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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Committee Substitute for

SENATE BILL NO. 550

(By Mr. *Williams*)



PASSED *March 12* 1983

In Effect *units day from* Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 550

(MR. WILLIAMS, *original sponsor*)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-f, relating to the creation of a solid waste management act; transferring authority over the management of solid waste from the department of health to the department of natural resources; purpose and legislative findings; definitions; powers and duties of the director of natural resources and the chief of the water resources division; rules; prohibited acts; permits required; orders; inspections; enforcement; civil and criminal penalties; appeal and review procedures; short title.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-f, to read as follows:

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.

- 1 (a) The purpose of this article is to transfer jurisdiction
- 2 over the management of solid waste under section nine,
- 3 article one, chapter sixteen of the code from the department

4 of health to the department of natural resources and to
5 establish a comprehensive program of controlling solid
6 waste disposal.

7 (b) The Legislature finds that uncontrolled,
8 inadequately controlled and improper collection,
9 transportation, processing and disposal of solid waste (1) is
10 a public nuisance and a clear and present danger to people;
11 (2) provides harborages and breeding places for disease-
12 carrying, injurious insects, rodents and other pests harmful
13 to the public health, safety and welfare; (3) constitutes a
14 danger to livestock and domestic animals; (4) decreases the
15 value of private and public property, causes pollution,
16 blight and deterioration of the natural beauty and resources
17 of the state and has adverse economic and social effects on
18 the state and its citizens; (5) results in the squandering of
19 valuable nonrenewable and nonreplenishable resources
20 contained in solid waste; (6) that resource recovery and
21 recycling reduces the need for landfills and extends their
22 life; and that (7) proper disposal, resource recovery or
23 recycling of solid waste is for the general welfare of the
24 citizens of this state.

§20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid waste
4 facility or practice which has a valid permit under this
5 article;

6 (b) "Director", "board", "chief", "person", "persons",
7 "applicant", "water", "waters", "water resources",
8 "sewage", "point source", "code" and "department" shall
9 have the same meaning as defined in section two, article
10 five-a, chapter twenty of the code;

11 (c) "Open dump" means any solid waste disposal which
12 does not have a permit under this article, or is in violation of
13 state law, or where solid waste is disposed in a manner that
14 does not protect the environment;

15 (d) "Sludge" means any solid, semisolid, residue or
16 precipitate, separated from or created by a municipal,
17 commercial or industrial waste treatment plant, water
18 supply treatment plant or air pollution control facility or
19 any other such waste having similar origin;

20 (e) "Solid waste" means any garbage, paper, litter,

21 refuse, cans, bottles, sludge from a waste treatment plant,
 22 water supply treatment plant or air pollution control
 23 facility, other discarded material, including carcasses of
 24 any dead animal or any other offensive or unsightly matter,
 25 solid, liquid, semisolid or contained liquid or gaseous
 26 material resulting from industrial, commercial, mining,
 27 agricultural operations or from community activities but
 28 does not include solid or dissolved material in sewage, or
 29 solid or dissolved materials in irrigation return flows or
 30 industrial discharges which are point sources and have
 31 permits under article five-a, chapter twenty of the code, or
 32 source, special nuclear or byproduct material as defined by
 33 the Atomic Energy Act of 1954, as amended, or a hazardous
 34 waste either indentified or listed under article five-e,
 35 chapter twenty of the code or refuse, slurry and overburden
 36 regulated under article six, chapter twenty of the code;

37 (f) "Solid waste disposal" means the practice of
 38 disposing solid waste including placing, depositing,
 39 dumping or throwing or causing to be placed, deposited,
 40 dumped or thrown any solid waste; and

41 (g) "Solid waste facility" means any system, facility,
 42 land, contiguous land, improvements on the land,
 43 structures or other appurtenances or methods used for
 44 processing, recycling or disposing of solid waste, including
 45 landfills, transfer stations, resource recovery facilities and
 46 other such facilities not herein specified.

§20-5F-3. Transfer of authority.

