WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4369

(By Mr. , Speaker, Mr. Speaker, and Mr. Watson)

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Passed March 10, 1990

In Effect from Passage
AN ACT to amend and reenact section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two and four-a, article five-f, chapter twenty of said code; to further amend said article by adding thereto a new section, designated section four-b; to amend and reenact sections five, five-b and five-c of said article; to amend and reenact sections one, two and seven, article nine of said chapter; to further amend said article by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; to amend and reenact section twelve, article nine of said chapter; to amend and reenact sections twelve-a, twelve-b and twelve-c of said article; and to further amend said article by adding thereto a new section, designated section twelve-d, all relating to county solid waste assessment fees; adding additional legislative findings and definitions; requiring site approval permits for all solid waste disposal facilities; establishing priority for disposal needs; establishing special provision for residential solid waste disposal; setting priorities of disposal at a permit site; requiring bonding of solid waste facilities operating under a compliance order;
making performance bonds liable for thirty years after closure of a permit site; eliminating ninety day comment period by a county or regional solid waste authority on a pre-siting notice; requiring county and regional solid waste authorities to establish a waste management hierarchy; extending until one thousand nine hundred ninety-one the time within which county and regional solid waste authorities must submit comprehensive litter and solid waste control plans and commercial solid waste facility siting plans; providing for bonds and notes for constructing or acquiring or improving or extending solid waste facilities; allowing referendums on the continuation of establishment of Class A landfills; extending until one thousand nine hundred ninety-two the requirements regarding interim site approval; and making the solid waste assessment fee permanent.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two and four-a, article five-f of chapter twenty be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-b; that sections five, five-b and five-c of said article be amended and reenacted; that sections one, two and seven, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; that section twelve, article nine of said chapter be amended and reenacted; that sections twelve-a, twelve-b and twelve-c of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-d, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

1 Each county or regional solid waste authority is hereby authorized to impose a similar solid waste
assessment fee to that imposed by section five, article five-f, chapter twenty of this code at a rate not to exceed fifty center per ton or part thereof upon the disposal of solid waste in that county or region. All assessments due shall be applied to the reasonable costs of administration of the county's regional or county solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, litter control programs, or any solid waste programs deemed necessary to fulfill its duties.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

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

(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 division of health to the division 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.

(c) The Legislature further finds that disposal in West
Virginia of solid waste from unknown origins threatens the environment and the public health, safety and welfare, and therefore, it is in the interest of the public to identify the type, amount and origin of solid waste accepted for disposal at West Virginia solid waste facilities.

(d) The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal in the state of increasingly large amounts of infectious, dangerous and undesirable solid wastes and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

(e) The Legislature further finds that Class A landfills often have capacities far exceeding the needs of the state or the areas of the state which they serve and that such landfills create special environmental problems that require statewide coordination of the management of such landfills.

§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) “Chief” shall mean the chief of the section of waste management of the division of natural resources;

(c) “Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis;
(d) "Division" shall mean the division of natural resources;

(e) "Director" shall mean the director of the division of natural resources;

(f) "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;

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

(h) "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;

(i) "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 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 by-product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or
listed under article five-e, chapter twenty of the code or
refuse, slurry, overburden or other wastes or material
resulting from coal-fired electric power generation, the
exploration, development, production, storage and
recovery of coal, oil and gas, and other mineral
resources placed or disposed of at a facility which is
regulated under chapter twenty-two, twenty-two-a, or
twenty-two-b of the code, so long as such placement or
disposal is in conformance with a permit issued
pursuant to such chapters; “solid waste” shall not
include materials which are recycled by being used or
reused in an industrial process to make a product, as
effective substitute for commercial products, or are
returned to the original process as a substitute for raw
material feed stock;

(j) “Solid waste disposal” means the practice of
disposing of solid waste including placing, depositing,
dumping or throwing or causing to be placed, deposited,
dumped or thrown any solid waste;

(k) “Solid waste disposal shed” means the geographi-
cal area which the solid waste management board
designates and files in the state register pursuant to
section eight, article twenty-six, chapter sixteen of this
code;

(l) “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.
Such facility shall be deemed to be situated, for
purposes of this article, in the county where the majority
of the spatial area of such facility is located;

(m) “Class A facility” means a commercial solid waste
disposal facility which handles an aggregate of ten
thousand tons or more of solid waste per month; and

(n) “Applicant” means the person applying for a
commercial solid waste disposal permit or similar
renewal permit and any person related to such person
by virtue of common ownership, common management
or family relationships as the director of the division of natural resources may specify including the following: Spouses, parents and children and siblings.

