure revenue refunding bonds issued under authority of this article and any coupons in connection therewith are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. This article does not authorize the board to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

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§22-16-9. Solid waste closure revenue bonds lawful investments.

The provisions of sections nine and ten, article six, chapter twelve of this code notwithstanding, all solid waste closure revenue bonds issued pursuant to this article are lawful investments for the West Virginia state Board of Investments and are also lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for insurance companies.

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§22-16-10. Limitation on assistance.

The director may provide closure assistance only to permittees who meet the following requirements:

(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before November 30, 1991, except for those landfills allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before September 30, 1993, or the permittee of a landfill as provided for in subsection (g), section twelve, article sixteen of this chapter;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the amounts needed to comply, in a timely manner, with the closure requirements provided in article fifteen of this chapter and any rules promulgated pursuant thereto: Provided, That any permittee required to close a landfill, or any portion thereof, due to the lack of an approved composite liner system, who collects solid waste within this state which is disposed outside this state, shall not be eligible for closure assistance: Provided, however, That any permittee which is a Class I municipality shall be eligible for closure assistance when the permittee elects to and pays the solid waste assessment fee which would otherwise be levied and imposed upon the disposal of the solid waste by subsection (a), section four of this article, if the solid waste was disposed of within the state; and

(3) The permittee must maintain a permit for the landfill pursuant to the provisions of section ten, article fifteen of this chapter and maintain the full amount of the bond required to be submitted pursuant to section twelve of said article.

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§22-16-11. Application for closure assistance.

(a) The secretary shall provide an application and application procedure for all permitees of solid waste landfills desiring to receive closure assistance under this article.

(b) The secretary shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance or rejection of the application. If the application is rejected the notice shall contain the reasons for the rejection.

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§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

(a) The Solid Waste Facility Closure Cost Assistance Fund continues as a special revenue account in the State Treasury. The fund operates as a special fund in which all deposits and payments do not expire to the General Revenue Fund, but remain in the account and are available for expenditure in the succeeding fiscal year. Separate subaccounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in the fund, including moneys collected and deposited into the fund pursuant to §22-16-4 of this code;

(2) Contributions, grants, and gifts from any source, both public and private, which may be used by the secretary for any project or projects;

(3) Amounts repaid by permittees pursuant to §22-15-18 of this code; and

(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The Solid Waste Management Board, upon written approval of the secretary, has the authority to pledge all or part of the revenues paid into the Solid Waste Facility Closure Cost Assistance Fund as needed to meet the requirements of any revenue bond issue or issues of the Solid Waste Management Board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues where other moneys pledged may be insufficient. Any pledge of moneys in the Solid Waste Facility Closure Cost Assistance Fund for revenue bonds is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis. Expenditures from the fund, other than for the retirement of revenue bonds, may only be made in accordance with this article.

(e) The amounts deposited in the fund may be expended only on the cost of projects as provided in §22-16-3 and §22-16-15 of this code, as provided in subsection (f) of this section, and for payment of bonds and notes issued pursuant to §22-16-5 of this code. No more than two percent of the annual deposits to the fund may be used for administrative purposes.

(f) Notwithstanding any provision of this article, upon request of the Solid Waste Management Board, and with the approval of the projects by the Secretary of the Department of Environmental Protection, the secretary may pledge and place into escrow

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accounts up to an aggregate of $2 million of the fund to satisfy two years debt service requirement that permittees of publicly owned landfills and transfer stations are required to meet in order to obtain loans. Pledges shall be made on a project-by-project basis, may not exceed $500,000 for a project, and are made available after loan commitments are received. The secretary may pledge funds for a loan only when the following conditions are met:

(1) The proceeds of the loan are used only to perform construction of a transfer station or a composite liner system that is required to meet Title 47, Series 38, Solid Waste Management Rules;

(2) The permittee dedicates all yearly debt service revenue, as determined by the Public Service Commission, to meet the repayment schedule of the loan, before it uses available revenue for any other purpose; and

(3) That any funds pledged may only be paid to the lender if the permittee is in default on the loan.

(g) Notwithstanding any provision of this code to the contrary, the Elkins-Randolph County Landfill, located in Randolph County, and the Webster County Landfill, located in Webster County, are eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to complete their closure upon the filing of appropriate application. Upon the filing of an appropriate application, the Department of Environmental Protection shall work with the applicant to ensure the application meets the department's requirements.