1 The Legislature hereby transfers from the department of
 2 health to the department of natural resources the duties,
 3 responsibilities and authority of the state director of health
 4 under section nine, article one, chapter sixteen of the code
 5 as to the permitting and regulating of solid wastes and
 6 hereby designates the chief to be the authorized
 7 representative denoted in that section for this purpose:
 8 *Provided*, That the state director of health shall retain
 9 authority under chapter sixteen of the code to enforce the
 10 public health laws over solid waste disposal which presents
 11 an imminent and substantial endangerment to the public
 12 health.

§20-5F-4. Powers and duties; rules and rule making.

1 In addition to all other powers, duties, responsibilities
 2 and authority granted and assigned to the director and chief

3 in the code and elsewhere described by law, they are hereby
4 empowered as follows:

5 (a) The director may adopt rules and regulations in
6 compliance with the West Virginia administrative
7 procedure act to carry out the provisions of this article
8 including modifying and existing rules and regulations and
9 establishing permit application fees up to an amount
10 sufficient to defray the costs of permit review. In
11 promulgating rules and regulations the director may
12 consider and establish requirements based on the quantity
13 of solid waste to be handled, including different
14 requirements for solid waste facilities or approved solid
15 waste facilities which handle more than one hundred tons
16 of solid waste per day, the environmental impact of solid
17 waste disposal, the nature, origin or characteristics of the
18 solid waste, public sentiment, the financial capability of the
19 applicant, soil and geological considerations and other
20 natural resource considerations. All existing rules and
21 regulations of the department of health relating to solid
22 waste disposal shall remain valid and be enforceable by the
23 department of natural resources on the effective day of this
24 article until changed or modified by the director, in
25 compliance with chapter twenty-nine-a of the code.

26 (b) The chief, after public notice and opportunity for
27 public hearing, may issue a permit with reasonable terms
28 and conditions for installation, establishment,
29 modification, operation or abandonment of a solid waste
30 facility: *Provided*, That the director, may deny the issuance
31 of a permit on the basis of information in the application or
32 from other sources including public comment, if the solid
33 waste facility may cause adverse impacts on the natural
34 resources and environmental concerns under the director's
35 purview in chapter twenty of the code, destruction of
36 aesthetic values, destruction or endangerment of the
37 property of others or is significantly adverse to the public
38 sentiment of the area where the solid waste facility is, or
39 will be, located. The director may also prohibit the
40 installation or establishment of specific types and sizes of
41 solid waste facilities in a specified geographical area of the
42 state based on the above cited factors and may delete such
43 geographical area from consideration for that type and size
44 solid waste facility.

45 (c) The director, chief or any authorized representative,
46 employee or agent of the department, may at reasonable
47 times, enter onto any approved solid waste facility, open
48 dump, solid waste facility or property where solid waste is
49 present for the purpose of making an inspection or
50 investigation of solid waste disposal.

51 (d) The director, chief or any authorized representative,
52 employee or agent of the department may, at reasonable
53 times, enter any approved solid waste facility, open dump,
54 solid waste facility or property where solid waste is present
55 and take samples of the waste, soils, air or water or may,
56 upon issuance of an order, require any person to take and
57 analyze samples of such waste, soil, air or water.

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

62 (f) The chief or his authorized representative, employee
63 or agent shall make periodic inspections at every approved
64 solid waste facility to effectively implement and enforce the
65 requirements of this article or its rules and regulations.

§20-5F-5. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it shall be unlawful
2 for any person to create, contribute to or operate an open
3 dump or for any landowner to allow an open dump to exist
4 on his property unless that open dump is under a
5 compliance schedule approved by the chief. Such
6 compliance schedule shall contain an enforceable sequence
7 of actions leading to compliance and shall not exceed three
8 years. No portion of this subsection shall be construed to
9 prevent a person from disposing of solid waste from his own
10 household upon his own private, rented or leased property
11 as long as such disposal does not create a public nuisance,
12 hazard to health, violate the terms of section fifteen, article
13 five, chapter twenty of the code or other provisions of the
14 code.