§20-5F-4a. Approval permits required for certain solid waste disposal facilities; fee required.

(a) (1) For each commercial solid waste disposal permit or similar renewal permit application filed with the division of natural resources on and after the first day of January, one thousand nine hundred eighty-nine, prior to filing said application, an applicant shall first obtain a certificate of site approval from the county or regional solid waste authority, as the case may be, established in accordance with article nine of this chapter, covering the geographic area in which the solid waste disposal facility is to be located.

(2) For each such solid waste permit or renewal permit application filed with the division of natural resources after the effective date of this act but before the first day of January, one thousand nine hundred eighty-nine, an applicant shall first obtain a certificate of site approval from the county commission of the county in which the solid waste disposal facility is to be located.

(3) For each such solid waste permit or renewal permit application pending before the division of natural resources on the effective date of this act, an applicant shall within thirty days of the effective date of this act obtain a certificate of site approval from the county commission of the county in which the solid waste disposal facility is to be located.

(4) Notwithstanding anything in this section to the contrary, nothing contained in this section shall be construed to require an applicant for such a solid waste disposal permit or renewal permit to obtain more than one certificate of site approval from the county, or authority relating to the same solid waste disposal facility.

(b) The fee for the certificate of site approval is twenty-five dollars payable upon the filing of the
application therefor with the county, county solid waste
authority or regional solid waste authority, as the case
may be.

(c) Each county commission and authority shall as
soon as practicable promulgate reasonable rules includ-
ing, but not limited to, rules for determining the effect
of the proposed solid waste facility on residential,
business or commercial property investment and values,
and the social, economic, aesthetic and environmental
impact on community growth and development in
utilities, health, education, recreation, safety, welfare
and convenience, if any, before issuing any certificate of
site approval pursuant to this section. Each county
commission and authority may deny a certificate of site
approval based upon said rules and regulations or upon
a finding of adverse public sentiment.

(d) Any person adversely affected by a decision of a
county commission or authority under the provisions of
this section may appeal that decision to the circuit court
for the county in which the proposed facility is to be
located.

§20-5F-4b. Special provision for residential solid waste
disposal.

All commercial and public solid waste disposal
facilities shall establish and publish a yearly schedule
providing for one day per month on which a person not
in the business of hauling or disposing of solid waste
may dispose of an amount of residential solid waste up
to one pick-up truck load or its equivalent, free of all
charges and fees.

§20-5F-5. Prohibitions; permits required; priority of
disposal.

(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 two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm shall not be deemed to constitute a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons shall not constitute a violation of this section: Provided, That no person shall contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of the land on which unauthorized dumps have been or are being made shall not be liable for such unauthorized dumping unless such landowners refuse to cooperate with the division of natural resources in stopping such unauthorized dumping.

(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, however, That such administrative extension may not be for more than one year. Upon expiration of a permit, renewal permits may be issued in compliance with rules and regulations promulgated
by the director of the division of natural resources.

(d) All existing permits of the division 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 division 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 division of health permits shall apply to the chief for a permit under this article: Provided, however, That the chief may require persons holding such existing health division 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, exist at that facility. Notwithstanding any other provision contained in this subsection, the division of natural resources may enter an extension order for a period of two years while an application for a permit pursuant to this article is pending.

(e) No person may dispose in the state of any solid waste, whether such waste originates in-state or out-of-state, in a manner which endangers the environment or the public health, safety or welfare as determined by the director of the division of natural resources. Upon request by the director of the division of natural resources, the director of the division of health shall provide technical advice concerning the disposal of solid waste within the state.

(f) To the extent permissible by law, a commercial solid waste facility shall first ensure that the disposal needs of the county, or if applicable the region, in which it is located are met. If the county solid waste authority, or regional solid waste authority if applicable, in which the facility is located determines that the present or future disposal needs of the county, or if applicable the region, are not being, or will not be, met by the commercial solid waste facility, such authority may apply to the director of the division of natural resources
to modify the applicable permit in order to reduce the total monthly tonnage of out of county waste, or if applicable, out of region waste, the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage generated by the county, or if applicable the region, in which the facility is located.

The director of the division of natural resources shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code which reflect the purposes as set forth in this article.