(h) The Department of Environmental Protection is required to file, by January 1 of each year, an annual report with the Joint Committee on Government and Finance providing details on the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

(i) The Prichard Landfill in Wayne County is eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to complete post-closure maintenance and monitoring upon the filing of an appropriate application. In the event of a permit transfer, neither the state nor the Wayne County Economic Development Authority or entity may assume any liability from the private landfill other than post-closure maintenance and monitoring costs.

(j)(1) Notwithstanding any other provision of this code, upon completion of the landfill closure-related services at all eligible landfills pursuant to §22-16-3 of this code, the secretary may transfer excess money from the Solid Waste Facility Closure Cost Assistance Fund to the Reclamation of Abandoned and Dilapidated Properties Program Fund created by §22-15A-30 of this code. However, the secretary may not transfer moneys from the Solid Waste Facility Closure Cost Assistance Fund that are required to be maintained so that the department can conduct post-closure activities authorized by this article and the legislative rules promulgated thereunder. The department shall maintain in the Solid Waste Facility Closure Cost Assistance Fund a minimum balance of twice the total cost of post-closure

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expenses projected for the fiscal year as a buffer for unanticipated necessary post-closure activities.

(2) Contingent upon the Department of Environmental Protection securing private foundation funding to establish the Reclamation of Abandoned and Dilapidated Properties Program, and prior to the completion of the landfill closure-related services at all eligible landfills, the secretary may expend money from the Solid Waste Facility Closure Cost Assistance Fund for pilot projects conducted by the Department of Environmental Protection demonstrating the function of the Reclamation of Abandoned and Dilapidated Properties Program.

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§22-16-13. Promulgation of rules by director.

The director shall promulgate rules that are necessary for the efficient and orderly implementation and administration of this article.

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§22-16-14. Liability of owner or operator.

Nothing in this article relieves the owner, operator or permittee of a landfill of the legal duties, obligations or liabilities incident to the ownership or operation of a landfill, except that the performance by the director of any of the activities set forth in subsection (b), section three of this article relieves the operator from the requirement to perform such activities.

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§22-16-15. Procedures for handling remedial actions; payment of costs of remedial actions to be paid by owner or operator.

When the director, in performing activities pursuant to this article determines action, not set forth in subsection (b), section three of this article, is necessary to prevent or remediate any adverse effects of the landfill he or she shall notify the permittee and make and enter an order directing the permittee to take corrective or remedial action. The order shall contain findings of fact upon which the director based his or her determination to make and enter such order. The director shall fix a time limit for the completion of such action.

The director shall cause a copy of any such order to be served by registered or certified mail or by a law-enforcement officer upon such person.

If the corrective action is not taken within the time limit or the permittee notifies the director that it is unable to comply with the order, the director may expend amounts, as provided herein, to make the remediation.

The costs reasonably incurred in any remedial action taken by the director as provided in this article may be paid for initially by amounts available to the director in the fund created in subdivision (3), subsection (h), section eleven, article fifteen of this chapter or, to the extent funds are available, from the fund created in section twelve of this article, and such sums so expended, if not promptly repaid by the permittee upon request of the director, may be recovered from the permittee by appropriate civil action to be initiated by the Attorney General upon request of the director. All funds so recovered shall be deposited in the fund from which said funds were expended.

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§22-16-16. Right of entry.

The director or his or her duly authorized representatives 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 landfill, to determine the feasibility of the remediation or prevention of such adverse effects and to perform the activities set forth in sections three and fifteen of this article. Such entry is as an exercise of the police power of the state 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.

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§22-16-17. Authority of director to accept grants and gifts.

The director has the authority, on behalf of the Division of Environmental Protection, to accept for deposit in the closure cost assistance fund established in section twelve of this article, all gifts, grants, property, funds, security interest, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

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§22-16-18. Management and control of project.

(a) The director shall manage and control all projects, and may make and enter into all contracts or agreements necessary and incidental to the performance of the duties imposed under this article.

(b) On or before December 31, 1992, the director, in consultation with the Public Service Commission, shall complete a statewide closure plan, a comprehensive analysis of the total costs of closure anticipated under such statewide closure plan, and a proposal for implementation of closure assistance funding. The director, in consultation with the Public Service Commission, shall prepare and issue a report which shall include the following:

(1) An identification of specific landfills expected to be closed during the three-year period next following the completion of the plan;

(2) An estimate of the projected closure costs associated with each such identified landfill, including such engineering and technical analysis as may be necessary to provide a reasonable estimate;

(3) The extent to which closure assistance will be needed for each such specific landfill; and

(4) An assessment of the order of priority which should be established for closure of landfills and all moneys potentially available therefor.

The plan and report required pursuant to the provisions of this section shall be submitted to the Legislature for its approval or rejection by a concurrent resolution.

WV Legislature