WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Committee Substitute for
SENATE BILL NO. 550

(By Mr. Williams)

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 over the management of solid waste under section nine, article one, chapter sixteen of the code from the department
of health to the department of natural resources and to
establish a comprehensive program of controlling solid
waste disposal.
(b) The Legislature finds that uncontrolled,
inadequately controlled and improper collection,
transportation, processing and disposal of solid waste (1) is
a public nuisance and a clear and present danger to people;
(2) provides harborages and breeding places for disease-
carrying, injurious insects, rodents and other pests harmful
to the public health, safety and welfare; (3) constitutes a
danger to livestock and domestic animals; (4) decreases the
value of private and public property, causes pollution,
blight and deterioration of the natural beauty and resources
of the state and has adverse economic and social effects on
the state and its citizens; (5) results in the squandering of
valuable nonrenewable and nonreplenishable resources
contained in solid waste; (6) that resource recovery and
recycling reduces the need for landfills and extends their
life; and that (7) proper disposal, resource recovery or
recycling of solid waste is for the general welfare of the
citizens of this state.

§20-5F-2. Definitions.
Unless the context clearly requires a different meaning,
as used in this article the terms:
(a) "Approved solid waste facility" means a solid waste
facility or practice which has a valid permit under this
article;
(b) "Director", "board", "chief", "person", "persons",
"applicant", "water", "waters", "water resources",
"sewage", "point source", "code" and "department" shall
have the same meaning as defined in section two, article
five-a, chapter twenty of the code;
(c) "Open dump" means any solid waste disposal which
does not have a permit under this article, or is in violation of
state law, or where solid waste is disposed in a manner that
does not protect the environment;
(d) "Sludge" means any solid, semisolid, residue or
precipitate, separated from or created by a municipal,
commercial or industrial waste treatment plant, water
supply treatment plant or air pollution control facility or
any other such waste having similar origin;
(e) "Solid waste" means any garbage, paper, litter,
refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining, agricultural operations or from community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a, chapter twenty of the code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either indentified or listed under article five-e, chapter twenty of the code or refuse, slurry and overburden regulated under article six, chapter twenty of the code; (f) "Solid waste disposal" means the practice of disposing solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste; and (g) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified.

§20-5F-3. Transfer of authority.
1 The Legislature hereby transfers from the department of health to the department of natural resources the duties, responsibilities and authority of the state director of health under section nine, article one, chapter sixteen of the code as to the permitting and regulating of solid wastes and hereby designates the chief to be the authorized representative denoted in that section for this purpose: Provided, That the state director of health shall retain authority under chapter sixteen of the code to enforce the public health laws over solid waste disposal which presents an imminent and substantial endangerment to the public health.

§20-5F-4. Powers and duties; rules and rule making.
1 In addition to all other powers, duties, responsibilities and authority granted and assigned to the director and chief
in the code and elsewhere described by law, they are hereby
empowered as follows:
(a) The director may adopt rules and regulations in
compliance with the West Virginia administrative
procedure act to carry out the provisions of this article
including modifying and existing rules and regulations and
establishing permit application fees up to an amount
sufficient to defray the costs of permit review. In
promulgating rules and regulations the director may
consider and establish requirements based on the quantity
of solid waste to be handled, including different
requirements for solid waste facilities or approved solid
waste facilities which handle more than one hundred tons
of solid waste per day, the environmental impact of solid
waste disposal, the nature, origin or characteristics of the
solid waste, public sentiment, the financial capability of the
applicant, soil and geological considerations and other
natural resource considerations. All existing rules and
regulations of the department of health relating to solid
waste disposal shall remain valid and be enforceable by the
department of natural resources on the effective day of this
article until changed or modified by the director, in
compliance with chapter twenty-nine-a of the code.
(b) The chief, after public notice and opportunity for
public hearing, may issue a permit with reasonable terms
and conditions for installation, establishment,
modification, operation or abandonment of a solid waste
facility: Provided, That the director, may deny the issuance
of a permit on the basis of information in the application or
from other sources including public comment, if the solid
waste facility may cause adverse impacts on the natural
resources and environmental concerns under the director's
purview in chapter twenty of the code, destruction of
aesthetic values, destruction or endangerment of the
property of others or is significantly adverse to the public
sentiment of the area where the solid waste facility is, or
will be, located. The director may also prohibit the
installation or establishment of specific types and sizes of
solid waste facilities in a specified geographical area of the
state based on the above cited factors and may delete such
geographical area from consideration for that type and size
solid waste facility.
(c) The director, chief or any authorized representative, employee or agent of the department, may at reasonable times, enter onto any approved solid waste facility, open dump, solid waste facility or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

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

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

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

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

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

(b) It shall be unlawful for any person, unless he holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.
(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article five-a and the rules promulgated thereunder, so that only a single permit shall be required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That the chief may administratively extend a permit beyond its five year term if the approved solid waste facility is in compliance with this article, its rules and article five-a of this chapter and the rules promulgated thereunder, provided, that such administrative extension may not be for more than one year. Upon expiration of a permit, a new permit may be issued upon application, public notice and opportunity for public hearing, if the approved solid waste facility will meet all applicable rules, standards, limitations and other requirements of this article and article five-a.

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

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

(a) If the director or chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of this article, its rules, article five-a of this chapter or its rules, or any permit or order issued under this article, he may issue an order requiring compliance within a specified time which may exceed thirty days or suspending or revoking the permit.
(b) Any person who willfully or negligently violates any rules or regulations promulgated under this article, permit terms and conditions or orders of the director or chief shall be subject to the same criminal penalties as set forth in section nineteen, article five-a, chapter twenty of the code. 
(c) Any person who violates this article, any rules promulgated thereunder, permit term or condition or order of the chief or director shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation. The director or chief may institute civil actions to obtain injunctive or other relief either in the circuit court wherein the violation occurs or in the circuit court for Kanawha County.

§20-5F-7. Appeal and review procedures.
(a) Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or chief, or by the issuance or denial of a permit or by the permit’s terms or conditions, may appeal to the water resources board in the same manner as appeals are taken under the water pollution control act, section fifteen, article five-a, chapter twenty of the code.
(b) Any party, the director or the chief adversely affected by an order made and entered by the water resources board may obtain judicial review thereof in the same manner as provided for under section sixteen, article five-a of the water pollution control act.

This article may be known and cited as the “solid waste management act”.


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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... this the ............... day of ............... 1983.

Governor