§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, regulations promulgated hereunder and the permit: Provided, That the director shall have the discretion to waive the requirement of a bond from the operator of a commercial solid waste facility, other than a Class A facility, which is operating under a compliance order. The amount of the bond required shall be one thousand dollars per acre and may include an additional amount determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures shall include, but not be limited to, satisfactory monitoring, post-closure care and remedial measures: Provided, That the amount of the bond shall not exceed eight thousand dollars per acre. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either (1) the entire area to be used for the disposal of solid waste, or (2) that increment of land within the permit area upon which
the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code.

If the operator chooses to use incremental bonding, as succeeding increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

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

(c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of
the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

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

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

Should any corporate surety fail to promptly pay, in full, forfeited bond, it shall be disqualified from writing any further surety bonds under this article.

§20-5F-5c. Pre-siting notice.

Any person investigating an area for the purpose of siting a commercial solid waste facility where no current solid waste permit exists, in order to determine a feasible, approximate location, shall prior to filing an application for a solid waste permit publish a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is to be located. Such notice shall inform the public of the location, nature and other details of the proposed activity as prescribed in rules and regulations to be promulgated as soon as practicable by the director. Within five days of such publication such person shall file with the director a pre-siting notice, which shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. Such notice shall contain a certification of publication from a qualified newspaper, description of the area, the period of investigative review, a United States geological survey topographic map and a map showing the location of property boundaries of the area proposed for siting and other such information as required by rules and regulations promulgated pursuant to this section. The director shall hold a public hearing on the pre-siting notice in the area affected. The director shall define pre-siting activities by promulgating legislative rules pursuant to chapter twenty-nine-a of this code. On or after the first day of January, one thousand nine hundred eighty-nine, the pre-siting notice, as prescribed by the director, shall also be filed with the county or regional solid waste authority, established pursuant to article nine, chapter twenty of this code, in which the proposed site is located within five days of the publication of the notice.
The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia, (2) the degradation of the state's environmental quality including both surface and groundwaters which provide essential and irreplaceable sources of domestic and industrial water supplies, (3) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare, (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state, (5) has adverse social and economic effects on the state and its citizens, and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal into the state of increasingly large amounts of infectious, dangerous and undesirable solid waste and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

Therefore, it is the purpose of the Legislature to
protect the public health and welfare by providing for
a comprehensive program of solid waste collection,
processing, recycling and disposal to be implemented by
state and local government in cooperation with the
private sector. The Legislature intends to accomplish
this goal by establishing county and regional solid waste
authorities throughout the state to develop and imple-
ment litter and solid waste control plans. It is the
further purpose of the Legislature to restrict and
regulate persons and firms from exploiting and endan-
gering the public health and welfare of the state by
disposing of solid wastes and other dangerous materials
which would not be accepted for disposal in the location
where such wastes or materials were generated.

It is further the purpose of the Legislature to reduce
our solid waste management problems and to meet the
purposes of this article by requiring county and regional
solid waste authorities to establish programs and plans
based on an integrated waste management hierarchy. In
order of preference, the hierarchy is as follows:

1. **Source reduction.**—This involves minimizing waste
   production and generation through product design,
   reduction of toxic constituents of solid waste, and
   similar activities.

2. **Recycling, reuse and resource recovery.**—This
   involves separating and recovering valuable resources
   from the waste stream, composting food and yard waste,
   marketing of recyclables and, if environmentally
   acceptable, incineration.

3. **Landfilling.**—This is the lowest priority in the
   hierarchy and involves the waste management option of
   last resort. To the maximum extent possible, it should
   be reserved for nonrecyclables and other materials that
   cannot practically be managed in any other way.

The Legislature further finds that the potential
impacts of proposed commercial solid waste facilities
may have a deleterious and debilitating impact upon the
transportation network, property values, economic
growth, environmental quality, other land uses and the
public health and welfare in affected communities. The
Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land use conflicts engendered by these proposed facilities. The Legislature also finds that such local land use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.


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

(a) “Approved solid waste facility” means a commercial solid waste facility or practice which has a valid permit or compliance order under article five-f of this chapter;

(b) “Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and shall not include the legitimate reuse and recycling of materials for structural fill, road base, mine reclamation, and similar applications;

(c) “Compliance order” means an administrative order issued pursuant to section five, article five-f, chapter twenty of this code authorizing a solid waste
facility to operate without a solid waste permit;

(d) "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;

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

(f) "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;