15 (b) It shall be unlawful for any person, unless he holds a
16 valid permit from the division to install, establish,
17 construct, modify, operate or abandon any solid waste
18 facility. All approved solid waste facilities shall be
19 installed, established, constructed, modified, operated or
20 abandoned in accordance with this article, plans,
21 specifications, orders, instructions and rules in effect.

22 (c) Any permit issued under this article shall be issued
23 in compliance with the requirements of this article, its rules
24 and article five-a and the rules promulgated thereunder, so
25 that only a single permit shall be required of a solid waste
26 facility under these two articles. Each permit issued under
27 this article shall have a fixed term not to exceed five years:
28 *Provided*, That the chief may administratively extend a
29 permit beyond its five year term if the approved solid waste
30 facility is in compliance with this article, its rules and
31 article five-a of this chapter and the rules promulgated
32 thereunder, provided, that such administrative extension
33 may not be for more than one year. Upon expiration of a
34 permit, a new permit may be issued upon application,
35 public notice and opportunity for public hearing, if the
36 approved solid waste facility will meet all applicable rules,
37 standards, limitations and other requirements of this
38 article and article five-a.

39 (d) All existing permits of the department of health for
40 solid waste facilities under section nine, article one, chapter
41 sixteen of the code shall continue in full force and effect
42 until a permit is issued for that approved solid waste facility
43 under this article, provided that all such existing permits of
44 the department of health shall expire within five years of
45 the effective date of this article. Within four years of the
46 effective date of this article, all persons holding such
47 department of health permits shall apply to the chief for a
48 permit under this article: *Provided*, That the chief may
49 require persons holding such existing health department
50 permits to reapply under this section prior to four years
51 from the effective date of this article if persistent violations
52 of this article, any permit term or condition, orders or rules
53 promulgated under this article, exists at that facility.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

1 (a) If the director or chief, upon inspection,
2 investigation or through other means observes, discovers or
3 learns of a violation of this article, its rules, article five-a of
4 this chapter or its rules, or any permit or order issued under
5 this article, he may issue an order requiring compliance
6 within a specified time which may exceed thirty days or
7 suspending or revoking the permit.

8 (b) Any person who willfully or negligently violates any
9 rules or regulations promulgated under this article, permit
10 terms and conditions or orders of the director or chief shall
11 be subject to the same criminal penalties as set forth in
12 section nineteen, article five-a, chapter twenty of the code.

13 (c) Any person who violates this article, any rules
14 promulgated thereunder, permit term or condition or order
15 of the chief or director shall be subject to a civil penalty not
16 to exceed ten thousand dollars per day of such violation.
17 The director or chief may institute civil actions to obtain
18 injunctive or other relief either in the circuit court wherein
19 the violation occurs or in the circuit court for Kanawha
20 County.

§20-5F-7. Appeal and review procedures.

1 (a) Any person having an interest which is or may be
2 adversely affected, or who is aggrieved by an order of the
3 director or chief, or by the issuance or denial of a permit or
4 by the permit's terms or conditions, may appeal to the water
5 resources board in the same manner as appeals are taken
6 under the water pollution control act, section fifteen, article
7 five-a, chapter twenty of the code.

8 (b) Any party, the director or the chief adversely
9 affected by an order made and entered by the water
10 resources board may obtain judicial review thereof in the
11 same manner as provided for under section sixteen, article
12 five-a of the water pollution control act.

§20-5F-8. Short title.

1 This article may be known and cited as the "solid waste
2 management act".

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Samuel E. Holme
.....
Chairman Senate Committee

Ronald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Millis
.....
Clerk of the Senate

Donald L. Stopp
.....
Clerk of the House of Delegates

Warren R. McGraw
.....
President of the Senate

W. M. Lee, Jr.
.....
Speaker House of Delegates

The within *is approved* this the *29*
day of *March* 1983.

John P. Raley
.....
Governor