(g) "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 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 this code, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under article five-e, chapter twenty of this code or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power generation, the
exploration, development, production, storage and 
recovery of coal, oil and gas, and other mineral 
resources placed or disposed of at a facility which is 
regulated under chapter twenty-two, twenty-two-a or 
twenty-two-b of this code, so long as such placement or 
disposal is in conformance with a permit issued 
pursuant to said chapters; “solid waste” shall also not 
include materials which are recycled by being used or 
reused in an industrial process to make a product, as 
effective substitutes for commercial products, or are 
returned to the original process as a substitute for raw 
material feedstock;

(h) “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;

(i) “Solid waste disposal shed” means the geographical 
area which the solid waste management board designates and files in the state register pursuant to section 
eight, article twenty-six, chapter sixteen of this code;

(j) “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. 
Such facility shall be deemed to be situated, for 
purposes of this article, in the county where the majority 
of the spatial area of such facility is located; and

(k) “Class A facility” means a commercial solid waste 
disposal facility which handles an aggregate of ten 
thousand tons or more of solid waste per month.

§20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

(a) Each county and regional solid waste authority 
shall be required to develop a comprehensive litter and 
solid waste control plan for its geographic area and to
submit said plan to the solid waste management board on or before the first day of July, one thousand nine hundred ninety-one. Each authority shall submit a draft litter and solid waste control plan to the solid waste management board by the thirty-first day of March, one thousand nine hundred ninety-one. The comments received by the county or regional solid waste authority at public hearings, two of which shall be required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either (i) payment of garbage collection fee or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste landfills and other facilities, whether existing or proposed, to serve the solid waste needs of the county
or the region, as the case may be, consistent with the
comprehensive county plan prepared by the county
planning commission;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and
stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid
waste collection and disposal services of municipalities
and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of
private industry and civic groups in volunteer cleanup
efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling
efforts;

(11) A program to identify the disposal of solid wastes
which are not generated by sources situated within the
boundaries of the county or the region established
pursuant to this section;

(12) Coordination with the division of highways and
other local, state and federal agencies in the control and
removal of litter and the cleanup of open and unpermit-
ted dumps;

(13) Establishment of a program to encourage and
utilize those individuals incarcerated in the county jail
and those adults and juveniles sentenced to probation for
the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all
refuse from commercial and industrial sources within
the county or region, as the case may be, including
refuse from commercial and industrial sources, but
excluding refuse from sources owned or operated by the
state or federal governments.

(c) The solid waste management board shall establish
advisory rules to guide and assist the counties in the
development of the plans required by this section.

(d) Each plan prepared under this section shall be
subject to approval by the solid waste management
board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.

(e) The solid waste management board shall develop a litter and solid waste control plan for any county or regional solid waste authority which fails to submit such a plan on or before the first day of July, one thousand nine hundred ninety-one: Provided, That in preparing such plans the director may determine in his discretion whether to prepare a regional or county based plan for those counties which fail to complete such a plan.


For constructing or acquiring any solid waste facilities for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extension thereto, and also for reimbursing or paying the costs and expenses of creating the authority, if any, the board of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds or notes of such authority, payable from the revenues derived from the operation of the solid waste facilities under control of the authority or from such other funds as available to the authority for such purpose. Such bonds or notes may be issued in one or more series, may bear such date or dates, may mature at such time or times not to exceed forty years from their respective dates, may bear interest at such rate or rates, payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the
absence of any express recital on the face thereof, that
the bond or note is nonnegotiable, all such bonds or notes
shall be, and shall be treated as, negotiable instruments
for all purposes. The bonds or notes shall be executed
by the chairman of the board, who may use a facsimile
signature. The official seal of the authority or a
facsimile thereof shall be affixed to or printed on each
bond or note and attested, manually or by facsimile
signature, by the secretary-treasurer of the board, and
any coupons attached to any bond or note shall bear the
signature or facsimile signature of the chairman of the
board. Bonds or notes bearing the signatures of officers
in office on the date of the signing thereof shall be valid
and binding for all purposes notwithstanding that
before the delivery thereof any or all of the persons
whose signatures appear thereon shall have ceased to be
such officers. Notwithstanding the requirements or
provisions of any other law, any such bonds or notes may
be negotiated or sold in such manner and at such time
or times as is found by the board to be most advantage-
ous. Any resolution or resolutions providing of the
issuance of such bonds or notes may contain such
convenants and restrictions upon the issuance of
additional bonds or notes thereafter as may be deemed
necessary or advisable for the assurance of the payment
of the bonds or notes thereby authorized.

§20-9-10b. Items included in cost of properties.

The cost of any solid waste facilities acquired under
the provisions of this article shall be deemed to include
the cost of the acquisition or construction thereof, costs
of closure of solid waste facilities, the cost of all property
rights, easements and franchises deemed necessary or
convenient therefor and for the improvements and
extensions thereto; interest upon bonds or notes prior to
and during construction or acquisition and for twelve
months after completion of construction or of acquisition
of the improvements and extensions; engineering, fiscal
agents and legal expenses; expenses for estimates of cost
and of revenues, expenses for plans, specifications and
surveys; other expenses necessary or incident to deter-
mining the feasibility or practicability of the enterprise,

§20-9-10c. Bonds or notes may be secured by trust indenture.

In the discretion and at the option of the board such bonds or notes may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia. The resolution authorizing the bonds or notes and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its board and officers in relation to the construction or acquisition of solid waste facilities and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or notes or revenues of the solid waste facilities or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or noteholders and such trustee.

§20-9-10d. Sinking fund for bonds or notes.

At or before the time of the issuance of any bonds or notes under this article the board may by resolution or
in the trust indenture provide for the creation of a
sinking fund and for payments into such fund from the
revenues of the solid waste facilities operated by the
authority or from other funds available thereto such
sums in excess of the cost of maintenance and operation
of such properties as will be sufficient to pay the
accruing interest and retire the bonds or notes at or
before the time each will respectively become due and
to establish and maintain reserves therefor. All sums
which are or should be, in accordance with such
provisions, paid into such sinking fund shall be used
solely for payment of interest and principal and for the
retirement of such bonds or notes or at prior to maturity
as may be provided or required by such resolution.

§20-9-10e. Collection, etc., of revenues and funds and
enforcement of covenants; default; suit, etc.,
by bondholder or noteholder or trustee to
compel performance of duties; appointment
and powers of receiver.

The board for any such authority shall have power to
insert enforceable provisions in any resolution authoriz-
ing the issuance of bonds or notes relating to the
collection, custody and application of revenues or of the
authority from the operation of the solid waste facilities
under its control or other funds available to the
authority and to the enforcement of the covenants and
undertakings of the authority. In the event there shall
be default in the sinking fund provisions aforesaid or in
the payment of the principal or interest on any of such
bonds or notes or, in the event the authority or its board
or any of its officers, agents or employees, shall fail or
refuse to comply with the provisions of this article, or
shall default in any covenant or agreement made with
respect to the issuance of such bonds or notes or offered
as security therefor then any holder or holders of such
bonds or notes and any such trustee under the trust
indenture, if there be one, shall have the right by suit,
action, mandamus or other proceeding instituted in the
circuit court for the county or any of the counties
wherein the authority extends, or in any other court of
competent jurisdiction, to enforce and compel perfor-
mance of all duties required by this article or under-
taken by the authority in connection with the issuance
of such bonds or notes, and upon application of any such
holder or holders, or such trustee, such court shall, upon
proof of such defaults, appoint a receiver for the affairs
of the authority and its properties, which receiver so
appointed shall forthwith directly, or by his agents and
attorneys, enter into and upon and take possession of the
affairs of the authority and each and every part thereof,
and hold, use, operate, manage and control the same,
and in the name of the authority exercise all of the
rights and powers of such authority as shall be deemed
expedient, and such receiver shall have power and
authority to collect and receive all revenues and apply
same in such manner as the court shall direct. Whenever
the default causing the appointment of such receiver
shall have been cleared and fully discharged and all
other defaults shall have been cured, the court may in
its discretion and after such notice and hearing as it
deems reasonable and proper direct the receiver to
surrender possession of the affairs of the authority to its
board. Such receiver so appointed shall have no power
to sell, assign, mortgage, or otherwise dispose of any
assets of the authority except as hereinbefore provided.

§20-9-10f. Operating contracts.

The board may enter into contracts or agreements
with any persons, firms or corporations for the operation
and management of the solid waste facilities for such
period of time and under such terms and conditions as
shall be agreed upon between the board and such
persons, firms or corporations. The board shall have
power to provide in the resolution authorizing the
issuance of bonds or notes, or in any trust indenture
securing such bonds or notes, that such contracts or
agreements shall be valid and binding upon the
authority as long as any of said bonds or notes, or
interest thereon, are outstanding and unpaid.

§20-9-10g. Statutory mortgage lien created unless other-
wise provided; foreclosure thereof.

Unless otherwise provided by resolution of the board,
there shall be and is hereby created a statutory mortgage lien upon such solid waste facilities of the authority, which shall exist in favor of the holders of bonds or notes hereby authorized to be issued, and each of them, and the coupons attached to said bonds or notes, and such solid waste facilities shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds or notes. Any holder of such bonds or notes, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds or notes, and may foreclose such statutory mortgage lien in the manner now provided by the laws of the state of West Virginia for the foreclosure of mortgages on real property.

§20-9-10h. Refunding bonds or notes.

The board of any authority having issued bonds or notes under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds or notes of such authority for the purpose of retiring or refinancing any or all outstanding bonds or notes, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds or notes shall be applicable to such refunding bonds or notes, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds or notes to be so refunded.

§20-9-10i. Indebtedness of authority.

No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of an authority. No indebtedness of any nature of authority shall constitute an indebtedness of the state of West Virginia or any municipality or county therein or a charge against any property of said state of West Virginia or any munic-
ipalities or counties. No indebtedness or obligation
incurred by any authority shall give any right against
any member of the governing body of any municipality
or any member of the authority of any county or any
member of the board of any authority. The rights of
creditors of any authority shall be solely against the
authority as a corporate body and shall be satisfied only
out of property held by it in its corporate capacity.

§20-9-10j. Property, bonds or notes and obligations of
authority exempt from taxation.

The authority shall be exempt from the payment of
any taxes or fees to the state or any subdivisions thereof
or any municipalities or to any officer or employee of
the state or of any subdivision thereof or of any
municipalities. The property of the authority shall be
exempt from all local and municipal taxes. Bonds, notes,
debentures and other evidence of indebtedness of the
authority are declared to be issued for a public purpose
and to be public instrumentalities, and, together with
interest thereon, shall be exempt from taxes.

§20-9-12. Powers, duties and responsibilities of authority
generally.

The authority may exercise all powers necessary or
appropriate to carry out the purposes and duties
provided in this article, including the following:

(1) Sue and be sued, plead and be impleaded and have
and use a common seal.

(2) To conduct its business in the name of the county
solid waste authority or the regional solid waste
authority, as the case may be, in the names of the
appropriate counties.

(3) The authority board of directors shall promulgate
rules and regulations to implement the provisions of
sections eight and nine of this article and is authorized
to promulgate rules and regulations for purposes of this
article and the general operation and administration of
authorities affairs.

(4) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the conduct of its
affairs consistent with this article.

(5) To promulgate such rules and regulations as may
be proper and necessary to implement the purposes and
duties of this article.

(6) Acquire, construct, reconstruct, enlarge, improve,
furnish, equip, maintain, repair, operate, lease or rent
to, or contract for the operation by any person, partner-
ship, corporation or governmental agency, any solid
waste facility or collection, transportation and process-
ing facilities related thereto.

(7) Issue negotiable bonds, notes, debentures or other
evidences of indebtedness and provide for the rights of
the holders thereof, incur any proper indebtedness and
issue any obligations and give any security therefor
which it may deem necessary or advisable in connection
with exercising powers as provided herein.

(8) Make available the use or services of any solid
waste facility collection, transportation and processing
facilities related thereto, to any person, partnership,
corporation or governmental agency consistent with this
article.

(9) Acquire by gift or purchase, hold and dispose of
real and personal property in the exercise of its powers
and duties.

(10) Make and enter all contracts, leases and agree-
ments and to execute all instruments necessary or
incidental to the performance of its duties and powers.

(11) Employ managers, engineers, accountants, attor-
neys, planners and such other professional and support
personnel as are necessary in its judgment to carry out
the provisions of this article.

(12) Receive and accept from any source such grants,
fees, real and personal property, contributions and funds
of any nature as may become available to the authority
in order to carry out the purposes of this article.

(13) Cooperate with and make such recommendations
to local, state and federal government and the private
sector in the technical, planning and public policy aspects of litter control and solid waste management as the authority may find appropriate and effective to carry out the purposes of this article.

(14) Charge, alter and collect rentals, fees, service charges and other charges for the use or services of any solid waste facilities or any solid waste collection, transportation and processing services provided by the authority.

(15) Do all acts necessary and proper to carry out the powers expressly granted to the authority by the article and powers conferred upon the authority by this article.

All rules and regulations promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of the code.

§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the West Virginia state solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste landfills which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste landfills which shall accept only less than an aggregate of ten thousand tons of solid waste per month.
31 [Enr. Com. Sub. for H. B. 4364]

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including all solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The plan shall be developed based upon information readily available. Due to the limited funds and time available the plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other public participation in the preparation of the siting plan as required by the
rules and regulations promulgated by the West Virginia state solid waste management board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the West Virginia state solid waste authority.

(d) The siting plan shall take effect upon approval by the West Virginia state solid waste management board pursuant to the rules and regulations promulgated for this purpose. Upon approval of said plan, the West Virginia state solid waste management board shall transmit a copy thereof to the director of the division of natural resources and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the West Virginia state solid waste management board, it shall be unlawful for any person to establish, construct, install or operate a commercial solid waste landfill or transfer station at a site not authorized by the siting plan: Provided, That an existing commercial solid waste landfill or transfer station which, on the effective date of this section, held a valid solid waste permit or compliance order issued by the division of natural resources pursuant to article five-f of this chapter may continue to operate but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order, and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules and regulations promulgated by the West Virginia state solid waste management board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the
contrary, upon application from a person who has filed a pre-siting notice pursuant to section five-c, article five-f of this chapter, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The West Virginia state solid waste management board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The West Virginia state solid waste management board shall prepare and adopt a siting plan for any county or regional solid waste authority which does not complete and file with the said state authority such a siting plan in compliance with the provisions of this section and the rules and regulations promulgated thereunder. Any siting plan adopted by the West Virginia state solid waste authority pursuant to this subsection shall comply with the provisions of this section, and the rules and regulations promulgated thereunder, and shall have the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the said state authority.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the West Virginia state solid waste management board pursuant to section seven of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

(j) The West Virginia state solid waste management board is authorized and directed to promulgate rules
and regulations specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

§20-9-12b. Interim siting approval for commercial solid waste facilities.

(a) Until the first day of July, one thousand nine hundred ninety-two, or the effective date of the commercial solid waste facility siting plan authorized by section twelve-a of this article, whichever date occurs first, it shall be unlawful for any person to establish, construct or install a commercial solid waste landfill or transfer station, or to expand the spatial land area of such an existing facility, without a certificate of site approval from the county or regional solid waste authority for the county in which the facility would be situated: Provided, That a person, who, on the effective date of this section, holds a valid Class A approval permit issued by a county commission, may obtain site approval from the county commission for the county in which the facility would be situated: Provided, however, That no such certificate will be required for such an existing commercial solid waste facility which on the effective date of this section held a valid solid waste permit or compliance order issued by the division of natural resources unless such facility increases its spatial land area beyond that authorized by such solid waste permit or compliance order.

(b) The county or regional solid waste authority, or county commission, as appropriate shall issue or deny the certificate of site approval based upon the consideration of the effects of the proposed commercial solid waste landfill or transfer station upon one or more of the following criteria: The efficient disposal of solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.
(c) The county or regional solid waste authority, or county commission, as appropriate, shall issue or deny the certificate of site approval within a reasonable period upon receiving the pre-siting notice for the proposed commercial solid waste facility required by section five-c of article five-f of this chapter.

(d) The county or regional solid waste authority, or county commission, as appropriate, shall hold a public hearing prior to the issuance of a certificate of site approval for the purpose of receiving public comment upon the siting of the proposed commercial solid waste facility. The authority shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

(e) The county or regional solid waste authority, or county commission, as appropriate, shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval.

(f) Any person adversely affected by a decision of a county or regional solid waste authority, or county commission, as appropriate, to issue or deny a certificate of site approval pursuant to this section may appeal that decision to the circuit court for the county in which the proposed commercial solid waste facility would be located.

§20-9-12c. Approval of establishment or continuation of Class A facility by county commission and/or referendum.

(a) If a Class A applicant obtains a certificate of site approval from the county or regional solid waste authority regarding establishing, constructing or operating a commercial solid waste landfill, said applicant shall also file a notice with the county commission of the county within whose boundaries such landfill would be situated or of the county commission where it would be situated if its spatial area covers more than one county. The applicant shall request the approval of the county commission of the affected county.
to establish, construct or operate such landfill within the county. The county commission must act on such request and either grant or deny its approval within thirty days after the filing of such notice and request. The county commission may hold public hearings and solicit public comment for the purposes of this section.

Following the decision by the county commission and upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after it has rendered its decision, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot.

Any referendum conducted pursuant to this section shall be held at the next primary, general or other county-wide election: Provided, That the election shall be held within nine months following the decision of the county commission. If no primary, general or county-wide election is scheduled within such nine month period, then the county commission shall schedule a special election to be held within such time period.

(1) Such referendum will be to determine whether it is the will of the voters of the county that a solid waste facility handling ten thousand tons or more of solid waste per month be located in the county. Any election at which the question of locating a solid waste disposal facility 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.

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

“Shall a solid waste disposal facility handling ten thousand tons or more of solid waste per month be located within ___________ County, West Virginia?

□ For the Facility

□ Against the Facility

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

(3) If a majority of the legal votes cast upon the question be against the siting of a Class A landfill within the county, then the county commission, the county or regional solid waste authority and the division of natural resources shall not proceed any further with the pending notice or application nor may any of them allow to be filed subsequent notices or applications to site a Class A landfill within the county. If a majority of the legal votes cast upon the question be for siting a Class A landfill within the county, then the application process as set forth in this article and article five-f of this chapter may proceed, but such vote shall not be binding on or require the county or regional solid waste authority or the division of natural resources to approve an application to establish, construct or operate a Class A landfill. If the majority of the legal votes cast be against the question, that does not prevent the question from again being submitted to a vote at any subsequent election in the manner herein provided.

(b) Notwithstanding any other provisions of this chapter to the contrary, a person who, on the effective date of this section holds a valid Class A approval permit or compliance order issued by the division of natural resources pursuant to article five-f of this chapter, may continue to operate if, by the first day of June, one thousand nine hundred ninety, the county commission of the county in which such facility is located approves the continued handling of ten thousand tons or more of solid waste per month: Provided, That the decision of the county commission is subject to

review by referendum of the citizens of the county in
which such facility is located.

(1) Any referendum held pursuant to this subsection
shall comply with the procedure set forth in subsection
(a) of this section. Further the ballot, or ballot labels
where voting machines are used, shall have printed
thereon substantially the following: “Shall the
____________________ landfill continue to handle ten
thousand tons or more of solid waste per month?

□ For continued handling of ten thousand tons or
more of solid waste per month

□ Against continued handling of ten thousand tons
or more of solid waste per month

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

(2) If a majority of the legal votes cast upon the
question are against the continued handling of ten
thousand tons or more of solid waste per month, or if
the county commission disapproves the continued
operation of such facility, the director of the division of
natural resources shall, within thirty days following
certification of the election results, or the decision of the
county commission, amend the permit or compliance
order to require a decrease, over a period lasting no
more than one year, in total tonnage to a level below ten
thousand tons of solid waste per month.

§20-9-12d. Solid waste assessment interim fee; regulated
motor carriers; dedication of proceeds; criminal penalties.

(a) Imposition.—Effective the first day of July, one
thousand nine hundred eighty-nine, a solid waste
assessment fee is hereby levied and imposed upon the
disposal of solid waste at any solid waste disposal facility
in this state to be collected at the rate of one dollar per
ton or part thereof of solid waste. The fee imposed by
this section shall be in addition to all other fees levied
by law.

(b) Collection, return, payment and record.—The fee
herein imposed shall be paid by the person disposing of solid waste at a solid waste disposal facility and shall be collected by the operator of such facility and remitted to the state tax commissioner. The fee accrues at the time the solid waste is disposed of in this state. The fee imposed by this section shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on such form or forms as prescribed by the state tax commissioner. 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 such form as the state tax commissioner may by regulation require.

(c) Regulated motor carriers.—The fee imposed by this section and section twenty-two, article five, chapter seven of this code shall be considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a 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 fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service.

(d) Definition of solid waste disposal facility.—For purposes of this section, the term “solid waste disposal facility” means any approved solid waste facility or open dump in this state. Nothing herein shall be construed to authorize in any way the creation or operation of or contribution to an open dump.

(e) Exemptions.—The following transactions shall be exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility 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 such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit 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 such days and times as designated by the director of the division of natural resources by regulation as exempt from the fee imposed pursuant to section five-a, article five-f, chapter twenty of this code.

(f) Procedure and administration.—Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties.—Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds.—The net proceeds of the fee collected pursuant to this section shall be transferred to a special revenue account designated as the “Solid Waste Planning Fund” as such proceeds are received by the state tax commissioner. The West Virginia state solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: Provided, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the West Virginia state solid waste management board for: (i) Grants to the county or
89 regional solid waste authorities for the purposes of this article; (ii) administration, technical assistance or other costs of the state solid waste management board necessary to implement the purposes of this article and article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

96 (i) Severability.—If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

105 (j) Effective date.—This section is effective on the first day of July, one thousand nine hundred ninety.

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

[Signature]
Chairman Senate Committee

Bermond V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

Donald D. Lepp
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 30th day of March 1990.

[Signature]
Governor